ORIGINAL

# In the Supreme Court of the State of California

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| **PEOPLE OF THE STATE OF CALIFORNIA,**<br>**Plaintiff and Respondent,**<br>**v.**<br>**JAVIER CASTILLO,**<br>**Defendant and Appellant.** | Case No. S171163 |

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Second Appellate District, Case No. B202289
Los Angeles County Superior Court, Case No. ZM009280, ZM0006562, ZM004837
The Honorable Stephen A. Marcus, Judge

## ANSWERING BRIEF ON THE MERITS

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## TABLE OF CONTENTS

**Page**


Issue Presented ........................................................................................ 1

Introduction ............................................................................................. 1

Statement of the Case ............................................................................... 2

Summary of Argument .............................................................................. 6

Argument .................................................................................................. 7

I. The Court of Appeal properly increased the term of appellant's SVP commitment from two years to an indeterminate term pursuant to the 2006 amendments to the SVPA ...................................................................... 7

A. The 2006 amendments to the SVPA ........................... 8

B. The indeterminate term was the only legally authorized term in appellant's case ............................ 9

C. The District Attorney's stipulation to a two-year term was not binding on the Court of Appeal because the stipulation was legally erroneous .......... 11

D. The Attorney General was not barred from challenging the two-year commitment term on appeal ........................................................................ 13

1. Equitable Estoppel ........................................ 13

2. Promissory Estoppel and Judicial Estoppel ...................................................... 22

3. Waiver and Forfeiture .................................... 24

4. Due Process .................................................. 25

II. Appellant's claim that the Court of Appeal was precluded from reaching the merits of the challenge to the two-year term should not be addressed by this Court ......................................................................... 26

III. Appellant's claim that the trial court lacked jurisdiction to order an indeterminate term is not properly before this Court .................................................. 27

Conclusion ............................................................................................... 29

## TABLE OF AUTHORITIES

**Page**

**CASES**

*Boren v. State Personnel Board*
(1951) 37 Cal.2d 634 .......... 14

*Bourquez v. Superior Court*
(2007) 156 Cal.App.4th 1275 .......... 4, 10, 12, 28

*Burrows v. State of California*
(1968) 260 Cal.App.2d 29 .......... 11

*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court*
(1990) 50 Cal.3d 658 .......... 11

*City of Goleta v. Superior Court*
(2006) 40 Cal.4th 270 .......... 14

*City of Long Beach v. Mansell*
(1970) 3 Cal.3d 462 .......... 14

*County of Lassen v. State of California*
(1992) 4 Cal.App.4th 1151 .......... 14

*Doers v. Golden Gate Bridge etc. Dist.*
(1979) 23 Cal.3d 180 .......... 21

*Garabedian v. Los Angeles Cellular Telephone Co.*
(2004) 118 Cal.App.4th 123 .......... 11

*Hale v. Morgan*
(1978) 22 Cal.3d 388 .......... 24

*Hubbart v. Superior Court*
(1999) 19 Cal.4th 1138 .......... 8

*In re Marriage of Fithian*
(1977) 74 Cal.App.3d 397 .......... 11

*In re Marriage of Jackson*
(2006) 136 Cal.App.4th 980 .......... 23

*Kajima/Ray Wilson v. Los Angeles County Metropolitan Transportation Authority*
(2000) 23 Cal.4th 305 ....................23

*Longshore v. County of Ventura*
(1979) 25 Cal.3d 14 ....................14

*Medina v. Board of Retirement*
(2003) 112 Cal.App.4th 864 ....................14

*Oakland Raiders v. City of Berkeley*
(1976) 65 Cal.App.3d 623 ....................11

*People v. Carroll*
(2007) 158 Cal.App.4th 503 ....................9, 10, 28

*People v. Jones*
(1936) 6 Cal.2d 554 ....................11

*People v. Jones*
(1997) 15 Cal.4th 119 ....................21

*People v. Peevy*
(1998) 17 Cal.4th 1184 ....................21

*People v. Quartermain*
(1997) 16 Cal.4th 600 ....................26

*People v. Shields*
(2007) 155 Cal.App.4th 559 ....................28

*People v. Singh*
(1932) 121 Cal.App. 107 ....................12

*People v. Superior Court (Ghilotti)*
(2002) 27 Cal.4th 888 ....................8

*People v. Talibdeen*
(2002) 27 Cal.4th 1151 ....................24

*San Francisco Lumber Co. v. Bibb*
(1903) 139 Cal. 325 ....................11

*San Marcos Water District v. San Marcos Unified School District*
(1986) 42 Cal.3d 154 ....................23

*Simmons v. Ghaderi*
(2008) 44 Cal.4th 570 ....................14

*Valdez v. Taylor Automobile Co.*
(1954) 129 Cal.App.2d 810 ........................................................ 12

*Walton v. City of Red Bluff*
(1991) 2 Cal.App.4th 117 ........................................................ 27

**STATUTES**

Ann. Pen. Code (2008) § 209 ........................................................ 9, 15

Gov. Code, § 68081 ........................................................ 27

Pen. Code,
§ 288, subd. (a) ........................................................ 2
§ 288, subd. (b) ........................................................ 2
§ 1252 ........................................................ 27

Stats. 2000, ch. 420
§ 3 ........................................................ 8
§ 4 ........................................................ 8

Stats. 2006, ch. 337
§ 55 ........................................................ 1, 3, 8
§ 56 ........................................................ 1, 3
§ 62 ........................................................ 1, 3, 8

Welf. & Inst. Code
§ 6604 ........................................................ 1, 6, 8-10, 12-14,17, 19, 23, 28
§ 6604.1 ........................................................ 8

**COURT RULES**

Cal. Rules of Court
rule 8.516 ........................................................ 28
rule 8.516(a)(1) ........................................................ 26

**OTHER AUTHORITIES**

Prop. 83 ........................................................ 4, 5, 8, 9, 12, 15, 27
§ 2, subd. (h), 31 ........................................................ 9
§ 2, subd. (k) ........................................................ 9, 15
§ 27 ........................................................ 1. 8
§ 28 ........................................................ 1

Senate Bill 1128 ........................................................ 3-5,8-10, 12, 15, 17-19, 22

## ISSUE PRESENTED

Did the Court of Appeal err by increasing the term of defendant's commitment under the Sexually Violent Predator Act from two years to an indeterminate term pursuant to the 2006 amendments to Welfare and Institutions Code section 6604,[1] when the Los Angeles District Attorney had stipulated that only the two-year term would be sought?

## INTRODUCTION

As originally enacted, the Sexually Violent Predator Act (SVPA) provided for a two-year term of confinement for persons civilly committed as a sexually violent predator (SVP), subject to subsequent petitions for extended two-year commitments. (Former § 6604.) In 2006, the Legislature amended the SVPA, effective September 20, 2006, by eliminating the two-year commitment term and replacing it with an indeterminate term. (Stats. 2006, ch. 337, §§ 55, 56, 62.) Less than two months later, California voters approved Proposition 83, effective November 8, 2006, which also amended the SVPA by providing for indeterminate terms of commitment for SVP's. (Prop. 83, §§ 27, 28.)

Shortly after the Legislature amended the SVPA, the Los Angeles District Attorney (District Attorney) filed a stipulation in the instant case that provided that the District Attorney would seek the two-year commitment term because of "uncertainty in the retroactive application" of the change from a two-year commitment term to an indeterminate term. On August 10, 2007, about nine months after the effective date of Proposition 83, the jury found that appellant qualified as an SVP. In accordance with the terms of the stipulation, the trial court ordered appellant confined for a two-year term.

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[1] Unless otherwise indicated, all further statutory references are to the Welfare and Institutions Code.

On appeal, the Court of Appeal held that the two-year commitment term was unauthorized because the SVPA, as amended by Proposition 83, was in effect at the time of appellant's trial and required commitment for an indeterminate term.

As set forth below, the Court of Appeal properly modified the term of appellant's commitment to the indeterminate term because the indeterminate term was the mandatory term under the SVPA, and the District Attorney's stipulation to a two-year term was legally erroneous and therefore not binding on the Court of Appeal.

## STATEMENT OF THE CASE

Appellant was convicted in 1995 of two counts of lewd and lascivious acts upon a child under the age of 14 (Pen. Code, § 288, subd. (b)) and sentenced to six years in state prison. In 1992, appellant was convicted of one count of lewd and lascivious acts upon a child under the age of 14 (Pen. Code, § 288, subd. (a)) and sentenced to eight years in prison. (4RT 1808.)

On October 5, 1999, pursuant to a petition filed by the District Attorney, appellant was found to be an SVP. (1CT 56.) On September 19, 2001, the District Attorney filed a petition for the recommitment of appellant as an SVP for another two-year period (case No. ZM004837).[2] That petition was still pending on August 27, 2003, when the District Attorney filed a new petition seeking the recommitment of appellant as an SVP for an additional two-year period (case No. ZM006562). On January 22, 2004, the trial court granted the People's motion to consolidate the two pending petitions.

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[2] The Court of Appeal augmented the record to include pertinent documents from case Nos. ZM004837 and ZM006562; these documents, however, were not included in the bound volumes of the clerk's transcript.

The two consolidated petitions were still pending when the District Attorney filed another petition on September 15, 2005, seeking the recommitment of appellant as an SVP for another two-year period (case No. ZM009280). (1CT 1-9.) On January 19, 2006, the trial court granted the People's motion to consolidate this petition with the two prior petitions. (1CT 66.)

On September 20, 2006, the Governor signed the Sex Offender Punishment, Control, and Containment Act of 2006, Senate Bill No. 1128 (2005-2006 Reg. Sess.) (Senate Bill 1128), an urgency measure that went into effect immediately. (Stats. 2006, ch. 337, § 62.) Among other changes, Senate Bill 1128 amended the SVPA by eliminating the two-year commitment term and replacing it with an indeterminate term of commitment. (Stats. 2006, ch. 337, §§ 55, 56.)

On October 31, 2006, and again on July 30, 2007, the District Attorney filed in the instant case a document entitled "Stipulation to Implementation of Senate Bill 1128 or 'Jessica's Law.'" Attached to the document was a copy of a stipulation signed by representatives from the District Attorney, the Los Angeles County Public Defender's Office, and the Los Angeles County Superior Court, dated October 11, 2006. The stipulation provided in pertinent part that, "Due to uncertainty in the retroactive application of this change [from a two-year term to an indeterminate term], it is the intention of the Los Angeles County District Attorney's Office to apply the current two year commitment period to all currently pending initial commitment petitions . . . for cases in which the trial and commitment occur after the effective date of the legislation or initiative whichever occurs first . . . ." The stipulation further provided that the District Attorney "will apply the two year commitment period to pending initial petitions for 24 months after the effective date," and that the District Attorney "will seek the indeterminate term" for all cases in which

the initial commitment petition is filed after the effective date of the legislation. As for petitions to extend the commitment, the stipulation provided that the District Attorney "will use the filing criteria and commitment period in effect at the time of filing the re-commitment petitions." (1CT 72-74, 99-101.)

On November 7, 2006, the voters approved Proposition 83, and the proposition became effective the following day. Among other things, Proposition 83 amended the SVPA "in the same manner as Senate Bill 1128, changing the term of commitment to an indeterminate term . . . ." (*Bourquez v. Superior Court* (2007) 156 Cal.App.4th 1275, 1281.)

On August 1, 2007, a jury was impaneled to try appellant's case. (1CT 147.) At trial, the People presented the testimony of two psychologists who opined that appellant had a current diagnosis of pedophilia, and that he was likely to commit a sexually violent predatory crime. (3RT 981-1232; 4RT 1569-1604.) The People also called appellant as a witness in the People's case. (3RT 1302-1321; 4RT 1501-1549.) In the defense case, appellant presented the testimony of a psychologist who opined that there was insufficient evidence to make a definite diagnosis of pedophilia, and that appellant was not likely to commit a sexually violent predatory crime. (4RT 1903-1942.)

On August 10, 2007, the jury returned its verdict, finding that appellant qualified as an SVP. On the same day, the trial court committed appellant to a two-year term, with the commitment period running from October 5, 2005 to October 5, 2007.[3] (1CT 180-181.)

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[3] Immediately after the trial court imposed the two-year term, the court arraigned appellant on a new SVP petition that the People filed in case No. ZM011971, and found that there was probable cause to proceed on the new petition "based on the trial that was just completed and the

(continued...)

Appellant appealed the judgment of commitment. In the respondent's brief, the People, represented by the Attorney General on appeal, argued that the trial court's imposition of a two-year commitment term was unauthorized because the SVPA, as amended by Senate Bill 1128 and Proposition 83, required commitment for an indeterminate term.

In an opinion filed on January 30, 2009, the Court of Appeal rejected appellant's claims and agreed with the Attorney General's contention that the two-year commitment term was unauthorized and that the commitment order required correction to the indeterminate term mandated by the amended SVPA. The Court of Appeal explained that the indeterminate term was the only authorized commitment term under the amended SVPA, and that the SVPA statutory scheme afforded the trial court no discretion to formulate an alternative commitment term or to delay the effective date of the provisions amended by Proposition 83. (Opn. at p. 27.) The Court of Appeal further explained that applying the indeterminate term provision of Proposition 83 to pending petitions did not constitute an impermissible retroactive application of the law. (Opn. at p. 27.)

The Court of Appeal also rejected appellant's argument that the Attorney General was estopped from challenging the length of the commitment term. The Court of Appeal explained that appellant failed to show any detrimental reliance on the stipulation, and rejected appellant's argument that he had a lesser incentive to defend himself because he was effectively facing only a two-month commitment at the time of trial. The Court of Appeal further explained that enforcing the stipulation would be

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(...continued)
evidence that was taken in that trial as well as the documents filed by the D.A. in this petition." (5RT 2709-2710.)

contrary to the Legislature's plain directive and would entail a serious risk to public safety. (Opn. at pp. 29-30.)

The Court of Appeal also rejected appellant's argument that it had no jurisdiction to consider the legality of the two-year commitment order because the People failed to preserve the issue for appeal by filing a timely cross-appeal. The Court of Appeal explained that appellant's "timely appeal provides us with jurisdiction over this case, including the question of whether the trial court had authority to issue a commitment order on terms other than those authorized by the Legislature." (Opn. at pp. 25-26.)

Appellant filed a petition for review in this Court, presenting several issues for review. This Court granted review, and limited the issue to be briefed and argued as follows: "Did the Court of Appeal err by increasing the term of defendant's commitment under the Sexually Violent Predator Act from two years to an indeterminate term pursuant to the 2006 amendments to Welfare and Institutions Code section 6604, when the Los Angeles District Attorney had stipulated that only the two-year term would be sought?"

## SUMMARY OF ARGUMENT

The Court of Appeal properly increased the term of appellant's SVP commitment from two years to an indeterminate term pursuant to the 2006 amendments to the SVPA. Under the amended SVPA, which was operative at time of appellant's trial and commitment, the trial court was required to order appellant confined for an indeterminate term. The trial court therefore exceeded its jurisdiction by ordering an unauthorized two-year commitment term rather than the mandatory indeterminate term.

In addition, the District Attorney's stipulation to a two-year commitment term was not binding on the Court of Appeal because the stipulation was erroneous as a matter of law. Contrary to the terms of the

stipulation, the indeterminate term provision of the amended SVPA, rather than the two-year term provision of the former version of the SVPA, applied to appellant's case. Also, neither the trial court nor the District Attorney had the authority to ignore the operative law and resurrect the repealed two-year term through a stipulation.

Finally, the Court of Appeal correctly held that the Attorney General was not estopped from challenging the unauthorized commitment order on appeal. The doctrine of estoppel is not applicable to bar the Attorney General's appellate challenge to the two-year term because the application of estoppel would result in a direct contravention of a statute and would directly conflict with the policy choices of the voters and Legislature in amending the SVPA. In addition, the doctrine of estoppel is not applicable because appellant cannot establish all of the requisite elements of estoppel, especially the requisite element of detrimental reliance.

## ARGUMENT

### I. THE COURT OF APPEAL PROPERLY INCREASED THE TERM OF APPELLANT'S SVP COMMITMENT FROM TWO YEARS TO AN INDETERMINATE TERM PURSUANT TO THE 2006 AMENDMENTS TO THE SVPA

Contrary to appellant's contention, the Court of Appeal properly increased the term of appellant's SVP commitment from two years to an indeterminate term under the 2006 amendments to the SVPA. As fully set forth below, the indeterminate term was the mandatory term under the SVPA, and the District Attorney's stipulation to an unauthorized two-year term was erroneous as a matter of law and was therefore not binding on the Court of Appeal.

### A. The 2006 Amendments to the SVPA

The SVPA "provides for the involuntary commitment of certain offenders, following the completion of their prison terms, who are found to be SVP's because they have previously been convicted of sexually violent crimes and currently suffer diagnosed mental disorders which make them dangerous in that they are likely to engage in sexually violent criminal behavior." (*People v. Superior Court (Ghilotti)* (2002) 27 Cal.4th 888, 902.) The SVPA "clearly requires the trier of fact to find that an SVP is dangerous at the time of commitment." (*Hubbart v. Superior Court* (1999) 19 Cal.4th 1138, 1162.)

Before the 2006 amendments to the SVPA, a person found to be an SVP was committed to a two-year term. (Former § 6604; Stats. 2000, ch. 420, § 3.) In order to extend the person's term of commitment beyond the initial two-year term, the People were required to file a new petition and obtain a new determination that the person was an SVP. (Former §§ 6604, 6604.1; Stats. 2000, ch. 420, §§ 3, 4.)

On September 20, 2006, the Governor signed Senate Bill 1128 as an urgency measure that went into effect immediately. (Stats. 2006, ch. 337, § 62.) The legislation, inter alia, amended section 6604 by changing the SVP commitment term from a two-year term to an indeterminate term. (Stats. 2006, ch. 337, § 55.)

At the November 7, 2006 General Election, the voters approved Proposition 83, an initiative measure known as "The Sexually Predator Punishment and Control Act; Jessica's Law," and the proposition became effective the next day, November 8, 2006. Like Senate Bill 1128, Proposition 83 amended section 6604 by changing the term of commitment to an indeterminate term. (§ 6604, as amended by Prop. 83, § 27.)

The "Intent Clause" of Proposition 83 explained that, "'It is the intent of the People of the State of California in enacting this measure to

strengthen and improve the laws that punish and control sexual offenders.'" (Historical and Statutory Notes, 47C West's Ann. Pen. Code (2008) foll. § 209, p. 53; Prop. 83, § 2, subd. (h), 31.) With respect to the change from a two-year term to an indeterminate term, Proposition 83 specifically explained as follows:

> "The People find and declare each of the following: [¶] . . . [¶] (h) In addition, existing laws that provide for the commitment and control of sexually violent predators must be strengthened and improved. [¶] . . . [¶] (k) California is the only state, of the number of states that have enacted laws allowing involuntary civil commitments for persons identified as sexually violent predators, which does not provide for indeterminate commitments. California automatically allows for a jury trial every two years irrespective of whether there is any evidence to suggest or prove that the committed person is no longer a sexually violent predator. As such, this act allows California to protect the civil rights of those persons committed as a sexually violent predator while at the same time protect society and the system from unnecessary or frivolous jury trial actions where there is no competent evidence to suggest a change in the committed person."

(Historical and Statutory Notes, 47C West's Ann. Pen. Code (2008) foll. § 209, p. 53; Prop. 83, § 2, subd. (k).)

As amended by Proposition 83, section 6604 now reads, in pertinent part, as follows:

> If the court or jury determines that the person is a sexually violent predator, the person shall be committed for an indeterminate term to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secure facility designated by the Director of Mental Health.

### B. The Indeterminate Term Was the Only Legally Authorized Term in Appellant's Case

The indeterminate term provision in the amended version of section 6004 is applicable when the person's SVP trial and commitment occur after the effective dates of Senate Bill 1128 and Proposition 83. (*People v.*

*Carroll* (2007) 158 Cal.App.4th 503, 514; *Bourquez v. Superior Court, supra*, 156 Cal.App.4th at p. 1289.) Because the pertinent issue at an SVP trial is the person's *current* mental condition and dangerousness to the community, "[a]pplying Proposition 83 to pending petitions to extend commitment under the SVPA to make any future extended commitment for an indeterminate term is not a retroactive application." (*Bourquez v. Superior Court, supra*, 156 Cal.App.4th at p. 1289; accord, *People v. Carroll, supra,* 158 Cal.App.4th at p. 514 ["the significant point with respect to retroactivity is not the filing of the petition, but trial and adjudication under the SVPA," and he was therefore "subject to recommitment for an indeterminate term because of the status of his mental condition after Senate Bill 1128's amendments became effective"].)

Here, the amended version of section 6604 applied to appellant's case because his trial and commitment as an SVP occurred in August 2007, more than ten months after the effective date of Senate Bill 1128 and more than nine months after the effective date of Proposition 83. Section 6604 therefore required the trial court to commit appellant "for an indeterminate term," and the court's imposition of a two-year term was an unauthorized act in excess of its jurisdiction. As the Court of Appeal correctly explained, "In light of the jury's verdict, an indeterminate term was the sole remedy available, and the legislative scheme authorizing commitment afforded the court no discretion in formulating alternative commitment terms or to delay the effective date of the modifications effected by Proposition 83." (Opn. at p. 27.) Accordingly, in light of the plain terms of section 6604, the Court of Appeal properly increased the term of commitment from the unauthorized two-year term to the correct indeterminate term.

### C. The District Attorney's Stipulation to a Two-year Term Was Not Binding on the Court of Appeal Because the Stipulation Was Legally Erroneous

Moreover, the Court of Appeal was not bound by the District Attorney's stipulation to a two-year term because the stipulation was clearly erroneous as a matter of law.

As this Court first explained more than a century ago,

> Counsel . . . may agree as to the facts, but they cannot control this court by stipulation as to the sole, or any, question of law to be determined under them. [¶] When a particular legal conclusion follows from a given state of facts, no stipulation of counsel can prevent the court from so declaring it.

(*San Francisco Lumber Co. v. Bibb* (1903) 139 Cal. 325, 326; see also *California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664 [court may reject a stipulation that "incorporates an erroneous rule of law"]; *People v. Jones* (1936) 6 Cal.2d 554, 555 [prosecutor's stipulation concerning the commencement date of the defendant's life term was "erroneous and therefore not binding on the court"].)

The Courts of Appeal have similarly applied this long-standing rule that a stipulation is not binding on the court if it is based on an erroneous rule of law. (See, e.g., *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 128 ["An agreement of the parties does not bind the court if it is contrary to law or public policy"]; *In re Marriage of Fithian* (1977) 74 Cal.App.3d 397, 403 ["A stipulation is not binding if, as a matter of law, it is clearly erroneous"]; *Oakland Raiders v. City of Berkeley* (1976) 65 Cal.App.3d 623, 629 [stipulation that a city tax ordinance was a regulatory measure was "ineffective" because the "interpretation of the Constitution, statutes, and ordinance is a subject within the authority of the courts, not the parties"]; *Burrows v. State of*

*California* (1968) 260 Cal.App.2d 29, 34 [stipulation was "nothing but an erroneous legal conclusion which the trial court should not have accepted"]; *Valdez v. Taylor Automobile Co.* (1954) 129 Cal.App.2d 810, 821 [stipulation concerning the measure of damages "was an erroneous conclusion from the facts and as such is not binding on this court"]; *People v. Singh* (1932) 121 Cal.App. 107, 111 ["We are not bound by an erroneous stipulation as to a conclusion of law which is not a stipulation of fact"].)

Here, the District Attorney's stipulation to the two-year commitment term was erroneous as a matter of law. As explained above, the indeterminate term set forth in the current version of section 6604 applied to appellant's case because his trial and commitment occurred well after the effective dates of Senate Bill 1128 and Proposition 83. Thus, the District Attorney simply did not have the authority or the discretionary choice in appellant's case to seek the two-year commitment term under the former version of 6604 rather than the indeterminate term required under the current version of section 6604. (See *Bourquez v. Superior Court, supra*, 156 Cal.App.4th at p. 1284 ["The government's authority to commit someone under the SVPA is statutory; it is based on the provisions of the SVPA"].)

The District Attorney could not rely on the former version of section 6604 as the basis for seeking the two-year commitment term because that former version of section 6604 was no longer operative at the time of appellant's trial and commitment; instead, as explained above, the current version of section 6604 was the operative version of the statute at the time of trial, and it required an indeterminate term if the jury found that appellant qualified as an SVP. Moreover, there was nothing in the current version of the SVPA that granted the District Attorney the authority to resurrect the repealed two-year term by delaying the effective date of the 2006 amendments. The stipulation was therefore legally inoperative

because it exceeded the scope of the District Attorney's authority under the SVPA.

Because the stipulation was directly contrary to the terms of section 6604, it was legally unauthorized and therefore not binding on the Court of Appeal. Accordingly, the Court of Appeal properly modified appellant's term of commitment to the mandatory indeterminate term prescribed in section 6604.

### D. The Attorney General Was Not Barred From Challenging the Two-Year Commitment Term on Appeal

Appellant contends that various doctrines barred the People from challenging the two-year commitment term on appeal because the People agreed to the stipulation at trial. (Opening Brief on Merits (OBM) 8-25.) He is incorrect.

#### 1. Equitable Estoppel

Appellant argues that the stipulation should be enforced under the doctrine of equitable estoppel. (OBM 16-23.) Not so. Contrary to appellant's contention, the doctrine of equitable estoppel cannot be applied here because to do so would directly contravene statutory law, as set forth in section 6604. Furthermore, equitable estoppel is inapplicable because appellant cannot establish all of its requisite elements.

> The doctrine of equitable estoppel is founded on concepts of equity and fair dealing. It provides that a person may not deny the existence of a state of facts if he intentionally led another to believe a particular circumstance to be true and to rely upon such belief to his detriment. The elements of the doctrine are that (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel has a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury. [Citations.]

(*City of Goleta v. Superior Court* (2006) 40 Cal.4th 270, 279.) "There can be no estoppel if one of these elements is missing." (*Simmons v. Ghaderi* (2008) 44 Cal.4th 570, 584.)

"Equitable estoppel 'will not apply against a governmental body except in unusual circumstances when necessary to avoid grave injustice and when the result will not defeat a strong public policy. [Citations.]' [Citation.]" (*City of Goleta, supra*, 40 Cal.4th at p. 279.) The "'facts upon which such an estoppel must rest go beyond the ordinary rules of estoppel and each case must be examined carefully and rigidly to be sure that a precedent is not established through which, by favoritism or otherwise, the public interest may be mulcted or public policy defeated.'" (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 495, fn. 30.)

Also, principles of estoppel cannot be invoked against a governmental agency to directly contravene "any statutory or constitutional limitations." (*Longshore v. County of Ventura* (1979) 25 Cal.3d 14, 28 ["no court has expressly invoked principles of estoppel to contravene directly any statutory or constitutional limitations"]; accord, *Boren v. State Personnel Board* (1951) 37 Cal.2d 634, 643 ["the authority of a public officer cannot be expanded by estoppel"]; *Medina v. Board of Retirement* (2003) 112 Cal.App.4th 864, 870 ["estoppel is barred where the government agency to be estopped does not possess the authority to do what it appeared to be doing"]; *County of Lassen v. State of California* (1992) 4 Cal.App.4th 1151, 1156 ["the equitable doctrine of estoppel may not be invoked where to do so would violate statutes or constitutional provisions that define the powers of a public agency"].)

In the instant case, equitable estoppel cannot be invoked against the People because it would result in a direct violation of the indeterminate term provision of section 6604, and would contravene the public policy choices of the Legislature and the California electorate when they approved

Senate Bill 1128 and Proposition 83. Similarly, estoppel is barred because, as explained above, the District Attorney lacked the authority under the SVPA to seek or promise a two-year commitment term in appellant's case.

Furthermore, the particular circumstances of appellant's case strongly demonstrate why the application of estoppel would directly nullify the electorate's clear intent in replacing the two-year commitment with an indeterminate term, which was to "protect society and the system from unnecessary or frivolous jury trial actions where there is no competent evidence to suggest a change in the committed person." (Historical and Statutory Notes, 47C West's Ann. Pen. Code (2008) foll. § 209, p. 53; Prop. 83, § 2, subd. (k).) Here, the trial court arraigned appellant on a newly filed SVP petition only minutes after the court ordered him confined to the stipulated two-year term; indeed, the trial court found probable cause for the new petition, in large part, on the basis of "the trial that was just concluded and the evidence that was taken in that trial." (5RT 2709-2710.) The circumstances of appellant's case therefore exemplified the type of situation that the voters clearly intended to eliminate when they approved Proposition 83 nine months earlier. Under these circumstances, the doctrine of equitable estoppel did not bar the People from challenging the two-year commitment term on appeal.[4]

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[4] Appellant argues that the stipulation promoted the administration of justice and public safety because it was intended to address the likely effect of the new legislation on the parties and the court system, i.e., it was intended to permit the pending SVP petitions "to be heard on their merits rather than rushed into an overburdened court system leading to, potentially, the release of a significant number of the prospective" SVP's. (OBM 22.) Appellant, however, cites no case authority for the proposition that public policy is furthered by the enforcement of a stipulation that is legally unauthorized and directly contrary to the terms of the operative statute. He also cites no case authority to support the proposition that it is proper for the trial court and parties to simply agree to delay the

(continued...)

Moreover, the doctrine of equitable estoppel is not applicable because appellant cannot establish all of its requisite elements. First, the record does not support the conclusion that the People were aware, but appellant was unaware, of the true state of facts, nor does the record indicate that the People concealed or misrepresented the true facts. In particular, the record does not show that the District Attorney (but not appellant) entered into the stipulation with the knowledge that the stipulation was unauthorized and legally unenforceable, that the Attorney General would subsequently challenge the stipulated two-year term on appeal, and that the Court of Appeal would agree with the Attorney General's position. To the contrary, all parties to the stipulation apparently believed that the stipulation was proper and enforceable.

Second, appellant cannot establish the element of detrimental reliance. The stipulation to a two-year term had no logical or tangible bearing on appellant's preparation for trial or the defense that he presented at trial. Because appellant cannot demonstrate that the stipulation had any impact on the trial or the jury's SVP finding, appellant cannot establish that his reliance on the stipulation was actually detrimental.

Appellant nevertheless argues that he detrimentally relied on the stipulation because "he expected to get another trial and, therefore, the results of the current trial, which would only lead to two additional months of commitment, were less significant than the results of the next trial, which would have been the trial in which he faced a lifetime commitment." (OBM 17.) This argument is not persuasive.

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(...continued)
implementation of a new law because of the additional burdens the new law will place on the parties and the court system.

Appellant had every incentive to fully defend himself at the current trial because a verdict in his favor would have precluded any further SVP proceedings and would have resulted in his immediate release from confinement. (§ 6604.) Indeed, there is nothing in the record to suggest that appellant refrained from a vigorous defense at trial because he "expected to get another trial." To the contrary, the record plainly shows that appellant presented an aggressive and vigorous defense. Also, appellant's suggestion that the results of the current trial were not particularly significant to him because it would lead to only two additional months of commitment is logically belied by the fact that his previous SVP trial in 1999 eventually resulted, as a practical matter, in continuous confinement for almost eight years (and through two expired petitions) between October 1999 and August 2007. Thus, there is no merit to appellant's contention that he detrimentally relied on the stipulation because it rendered his current trial less significant.

Appellant further contends that the stipulation "induced appellant . . . to change [his] behavior based upon a promise that [he] would only be subject to a two year commitment." (OBM 8-9.) He specifically argues that he "did not push for an immediate trial" prior to the amendments to the SVPA because "he was promised by his attorney, the trial court, and the district attorney, that he would not suffer any adverse consequences from delay even when the law changed to require an indeterminate commitment." (OBM 19, 23.) This argument is without merit because the record indicates that appellant did not change his behavior in reliance on the stipulation.

First, the timing of the stipulation vis-à-vis the effective date of the 2006 amendments fatally undercuts appellant's claim of detrimental reliance. In particular, the indeterminate term provision of section 6604, as first added by Senate Bill 1128, became effective on September 20, 2006.

The stipulation, however, was not signed until October 11, 2006, and was not filed in appellant's case until October 31, 2006. Thus, the indeterminate term provision was already applicable to appellant's case *before* the stipulation was ever signed and filed. In light of these circumstances, appellant's subsequent reliance on the stipulation was not actually detrimental because it did not cause appellant to forego any actions that would have prevented his exposure to the indeterminate term. In other words, appellant cannot establish detrimental reliance because the yet-unsigned and yet-unfiled stipulation did not affect his decision-making prior to the effective date of Senate Bill 1128.

Moreover, even aside from the timing of the stipulation, the record fails to support appellant's underlying assertion that his reliance on the stipulation induced him to refrain from demanding a prompt trial prior to the effective date of the 2006 amendments. To the contrary, the record strongly demonstrates that, even in the absence of the stipulation, appellant would not have demanded a prompt trial in order to avoid the application of the indeterminate term provision of the 2006 amendments because he had no intent or readiness to commence an immediate trial.

In particular, the record of the proceedings that occurred prior to the effective date of Senate Bill 1128 (September 20, 2006) and the signing of the stipulation (October 11, 2006) did not reveal any urgency or desire by appellant to commence an immediate trial, nor did the proceedings demonstrate that appellant was actually prepared to commence a trial before September 20, 2006. For instance, appellant agreed to a continuance from April 12, 2006, until August 3, 2006; appellant, however, filed no motions or any documents during this time period, and there is no indication that appellant either requested a trial date or was prepared to commence a trial in the near future. (1CT 67.)

The record of the brief hearing held on August 3, 2006, further demonstrated appellant's lack of interest in either demanding or actually receiving a prompt trial. At this hearing, appellant agreed to continue the matter to October 19, 2006 (i.e., after the effective date of Senate Bill 1128) for another pretrial hearing, and appellant personally expressed his refusal to cooperate with the People's mental health experts. (2RT A1-A6.) In addition, the record indicates that appellant's assigned trial counsel was on leave at the time and would not return until the beginning of October.[5] (2RT A2.) Notably, appellant did not demand or request a trial date or otherwise express any desire for an immediate trial in order to avoid the impending legislative change to the length of the commitment term. He also did not suggest that he was prepared to commence a trial in the next several months. (2RT A1–A6; 1CT 68.)[6]

In short, appellant's failure to demand a prompt trial before the effective date of the 2006 amendments to section 6604 was not caused by his reliance on the stipulation. Instead, the record plainly shows that appellant did not demand a prompt trial prior to the effective date of the 2006 amendments because he had no desire or readiness to commence such an immediate trial. Accordingly, appellant cannot establish that he changed his behavior to his detriment on the basis of his reliance on the stipulation.

[5] At the hearing, appellant was represented by another deputy public defender who was appearing on behalf of appellant's assigned trial counsel. (2RT A-2.)

[6] The record further shows that appellant did not file any motions or any documents during the time period between August 3, 2006, and October 19, 2006. Indeed, the first document filed by appellant as to the current petition was his motion for pretrial discovery, filed on December 20, 2006. (1CT 77-83.)

In sum, the record fails to demonstrate that appellant detrimentally relied on the stipulation. Accordingly, the Court of Appeal properly held the doctrine of estoppel was inapplicable to the instant case.

Appellant, however, faults the Court of Appeal for failing to consider "information provided by amicus curiae in its brief." (OBM 17-18.) Citing a letter from the District Attorney to the Attorney General – which was attached as an exhibit to an amicus brief filed in the Court of Appeal by the Los Angeles County Public Defender – appellant specifically argues that "the process of negotiating the stipulation began earlier in the year," and that "in reliance on the ongoing negotiations and the advice of his attorney, appellant did not push for an immediate trial." (OBM 19.) Appellant also relies on the letter to assert that the "stipulation did not suddenly appear out of whole cloth in October, 2006," that the imminent changes in the law "presented the significant risk that the Los Angeles County Public Defender's [Office] would demand prompt trials for all 136 pending" SVP petitions, and that the "Los Angeles County Superior Court could not have handled this sudden increase in its workload." (OBM 18.) Appellant's reliance on this letter is improper and misplaced.

First, appellant cannot cite this letter as evidentiary support for his numerous factual allegations – e.g., "the process of negotiating the stipulation began earlier in the year," appellant relied "on the ongoing negotiations and the advice of his attorney," and the changes in the law "presented the risk that the Los Angeles Public Defender's [Office] would demand prompt trials for all" pending petitions – because this letter is plainly outside the scope of appellate review. In particular, this letter was

not part of the original trial record in appellant's case,[7] the Court of Appeal did not augment the record to include the letter, and appellant did not request that the Court of Appeal (or this Court) take judicial notice of the letter. Thus, appellant's extensive reliance on this letter is improper. (*People v. Peevy* (1998) 17 Cal.4th 1184, 1207 [defendant's attempts to present evidence in the appellate court of a widespread police practice were "in contravention of the general rule that an appellate court is generally not the forum in which to develop an additional record"]; *People v. Jones* (1997) 15 Cal.4th 119, 171, fn. 4 [augmentation was not available for the purpose of adding material that was not a proper part of the record in the trial court]; *Doers v. Golden Gate Bridge etc. Dist.* (1979) 23 Cal.3d 180, 184, fn. 1 ["As a general rule, documents not before the trial court cannot be included as part of the record on appeal"].)

Second, even assuming arguendo that this Court can consider the contents of the letter, the letter fails to support appellant's allegation that "in reliance on the ongoing negotiations and the advice of his attorney, appellant did not push for an immediate trial." Respondent notes that the letter did not specify the time period when the negotiations about the stipulation either commenced or were "ongoing," nor did it specify what advice the Los Angeles County Public Defender's Office was providing to its clients during the course of the negotiations. Thus, the letter does not support the factual premise of appellant's claim.

Moreover, the actual proceedings in appellant's case showed that appellant did not change his position in reliance on the stipulation. As explained above, the record shows that, during the time period before the

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[7] The letter was dated June 2, 2008 (Amicus Brief in Support of Appellant, Exh. C), i.e., well after appellant filed his notice of appeal on September 4, 2007. (1CT 184.)

signing of the stipulation, appellant had no intent or readiness to demand a prompt trial in order to avoid the indeterminate term provision. Indeed, appellant's agreement to several continuances between January and October 2006 directly contradicts the letter's contention that the impending changes in the law had caused the Los Angeles County Public Defender's Office to attempt "to bring all of its 136 pending [SVP] cases to trial prior to the passage of either SB 1128 or Jessica's Law." (Amicus Brief in Support of Appellant, Exh. C at p. 2.)

Similarly, the record fails to support appellant's claim that he changed his behavior in reliance on the "ongoing negotiations" about the stipulation. In the proceedings that occurred prior to September 2006, appellant never suggested that he was foregoing a demand for an immediate trial because he was relying on ongoing negotiations about a stipulation. Indeed, the parties never mentioned the pending legislative efforts to amend the SVPA, let alone discussed any forthcoming stipulation concerning the implementation of that legislation. (2RT A1–A6; 1CT 68.) Also, the stipulation itself did not discuss the timing of the negotiations that led to the stipulation, nor did it set forth what actions the Public Defender's Office would have taken in any of the pending SVP cases in the absence of the stipulation. (1CT 72-74, 99-101.)

Thus, the record fails to support the contention that any of appellant's actions prior to the effective date of Senate Bill 1128 were motivated by the impeding legislation or the possibility of a stipulation concerning the legislation. Accordingly, appellant cannot establish the element of detrimental reliance.

### 2. Promissory Estoppel and Judicial Estoppel

Appellant further contends the stipulation should be enforced under the doctrine of promissory estoppel. (OBM 16-25.) He is again incorrect.

> In California, under the doctrine of promissory estoppel, "A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forebearance is binding if injustice can be avoided only by enforcement of the promise. The remedy granted for breach may be limited as justice requires." [Citations.] Promissory estoppel is "a doctrine which employs equitable principles to satisfy the requirement that consideration must be given in exchange for the promise sought to be enforced." [Citations.]

(*Kajima/Ray Wilson v. Los Angeles County Metropolitan Transportation Authority* (2000) 23 Cal.4th 305, 310.) Promissory estoppel will not be applied against the government if to do so will effectively nullify a strong rule of public policy, adopted for the benefit of the public. (*San Marcos Water District v. San Marcos Unified School District* (1986) 42 Cal.3d 154, 167-168.)

Here, as previously explained, the stipulation to a two-year commitment term directly violated the plain terms of section 6604, and the application of estoppel would undermine the public policy choices of the Legislature and the electorate. Furthermore, as explained in the equitable estoppel context, the record fails to support the contention that the stipulation induced appellant to forego requesting an immediate trial prior to the effective date of the 2006 amendments. Accordingly, under these circumstances, the doctrine of promissory estoppel is inapplicable.

Appellant also argues that the doctrine of judicial estoppel should be applied to this case "to preclude the People from taking a different position in this court than they did in the trial court." (OBM 14-16.) Like appellant's other estoppel arguments, this contention is incorrect. The application of judicial estoppel "depends on the significance of the procedural irregularities, whether the court's act violated a comprehensive statutory scheme and considerations of public policy." (*In re Marriage of Jackson* (2006) 136 Cal.App.4th 980, 994 [party's challenge to a stipulated

order terminating parental rights was not barred by judicial estoppel because the trial court exceeded its jurisdiction in entering the order, and estoppel would undermine the state's public policy favoring two parents].) Because the stipulation to a two-year commitment term directly violated one of the key provisions of the amended SVPA, and because the application of estoppel would contravene the public policy choices of the Legislature and the electorate, judicial estoppel is inapplicable in this case.

### 3. Waiver and Forfeiture

Appellant further contends that, by failing to raise the issue in the trial court, the People "waived and forfeited their right" to challenge the two-year commitment term on appeal. (OBM 9-13.) Appellant is incorrect.

The People did not forfeit the claim on appeal. A litigant may raise an issue for the first time on appeal if the issue is a pure question of law with undisputed facts, or if the issue involves a matter of important public interest. (*Hale v. Morgan* (1978) 22 Cal.3d 388, 394 [constitutional challenge to statute could be raised for the first time on appeal because it presented a question of law and an important question of public interest]; see also *People v. Talibdeen* (2002) 27 Cal.4th 1151, 1157 [trial court's failure to impose mandatory penalty assessments properly corrected on appeal even though People raised the issue for the first time on appeal because the error involved a pure question of law with only one answer].) Here, the forfeiture doctrine is inapplicable because the trial court's failure to impose the mandatory indeterminate term involved a pure question of law and presented an important question of public interest.

The People also did not waive or intentionally abandon the right to raise the issue on appeal. There is nothing in the record to suggest that the District Attorney affirmatively "waived" or relinquished the Attorney General's ability to challenge the two-year commitment order on appeal. Moreover, to the extent appellant is arguing that the People "waived" their

"right" to an indeterminate term, this argument is also without merit. The indeterminate term was not a "right" that the People could intentionally abandon or relinquish; instead, the indeterminate term was a mandatory legal consequence of the jury's verdict that appellant qualified as an SVP, and the District Attorney had no authority or discretion to "waive" the only authorized SVP commitment term.

**4. Due Process**

Likening the instant case to a violation of a plea agreement in a criminal case, appellant contends that the People's failure to comply with the stipulation, as well as the Court of Appeal's decision, violated his due process rights. (OBM 23-25.) This claim is without merit.

First, appellant cites no pertinent authority to support the proposition that due process required the Court of Appeal to enforce or uphold a stipulation or agreement that was legally unauthorized. Second, neither the Attorney General's appellate challenge to the stipulated two-year term, nor the Court of Appeal's holding, constituted a violation of the terms of the stipulation. In particular, the stipulation merely stated that the *District Attorney* would seek the two-year term in appellant's case; the stipulation did not reference the Attorney General, nor did it state or promise that the Attorney General would not challenge the two-year term on appeal. Similarly, the stipulation did not state or promise that the Court of Appeal would uphold the two-year commitment term against any appellate challenge.

Finally, appellant's rights to due process were not violated because appellant did not act to his detriment in reliance on the stipulation. As previously explained, the record fails to support appellant's contention that his reliance on the stipulation caused him to forego demanding a prompt trial for the purpose of avoiding the indeterminate term. There is also nothing in the record to suggest that appellant waived any of his

constitutional or statutory rights in exchange for the stipulated two-year term. Accordingly, under these circumstances, neither the Court of Appeal's holding nor the People's actions on appeal violated appellant's due process rights. (Cf. *People v. Quartermain* (1997) 16 Cal.4th 600, 618-621 [prosecutor's breach of his express agreement not to use the defendant's statement violated due process because the defendant waived his right to remain silent and acted to his detriment in reliance on the prosecutor's promise].)

## II. APPELLANT'S CLAIM THAT THE COURT OF APPEAL WAS PRECLUDED FROM REACHING THE MERITS OF THE CHALLENGE TO THE TWO-YEAR TERM SHOULD NOT BE ADDRESSED BY THIS COURT

Appellant contends that the Court of Appeal should not have reached the merits of respondent's challenge to the two-year commitment term because the People failed to file a cross-appeal. He argues that, although his notice of appeal granted the Court of Appeal subject matter jurisdiction over his case, his notice of appeal did not grant the Court of Appeal the authority to address an issue that could only be raised if the People had filed a cross-appeal. (OBM at 4-13.)

This Court should decline to address this issue because it is not "fairly included" within the issue on which this Court granted review. (Cal. Rules of Court, rule 8.516(a)(1).) In granting review, this Court specifically limited the briefing to the substantive question of whether the Court of Appeal erred in increasing the commitment to an indeterminate term in light of the District Attorney's stipulation to a two-year term. Because appellant's argument about the absence of a cross-appeal involves a procedural issue that is not relevant to the substantive issue of whether the Court of Appeal erred in light of the District Attorney's stipulation, the issue of the cross-appeal is clearly outside the scope of the issue on which

this Court granted review. Accordingly, this Court should decline to address the issue.

Furthermore, appellant's claim fails on the merits. Penal Code section 1252 provides, in pertinent part, as follows: "On an appeal by the defendant, the appellate court shall, in addition to the issues raised by the defendant, consider and pass upon all rulings of the trial court adverse to the State which it may be requested to pass upon by the Attorney General." Thus, under the authority of Penal Code section 1252, the Attorney General was permitted to challenge the two-year commitment term on appellant's appeal, and the Court of Appeal properly considered the issue.

Moreover, the Court of Appeal had the authority to raise and decide the issue on its own motion. (See *Walton v. City of Red Bluff* (1991) 2 Cal.App.4th 117, 129; Gov. Code, § 68081.) Thus, the absence of a cross-appeal did not preclude the Court of Appeal from deciding the substantive issue of whether the trial court correctly imposed a two-year term rather than the indeterminate term.

## III. APPELLANT'S CLAIM THAT THE TRIAL COURT LACKED JURISDICTION TO ORDER AN INDETERMINATE TERM IS NOT PROPERLY BEFORE THIS COURT

Appellant lastly contends that, at the time of his trial, the trial court lacked jurisdiction to conduct recommitment proceedings or to impose an indeterminate term. He specifically argues that the indeterminate term cannot be applied to him because it would involve an impermissible retroactive application of Proposition 83. He further argues that even if Proposition 83 could be applied to his case, the trial court lacked authority to commit him to an indeterminate term because Proposition 83 amended the SVPA by eliminating any reference to recommitment proceedings. (OBM 26-34.)

This issue is not properly before this Court because it was not raised in the petition for review, nor is it fairly included within the issue on which this Court granted review. (Cal. Rules of Court, rule 8.516.) The question of whether the trial court had jurisdiction to order an indeterminate term is wholly separate from the issue of the legal effect of the District Attorney's stipulation to a two-year term; indeed, this Court would not need to address the effect of the stipulation if the trial court had no jurisdiction in the first instance to commit appellant to an indeterminate term. Accordingly, this Court should decline to address the issue.

Moreover, appellant's argument – which has been consistently rejected by the Courts of Appeal – fails on the merits. As the Courts of Appeal have unanimously and persuasively explained, applying the indeterminate term provision to pending cases is not a retroactive application of the current version of section 6604 because the SVPA focuses on the person's *current* mental state at the time of trial and commitment, and the person's current mental state will be determined after the effective date of the 2006 amendments. (*People v. Carroll, supra,* 158 Cal.App.4th at pp. 512-514; *Bourquez v. Superior Court, supra*, 156 Cal.App.4th at pp. 1288-1289.) In addition, as the Courts of Appeal have persuasively held, the indeterminate term provision of the amended SVPA applies to petitions to extend commitments, especially since a contrary result would be directly contrary to the intent of the Legislature and voters to enhance the confinement of persons determined to be SVP's. (*People v. Carroll, supra,* 158 Cal.App.4th at pp. 508-510; *Bourquez v. Superior Court, supra*, 156 Cal.App.4th at pp. 1283-1288; *People v. Shields* (2007) 155 Cal.App.4th 559, 563-564.) Accordingly, in light of the sound reasoning of the Courts of Appeal, this Court should reject appellant's claim.

## CONCLUSION

Accordingly, for the reasons stated, respondent respectfully asks that the decision of the Court of Appeal be affirmed.

Dated: November 13, 2009

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

I certify that the attached **ANSWERING BRIEF ON THE MERITS** uses a 13 point Times New Roman font and contains 8166 words.

Dated: November 13, 2009

EDMUND G. BROWN JR.
Attorney General of California

CHUNG L. MAR
Deputy Attorney General
*Attorneys for Respondent*

## DECLARATION OF SERVICE

Case Name: **People v. Castillo** No.: **S171163**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 300 South Spring Street, Suite 1702, Los Angeles, CA 90013. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On **November 13, 2009**, I served the attached **ANSWERING BRIEF ON THE MERITS** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail system of the Office of the Attorney General, addressed as follows:

Rudy Kraft, Esq.
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Tracy J. Watson, Deputy District Attorney
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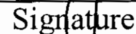
Court of Appeal (Courtesy Copy)
Second Appellate District, Division Five
300 South Spring Street, 2nd Floor
Los Angeles, CA 90013

John A. Clarke, Clerk of the Court
Los Angeles County Superior Court
111 N. Hill Street
Los Angeles, CA 90012
Attn: Hon. Stephen A. Marcus, Judge

On **November 13, 2009**, I caused thirteen (13) copies of the **ANSWERING BRIEF ON THE MERITS** in this case to be delivered to the California Supreme Court at 300 S. Spring Street, Los Angeles, CA 90013 by **Personal Delivery**.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **November 13, 2009**, at Los Angeles, California.

Nora Fung
Declarant



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