IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

OFFICE OF THE STATE PUBLIC DEFENDER, EVA PATERSON, LATINOJUSTICE PRLDEF, ELLA BAKER CENTER FOR HUMAN RIGHTS, AND WITNESS TO INNOCENCE,

Petitioners,

v.

ROB BONTA, CALIFORNIA ATTORNEY GENERAL, IN HIS OFFICIAL CAPACITY,

Respondent.

CAPITAL CASE

No. S284496

APPLICATION TO FILE BRIEF OF *AMICI CURIAE*, CONSTITUTIONAL LAW SCHOLARS, IN SUPPORT OF PETITIONERS AND BRIEF *AMICI CURIAE* OF CONSTITUTIONAL LAW SCHOLARS IN SUPPORT OF PEITIONERS

*ELISABETH SEMEL
(SBN 67484)
PROFESSOR AND
CO-DIRECTOR, DEATH
PENALTY CLINIC
U.C. Berkeley School of Law
Berkeley, CA 94720-7200
esemel@law.berkeley.edu
Telephone: 510-642-0458
Facsimile: 510-643-4625

ERWIN CHEMERINSKY
(Admitted in Illinois and
District of Columbia)
DEAN
U.C. Berkeley School of Law
Berkeley, CA 94720-7200
echemerinsky@law.berkeley.edu
Telephone: 510-642-6483
Facsimile: 510-642-9893

Attorneys for Amici Curiae

Document received by the CA Supreme Court.

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

OFFICE OF THE STATE PUBLIC DEFENDER, EVA PATERSON, LATINOJUSTICE PRLDEF, ELLA BAKER CENTER FOR HUMAN RIGHTS, AND WITNESS TO INNOCENCE,

Petitioners,

v.

ROB BONTA, CALIFORNIA ATTORNEY GENERAL, IN HIS OFFICIAL CAPACITY,

Respondent.

CAPITAL CASE

No. S284496

APPLICATION TO FILE BRIEF OF *AMICI CURIAE*, CONSTITUTIONAL LAW SCHOLARS, IN SUPPORT OF PETITIONERS

TO: THE HONORABLE PATRICIA GUERRERO, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT

Pursuant to Rule 8.520(f) of the California Rules of Court and this Court's order of September 11, 2024, Professor Khiara M. Bridges, Professor Devon Carbado, Professor Jennifer M. Chacón, Professor Ian Haney López, and Professor Robert Weisberg respectfully request leave to file the attached, simultaneously lodged amici curiae brief in support of petitioners, the Office of the State Public Defender, Eva Paterson,

Document received by the CA Supreme Court.

LatinoJustice PRLDEF, the Ella Baker Center for Human Rights, and Witness to Innocence.[1]

Amici are Constitutional Law scholars who are faculty members at California law schools.[2] Their scholarship and pedagogy encompass an examination of the ability of states to afford greater rights than the United States Constitution and the imperative of independent state constitutionalism when the parameters of fundamental rights are constrained under federal law. They also write and/or teach about the issues that animate the petition for writ of mandate ("petition"): the judiciary's role in addressing persistent racial bias in the legal system through the enforcement of state and federal constitutional guarantees.

Khiara M. Bridges is a Professor of Law at the University of California, Berkeley, School of Law who also holds a Ph.D. in Anthropology from Columbia University. Widely known for her

---

[1] No party or counsel for a party in this case authored the proposed brief in whole or in part or made a monetary contribution intended to fund the preparation or submission of the proposed brief. No person or entity other than *amici,* their members, or their counsel made a monetary contribution intended to fund the preparation or submission of the proposed brief.

[2] Amici's titles and affiliations are for identification purposes only.

Document received by the CA Supreme Court.

scholarship on reproductive justice, Professor Bridges has also written more broadly about the intersection between race, class, and federal constitutional guarantees, including articles that interrogate the Roberts Court's approach to claims of racial discrimination. Her scholarship has appeared in the *Harvard Law Review*, *Stanford Law Review*, the *Columbia Law Review*, the *California Law Review*, the *NYU Law Review*, and the *Virginia Law Review*, among others.

Devon Carbado is the Honorable Harry Pregerson Professor of Law at UCLA School of Law. Beginning in January 2025, he will be a Distinguished Research Professor at UCLA and the Elihu Root Professor of Law at NYU Law School. Professor Carbado teaches and writes in, among other areas, Constitutional Law, Constitutional Criminal Procedure, Antidiscrimination Law, and implicit bias and the law. His scholarship appears in leading law reviews, including the law reviews at UCLA, Berkeley, Harvard, Yale, Michigan, and Cornell.

Jennifer M. Chacón is the Bruce Tyson Mitchell Professor of Law at Stanford Law School. Her research focuses on the nexus of constitutional law, criminal law and procedure, and immigration law. Her work has been funded by the Russell Sage

Document received by the CA Supreme Court.

Foundation and the National Science Foundation. She is past Chair of the Ninth Circuit Court of Appeals Rules Committee, a member of the American Law Institute, and a Fellow of the American Bar Foundation (ABF). She was previously an associate at the law firm of Davis Polk and Wardwell in New York City, and a law clerk for the Honorable Sidney R. Thomas of the Ninth Circuit.

As the Chief Justice Earl Warren Professor of Public Law and a Distinguished Professor at the University of California, Berkeley, School of Law, Ian Haney López teaches and writes about race and constitutional law. His current research emphasizes the connections between deepening racial divisions and growing wealth inequality in the United States. Professor López has published four books and two anthologies, and his writing has appeared in the New York Times and the Washington Post, and in law reviews at Harvard, Yale, and Stanford, among other places. He has been a visiting professor at Yale, New York University, and Harvard.

Robert Weisberg holds the position of Edwin E. Huddleson, Jr. Professor of Law at Stanford University. Since 1981, he has taught classes and engaged in scholarly writing in the fields of

Document received by the CA Supreme Court.

Constitutional Law, Criminal Procedure and Constitutional Criminal Law. In particular, he has written extensively about constitutional issues related to capital punishment in California and, more broadly, in the United States.

The first section of the attached brief explains how the current death penalty in California is linked to the history of racism in this state. After presenting an overview of California's racial and ethnic diversification, amici then briefly trace the throughline from slavery to racial terror lynchings to capital punishment in the United States. Although California was admitted to the United States as a "free" state, it was also a place in which human enslavement, forced labor, and exploitation were commonplace. The brief shows the nexus between the historical record of lynchings and, later, of executions before the decisions in *Anderson* and *Furman* and petitioners' robust evidence of persistent racial disparities in the administration of the state's current death penalty scheme. *People v. Anderson*, 6 Cal. 3d 628 (1972); *Furman v. Georgia*, 408 U.S. 238 (1972).

The second section of the brief describes how state constitutionalism serves as an essential feature of federalism, one that enables state courts to afford greater protection to

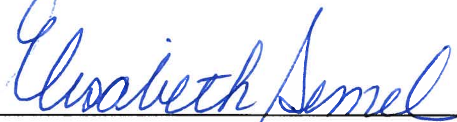
Document received by the CA Supreme Court.

fundamental rights than may be available under the United States Constitution. The brief highlights state courts' unique expertise in the operation of criminal law and procedure, including in the adjudication of capital cases. Amici describe this Court's long-standing leadership in providing greater protection for the rights of criminal suspects and defendants than the Supreme Court has found under the United States Constitution. This profound commitment to advancing rights and equality under the California Constitution is best served by the Court deciding this case.

WHEREFORE, the Constitutional Law Scholars respectfully request that the Court grant them leave to file the accompanying brief in support of petitioners in accord with Rule of Court 8.520(f) and the Court's order of September 11, 2024.

Dated: December 3, 2024

Respectfully submitted,



Professor Elisabeth Semel
Co-Director, Death Penalty Clinic
U.C. Berkeley School of Law

Attorney for Amici Curiae
CONSTITUTIONAL LAW
SCHOLARS

Document received by the CA Supreme Court.

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

OFFICE OF THE STATE PUBLIC DEFENDER,
EVA PATERSON, LATINOJUSTICE PRLDEF,
ELLA BAKER CENTER FOR HUMAN RIGHTS,
AND WITNESS TO INNOCENCE,

Petitioners,

v.

ROB BONTA, CALIFORNIA ATTORNEY GENERAL, IN HIS OFFICIAL CAPACITY,

Respondent.

CAPITAL CASE

No. S284496

BRIEF OF *AMICI CURIAE*, CONSTITUTIONAL LAW SCHOLARS, IN SUPPORT OF PETITIONERS

*ELISABETH SEMEL
(SBN 67484)
PROFESSOR AND CO-DIRECTOR, DEATH PENALTY CLINIC
U.C. Berkeley School of Law
Berkeley, CA 94720-7200
esemel@law.berkeley.edu
Telephone: 510-642-0458
Facsimile: 510-643-4625

ERWIN CHEMERINSKY
(Admitted in Illinois and District of Columbia)
DEAN
U.C. Berkeley School of Law
Berkeley, CA 94720-7200
echemerinsky@law.berkeley.edu
Telephone: 510-642-6483
Facsimile: 510-642-9893

Attorneys for Amici Curiae

Document received by the CA Supreme Court.

TABLE OF CONTENTS

TABLE OF AUTHORITIES 4

INTRODUCTION 11

ARGUMENT 17

I. THE CALIFORNIA DEATH PENALTY SHOULD BE UNDERSTOOD IN THE CONTEXT OF BOTH THE DIVERSITY AND THE HISTORY OF RACISM IN CALIFORNIA. 17

A. California is a State Celebrated for its Multiculturalism and Racial Diversity.......... 17

B. The Death Penalty in the United States and California is Rooted in the Legacy of Slavery, Racial Terror, and Subjugation. 24

1. Capital punishment in the United States manifests the nation's history of racial violence and oppression. 24

2. The death penalty in California is rooted in the state's history of racial domination, exploitation, and terror. 27

II. INDEPENDENT STATE CONSTITUTIONAL INTERPRETATION IS AT THE CORE OF CALIFORNIA'S JURISPRUDENTIAL TRADITION. 35

A. Jurists and Scholars Across Ideological and Geographic Divides Agree that the Push and Pull between State Constitutions and the

Document received by the CA Supreme Court.

Federal Constitution is a Vital Feature of our Judicial System... 35

B. This Court Has Been a Leader in its Reliance on California's Constitution as a Guarantor of Fundamental Rights...................................... 41

1. State constitutional independence is vital in the arena of criminal law and procedure. ... 42

2. In criminal cases, this Court has often held that our State Constitution is more protective of fundamental rights than is the Federal Constitution... 50

CONCLUSION 53

CERTIFICATE OF WORD COUNT............................ 55

PROOF OF SERVICE 56

Document received by the CA Supreme Court.

TABLE OF AUTHORITIES

Cases

Argersinger v. Hamlin, 407 U.S. 25 (2006) 51

Barber v. Mun. Ct., 24 Cal. 3d 742 (1979) 51

Blanton v. City of North Las Vegas, 489 U.S. 538 (1989) 52

Brown v. Merlo, 8 Cal. 3d 855 (1973) 41, 42

Com. v. Colon-Cruz, 470 N.E.2d 116 (Mass. 1984) 47

Com. v. Soares, 387 N.E.2d 499 (Mass. 1979) 13

Crawford v. Bd. of Education, 17 Cal. 3d 280 (1976) 42

Dist. Att'y for the Suffolk Dist. v. Watson, 411 N.E. 2d 1274 (Mass. 1980) 13, 46

Furman v. Georgia, 408 U.S. 238 (1972) 13, 34

Gardner v. App. Div. of Super. Ct., 6 Cal. 5th 998 (2019) 52

In re Johnson, 62 Cal. 2d 325 (1965) 51

In re Marriage Cases, 43 Cal. 4th 757 (2008) 42

Jones v. Chappell, 31 F. Supp. 3d 1050 (C.D. Cal. 2014) 48

Jones v. Davis, 806 F.3d 538 (9th Cir. 2015) 48

McCleskey v. Kemp, 481 U.S. 279 (1987) 24

Michigan v. Long, 463 U.S. 1032 (1983) 39

Mills v. Mun. Ct., 10 Cal. 3d 288 (1973) 51, 52

Mitchell v. Super. Ct., 49 Cal. 3d 1230 (1989) 52

People v. Anderson, 6 Cal. 3d 628 (1972) 34

People v. Aranda, 6 Cal. 5th 1077 (2019) 53

People v. Barnett, 17 Cal. 4th 1044 (1998) 42

Document received by the CA Supreme Court.

People v. Hanson, 23 Cal. 4th 355 (2000) 41

People v. Hardin,15 Cal. 5th 834 (2024) 15

People v. LaValle, 817 N.E. 2d 341 (N.Y. 2004) 45, 46

People v. McDaniel, 12 Cal. 5th 97 (2021) 16

People v. Potts, 6 Cal. 5th 1012 (2019) 48

People v. Ramos, 37 Cal.3d 136 (1984) 46

People v. Triplett, 48 Cal. App. 5th 655 (2020) 23

People v. Wheeler, 22 Cal.3d 258 (1978)....................................... 13

People v. Wilson, 16 Cal. 5th 874 (2024) 22

Powell v. Alabama, 287 U.S. 45 (1932) 52

PruneYard Shopping Center v. Robins, 447 U.S. 74 (1980) 39

Raven v. Deukmejian, 52 Cal. 3d 336 (1990) 17, 53

Robins v. PruneYard Shopping Center, 23 Cal. 3d 899 (1979).... 41

San Antonio v. Rodriguez, 411 U.S. 1 (1973) 40

Serrano v. Priest, 18 Cal. 3d 728 (1976) 42, 49

State v. Gregory, 427 P.3d 621 (Wash. 2018)............. 12, 14, 36, 45

State v. Santiago, 122 A.3d 1 (Conn. 2015) 12, 13, 46

Other Authorities

ACLU of N. Cal., *Slavery by Another Name*, Gold Chains: The Hidden History of Slavery in California (2019) 27

Adam McCann, *Most & Least Diverse States in America (2024)*, WalletHub (2024) 18

Benjamin Madley, *An American Genocide: The United States and the California Indian Catastrophe, 1846-1873* (2016) 18, 19

Document received by the CA Supreme Court.

Bryan Stevenson, *A Presumption of Guilt*, N.Y. Rev. Books (July 13, 2017) 25

Cal. Comm. on the Fair Admin. of Justice, *Final Report* (2008) . 48

Cal. Task Force to Study and Develop Reparation Proposals for African Americans, *Final Report* (2023) 28, 29, 31

California Legislature, Senate Daily Journal, Gov. Edmund G. Brown, *Message from the Governor: Statement on Capital Punishment* (1963) 33

Chris Rhomberg, *White Nativism and Urban Politics: The 1920s Ku Klux Klan in Oakland, California*, 17 J. Am. Ethnic Hist. 39 (1998) 32

Comm. on Revision of the Penal Code, *Death Penalty Report* (2021) 30, 48

David G. Lawrence & Jeff Cummins, *California: The Politics of Diversity*, Public Policy Institute of California, 7–8 (2024) .. 17

Decl. Matthew Rubenstein Regarding the Geographic Location of Federal Cases, the Frequency of Authorizations, Death Sentences and Executions and the Race and Gender of Defendants and Victims (June 3, 2024) 44

Donald R. Wright, *The Role of the Judiciary: From Marbury to Anderson*, 60 Cal. L. Rev. 1262 (1972) 23

Edward Humes, *Mean Justice: A Town's Terror, A Prosecutor's Power, A Betrayal of Innocence* (1999) 32

Equal Just. Initiative, *Lynching in America: Confronting the Legacy of Racial Terror* (3d ed. 2017) 26, 27

Goodwin Liu, State Courts and Constitutional Structure, 128 Yale L.J. 1304 (2019) 38

Habeas Corpus Resource Ctr., *Annual Report* (2023) 47, 48

Hans Johnson, et al., *California's Population*, Pub. Policy Inst. of Cal. (2024) 22

Document received by the CA Supreme Court.

Hans Johnson, et al., *Race and Diversity in the Golden State*, Pub. Policy Inst. of Cal. (2023) 22

Isabel Wilkerson, *The Warmth of Other Suns: The Epic Story of America's Great Migration* (2010) 25

J. Skelly Wright, *In Praise of State Courts: Confessions of a Federal Judge*, 11 Hastings Const. L.Q. 165 (1984) 40

Jean Pfaelzer, *California: A Slave State* (2023) 27

Jeffrey S. Sutton, *51 Imperfect Solutions: States and the Making of American Constitutional Law* (2008) 40

Joseph R. Grodin, *In Pursuit of Justice: Reflections of a State Supreme Court Justice* (1989) 37, 38

Justice Hans A. Linde, *First Things First: Rediscovering the States' Bills of Rights,* 9 U. Balt. L. Rev. 379 (1980) 36

Justice Hans A. Linde, *The State and the Federal Courts in Governance: Vive la Différence!,* 46 Wm. & Mary L. Rev. 1273 (2005) 36

Ken Gonzales-Day, *Lynching in the West*, *1850-1935* (2006) 26, 30

Knute Berger, *Our Dishonorable Past: KKK's Western Roots Date to 1868*, Crosscut (Mar. 19, 2017) 29, 31

Lawrence Gene Sager, *Fair Measure: The Legal Status of Underenforced Constitutional Norms*, 91 Harv. L. Rev. 1212 (1978) 40

Lynn M. Hudson, *West of Jim Crow: The Fight Against California's Color Line* (2020) 29

Margaret W. Cahalan & Lee Anne Parsons, *Historical Corrections Statistics in the United States, 1850–1984* 29

Mary-Beth Moylan & Linda E. Carter, *Clemency in California Capital Cases*, 14 Berkeley J. Crim. L. (2009) 28

Document received by the CA Supreme Court.

Michael F. Magliari, *Free State Slavery: Bound Indian Labor and Slave Trafficking in California's Sacramento Valley, 1850-1864*, 81 Pac. Hist. Rev. (2012) 28

NAACP History of Lynching in America 26

National Center for State Courts, *Court Statistics Project Releases Trial Court Caseload Trends* (2021) 43

PBS SoCal, *From the South to Compton* (Aug. 14, 2010) 20

Richard Melching, *The Activities of the Ku Klux Klan in Anaheim, California 1923–1925*, 56 S. Cal. Q. 175 (1974) 32

Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (2017) 32, 33

Robert Heizer, *Impact of Colonization on the Native California Societies*, 24 J. San Diego Hist. 1 (1978) 18

Robert M. Carter & A. LaMont Smith, *The Death Penalty in California: A Statistical and Composite Portrait* (1969) 29, 33

Rudolph M. Lapp, *Blacks in Gold Rush California* (1977) 31

S.F. Sheriff's Dept. Hist. Rsch. Project, *Executions in San Francisco 1851–1890* (2023) 31, 33

Sara Clarke, *California is the Most Diverse State, Report Says*, U.S. News & World Report (2020) 18

Shirley Ann Wilson Moore, *To Place Our Deeds: The African American Community in Richmond California, 1910-1963* 20

Shirley S. Abrahamson, *Criminal Law and State Constitutions: The Emergence of State Constitutional Law*, 63 Tex. L. Rev. 1141 (1985) 44

Stanley Mosk, *The Power of State Constitutions in Protecting Individual Rights*, 8 N. Ill. U. L. Rev. 651 (1988) 37

Stephen B. Bright, *Discrimination, Death, and Denial: The Tolerance of Racial Discrimination in Infliction of the Death Penalty*, 35 Santa Clara L. Rev. 433 (1995) 24

Document received by the CA Supreme Court.

Stuart Banner, *The Death Penalty: An American History* (2002) 24

Subcomm. on Cap. Punishment, *Problems of the Death Penalty and its Administration in California* (1957) 33

Thomas W. Frampton, *The Jim Crow Jury*, 71 Vand. L. Rev. 1593 (2019) 26

U.S. Census Bureau, *California, General Population Statistics* (1970) 21

U.S. Census Bureau, *Census Bulletin, no. 10, Population of California by Counties and Minor Civil Divisions* (1900) 19

U.S. Census Bureau, *Census Bulletin, no. 66, Population by Sex, General Nativity, and Color, by Groups of States and Territories: 1900* (1901) 20

U.S. Census Bureau, *General Characteristics–California* (1950) 20

U.S. Census Bureau, *Subject Definitions*, 2024 21

U.S. Census Bureau, *The Seventh Census of the United States: 1850–California* (1850) 19

U.S. Dept. of Just. Bureau of Just. Stats. (1986) 30

United States Courts, *U.S. District Courts —Judicial Business 2021* 43

William D. Carrigan & Clive Webb, *The Lynching of Persons of Mexican Origin or Descent in the United States, 1848 to 1928*, 37 J. Soc. Hist. (2003) 30

William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 Harv. L. Rev. 489 (1977) 35, 38, 39

Regulations

Crim. Proc. Act of 1851, Cal. Stats. 1851, ch. 29, §§ 463–480 28

Document received by the CA Supreme Court.

Constitutional Provisions

Cal. Const. art I, § 17 11

Cal. Const. art. I, § 7(a) 11

Cal. Const. art. I, § 7(b) 11

Cal. Const. art. I, § 13 51

Cal. Const. art. IV, § 16(a) 11

U. S. Const. amend. I 39, 41

U.S. Const., amend. VIII 16

Legislative Materials

A.B. 2542, 2019-2020 Leg., Reg. Sess. (Cal. 2020) 47

A.B. 256, 2021-2022 Leg., Reg. Sess. (Cal. 2022) 47

Document received by the CA Supreme Court.

INTRODUCTION

Amici, Constitutional Law scholars, submit this brief in support of petitioners' as-applied state constitutional challenge to California's capital punishment scheme, a matter the Attorney General agrees is "of the greatest public importance." Preliminary Response to Petition for Writ of Mandate ("Response") at 15. As initially presented, petitioners' claim that "California's capital punishment scheme is administered in a racially discriminatory manner" was grounded in the equal protection guarantees of the state Constitution. Petition for Writ of Mandate ("Petition") at 68–89; *see* Cal. Const. art. I, § 7(a) and (b), art. IV, § 16(a). In response to questions from the Court, petitioners further raised an as-applied challenge based on the California Constitution's cruel or unusual punishment provision. Petitioners' Brief at 31–41; *see* Cal. Const. art I, § 17.

Petitioners accurately characterize as "overwhelming" the empirical evidence they have amassed of "racial disparities in the application of California's death penalty system." Petition at 86. Amici are unaware of any other constitutional challenge to the administration of a capital punishment scheme that has presented as many statistical studies authored by as many

Document received by the CA Supreme Court.

highly-regarded researchers, which employ different approaches, analyze decision-making at several time periods over such an extended time frame, and include such a range of geographical locations. *See id.* at 24–25 (describing, *inter alia*, "15 studies spanning 44 years," including "four statewide studies and 11 county-level studies examining seven individual jurisdictions, involving "[t]hirteen separate researchers," encompassing six peer-reviewed studies and nine studies independently reviewed by "a leading empirical researcher and expert in assessing racial disparities in capital sentencing").[1]

---

[1] By contrast to the extensive statistical analyses presented here, the Washington Supreme Court relied on a single, albeit comprehensive, empirical study in holding that, as applied, the state's death penalty scheme violates the Washington Constitution's "cruel punishment" prohibition. *State v. Gregory*, 427 P.3d 621, 630, 633 (Wash. 2018). The Connecticut Supreme Court reviewed a wealth reports examining the national landscape on topics such as delay, deterrence, and trends in abolition, sentencing and executions, but did not consider the role of racial disparities in the application of the state's death penalty because the issue was not before it. *State v. Santiago*, 122 A.3d 1, 48–53 (Conn. 2015). *Id.* at 85 (Norcott, J. and McDonald, J, concurring). The court's inability to "speak[] to the persistent allegations of racial and ethnic discrimination that have permeated the breadth of this state's experience with capital charging and sentencing decisions" prompted a concurring opinion that analyzed them. *Id.* The concurring justices examined the data in Connecticut cases raising disparity claims, the report

Document received by the CA Supreme Court.

The statewide studies evidence "persistent and substantial race-based disparities" in "death sentencing among death-eligible cases based on both defendant race and victim race" whether decision-makers were prosecutors or juries. Petition at 28-29. The statewide disparities are indeed "substantial," showing, for example, that "Black defendants faced odds of being sentenced to death between 4.6 and 8.7 times higher than similarly situated defendants of other races." *Id*. at 29. County-level findings—including counties that are geographically, politically, and demographically diverse—are equally, if not more compelling, than the statewide outcomes. For example, in Riverside County, "Black defendants were 14 times more likely, and Latino

---

of a statewide commission on the death penalty, legislative testimony, and a recent statistical report by Stanford Law Professor John Donohue who independently reviewed nine of Petitioner's studies. *Id*. at 86-87, 90-95. *See* Petition at 24-25. In *Dist. Att'y for the Suffolk Dist. v. Watson*, 411 N.E. 2d 1274 (Mass. 1980), the Massachusetts Supreme Court held that the state's capital punishment scheme violated article 26 of the Massachusetts Declaration of Rights (prohibiting "cruel or unusual punishments") based on the "wisdom of *Furman*," national studies, the post-*Furman* examination of death sentences in three Southern states, and its opinion in *Com. v. Soares*, 387 N.E.2d 499 (Mass. 1979), which is analogous to this Court's decision in *People v. Wheeler*, 22 Cal. 3d 258 (1978). *See Furman v. Georgia*, 408 U.S. 238 (1972).

Document received by the CA Supreme Court.

defendants almost 11 times more likely, than similarly situated White defendants to be sentenced to death." *Id*. at 34. In San Joaquin County, "[t]he odds that a defendant in a Black-victim case would be charged with a special circumstance [were] one-fifth of the odds that a defendant in a White-victim case would be charged with a special circumstance." *Id*. at 38. And in San Diego County, "the odds that the prosecution would allege a special circumstance were more than 3.7 times greater in cases with White victims and Black defendants." *Id*. at 37.

In his Response, the Attorney General called these findings "profoundly disturbing." Response at 9. He expressed "no doubt that petitioners' arguments are entitled to careful consideration by a judicial tribunal." *Id*. Given the strength of petitioners' statistical showing and the Attorney General's position, it seemed likely that the Court would, at minimum, grant review and, as the Attorney General proposed, determine a "fair process . . . to develop an evidentiary record." *Id*. at 9; *id*. at 10 (suggesting that the appointment of a special master—the procedure employed by the Washington Supreme Court in *State v. Gregory*—would be the "better approach under these unusual circumstances"). 427 P.3d at 630.

Document received by the CA Supreme Court.

The Court, however, directed the parties to brief several legal issues, which the parties have done. *See generally* Petitioner's Brief and Attorney General's Supplemental Opening Brief ("Supplemental Brief"). The Attorney General now argues that "[t]his Court's own settled precedent construing the state equal protection clause forecloses petitioners' claim." Supplemental Brief at 29. He agrees, however, that "the circumstances here . . . could provide a basis for [relief] for purposes of state cruel or unusual punishment analysis." *Id.*at 35. The Attorney General then returns to his view that the Court should engage in "[e]videntiary scrutiny" of petitioners' studies. *Id.*[2]

Whether the Court considers petitioners' challenge under the state Constitution's equal protection provisions, under its prohibition against cruel or unusual punishment, or—as amici urge—under both guarantees, it has a duty to address them. As

[2] Amici agree that petitioners' empirical findings are "conclusive." Petitioners' Brief at 18; *see* Petition at 28–41 (summarizing the studies and findings). They respectfully request, however, that if the Court declines to order the relief petitioners' seek, the Court accept review and order a fact-finding process. *See People v. Hardin*,15 Cal. 5th 834, 862 (2024).

Document received by the CA Supreme Court.

amici discuss below, petitioners' mountain of evidence that racial discrimination infects the administration of California's death penalty in the "modern era" sits atop an even larger mountain of evidence that these disparities are rooted in the state's history of racial terror and subjugation.

In *People v. McDaniel*, 12 Cal. 5th 97, 141–55 (2021), the Court considered issues pertaining to the California jury trial right. The Court observed:

> Several amici curiae, including Governor Gavin Newsom, advance views of history and social context that link capital punishment with racism.[3] These claims sound in equal protection, due process, or the Eighth Amendment's prohibition on cruel and unusual punishment, and do not bear directly on the specific state law questions before us.

Id. at 141. If amici's claims in *McDaniel* missed the mark, here, petitioners' statistical evidence "bear[s] directly on the specific state law questions." *See id.* These questions are precisely the type that the Court has frequently answered by turning to the California Constitution, which affords "protection to our citizens beyond the limits imposed by the high court under the federal

---

[3] Counsel for amici were counsel for Governor Newsom in *McDaniel*. *See* Brief of Amicus Curiae The Hon. Gavin Newson in Support of Defendant and Appellant McDaniel, *People v. McDaniel*, No. S171393.

Document received by the CA Supreme Court.

Constitution." *Raven v. Deukmejian*, 52 Cal. 3d 336, 354 (1990). For the reasons amici present below, this is the bedrock jurisprudence that should guide the Court here.

ARGUMENT

I. THE CALIFORNIA DEATH PENALTY SHOULD BE UNDERSTOOD IN THE CONTEXT OF BOTH THE DIVERSITY AND THE HISTORY OF RACISM IN CALIFORNIA.

A. California is a State Celebrated for its Multiculturalism and Racial Diversity.

Diversity and growth characterize California's demographics. Since 2000, no racial or ethnic group has constituted a majority of Californians. David G. Lawrence & Jeff Cummins, *California: The Politics of Diversity*, Public Policy Institute of California, 7–8 (2024). Since 2010, California has been home to over twenty percent of the nation's non-White population. *Id.* at 8. This status has earned California national recognition as a state that values—indeed, promotes—multiculturalism and racial diversity. Sara Clarke, *California is the Most Diverse State, Report Says*, U.S. News & World Report

Document received by the CA Supreme Court.

(2020)[4]; Adam McCann, *Most & Least Diverse States in America (2024)*, WalletHub (2024).[5]

The racial and ethnic composition of what came to be the state of California has diversified over time but began with a decades-long extermination campaign against California's indigenous population. In 1769, the indigenous population of California was an estimated 310,000. Robert Heizer, *Impact of Colonization on the Native California Societies*, 24 J. San Diego Hist. 1, 1 (1978). From 1769 to 1846, the indigenous population suffered devastating demographic decline, falling from 310,000 to 150,000. Benjamin Madley, *An American Genocide: The United States and the California Indian Catastrophe, 1846-1873* 3 (2016). Under United States rule, California Natives died at an even more catastrophic rate—plunging from 150,000 to 30,000 between1846 and 1870, before dropping by almost half to 16,277 by 1880. *Id.* Diseases, dislocation, and starvation were important causes of many deaths; however, abduction, de jure and de facto

[4] https://www.usnews.com/news/best-states/articles/2020-09-10/california-is-the-most-diverse-state-in-the-us (last accessed December 3, 2024).
[5] https://wallethub.com/edu/most-least-diverse-states-in-america/38262 (last accessed December 3, 2024).

Document received by the CA Supreme Court.

enslaved labor, mass death in forced confinement on reservations, homicides, battles, and massacres at the hands of the United States also took thousands of indigenous lives and arrested reproduction. *Id.* In 1849 alone, the population of non-indigenous people more than tripled. *Id.* at 78.

At statehood, the California population was estimated to be 92,597 people. U.S. Census Bureau, *The Seventh Census of the United States: 1850–California*, 972 (1850). The population was almost entirely White. *Id.* (reporting 98.96% White). The remaining 1.04% were "free colored." *Id.* Free Black and White men and women were the only demographics included in the data; enslaved persons and other non-White minorities—including Indigenous peoples—were not counted. *See id.*

Fifty years later, the population had skyrocketed from 92,597 to an estimated 1,485,053 people. U.S. Census Bureau, *Census Bulletin, no. 10, Population of California by Counties and Minor Civil Divisions*, 2 (1900). People of color accounted for an estimated 5.5% of the population, while White residents were still an overwhelming majority, representing 94.5% of the population. U.S. Census Bureau, *Census Bulletin, no. 66, Population by Sex,*

Document received by the CA Supreme Court.

General Nativity, and Color, by Groups of States and Territories: 1900, 11 (1901). Black people accounted for less than one percent of persons in California.[6] *See id.* at 2.

The fifty-year period between 1900 and 1950 brought a dramatic shift in the racial composition of California's population. The state's Black population grew by over 4,000% from 11,045 to an estimated 462,172 people. U.S. Census Bureau, *General Characteristics–California*, 57 (1950).[7] Economic opportunity in California cities like Los Angeles and Richmond, generated by the federal government's World War II defense industry, invited thousands of new Black residents seeking to flee the racial terror in the South. Shirley Ann Wilson Moore, *To Place Our Deeds: The African American Community in Richmond California, 1910-1963* 41, 49; PBS SoCal, *From the South to Compton* (Aug. 14, 2010) ("During the 1940's, the West's black population increased by 443,000 (thirty-three percent) due in part to the military industrial complex that transformed the demographic

---

[6] 11,045 people or 0.76% of the population. *Id.*
[7] https://www2.census.gov/library/publications/decennial/1950/population-volume-2/37778768v2p5ch3.pdf.

Document received by the CA Supreme Court.

composition of western cities specifically Los Angeles and Oakland").[8]

California's current racial and ethnic diversity, however, is a product of the last half century. In 1970, non-Hispanic Whites constituted eighty-nine percent of California's population. U.S. Census Bureau, *California, General Population Statistics*, 87 (1970).[9] African-American individuals accounted for seven percent of the state's population, while non-White Hispanic[10] individuals represented less than one percent of California residents. *Id.*

From 2000 to 2020, the number of White residents fell by over two million, while the number of Latino individuals grew by 4.6 million. Hans Johnson, et al., *Race and Diversity in the*

---

[8] https://www.pbssocal.org/shows/departures/from-the-south-to-compton (last accessed December 3, 2024).
[9] https://www2.census.gov/library/publications/decennial/1970/population-volume-1/1970a_ca1-02.pdf.
[10] The U.S. Census Bureau uses the term "non-White Hispanics" to refer collectively to individuals whose "origin [is] Mexican, Puerto Rican, Cuban, Central or South American, or some other Hispanic origin." *Subject Definitions*, 2024, https://www.census.gov/programs-surveys/cps/technical-documentation/subject-definitions.html#ethnicorigin (last accessed December 3, 2024). Amici use the identifiers "non-White Hispanic" and "Latino" interchangeably to refer to the same group of individuals.

Document received by the CA Supreme Court.

Golden State, Pub. Policy Inst. of Cal. (2023). Similarly, the number of Asians and Pacific Islanders rose by 2.3 million. *Id.* Multiracial residents and members of other minority groups increased by more than 700,000. *Id.*

Today, White residents make up only thirty-five percent of the state's population. Hans Johnson, et al., *California's Population*, Pub. Policy Inst. of Cal. 2 (2024).[11] The remainder of the population is divided among a range of non-White races and ethnicities, the three most predominant being Latino (forty percent), Asian American or Pacific Islander (fifteen percent), and African American. *Id.* Although Black Californians rank among the most populous non-White groups, they constitute only five percent of the state's population. *Id.*

Despite this trend of diversification, discrimination against Californians of color in the criminal justice system remains prevalent and entrenched. *People v. Wilson*, 16 Cal. 5th 874, 1035 (2024) (Evans, J., dissenting) ("Even though racial bias is widely acknowledged as intolerable in our criminal justice system, it

---

[11] https://www.ppic.org/wp-content/uploads/JTF_PopulationJTF.pdf (last accessed December 3, 2024).

Document received by the CA Supreme Court.

nevertheless persists."); *People v. Triplett*, 48 Cal. App. 5th 655, 689 (2020) (Liu, J., dissenting from the denial of review). *Id.* ("Countless studies show that Black Americans are disproportionately subject to police and court intervention, even when they are no more likely than whites to commit offenses warranting such coercive action.").

As petitioners' robust statistical data make plain, racial disparities are particularly salient in the administration of capital punishment—the most severe and final of state-sanctioned penalties. It is the responsibility, indeed the duty, of this Court to address these unconscionable racial disparities. As former California Chief Justice Donald R. Wright declared:

> [A] court *must* reconsider a law every time a litigant interposes a constitutional challenge. However much we may wish to ignore such a challenge, we cannot do so and remain faithful to our oath. A court cannot wait until the public pressure which instigated passage of a particular law has subsided or until enough energy has been generated for repeal of a particular piece of legislation.

Donald R. Wright, *The Role of the Judiciary: From Marbury to Anderson*, 60 Cal. L. Rev. 1262, 1267-68 (1972). If, as applied, California's death penalty is racially discriminatory and offends the state Constitution, this Court should so hold.

Document received by the CA Supreme Court.

B. The Death Penalty in the United States and California is Rooted in the Legacy of Slavery, Racial Terror, and Subjugation.

1. <u>Capital punishment in the United States manifests the nation's history of racial violence and oppression.</u>

The death penalty is a direct descendant of lynching, racial violence, and racial oppression in America. Stephen B. Bright, *Discrimination, Death, and Denial: The Tolerance of Racial Discrimination in Infliction of the Death Penalty*, 35 Santa Clara L. Rev. 433, 439 (1995).

Since its inception, the American death penalty has been disproportionately applied, first, to enslaved Africans and African Americans, and, later, to free Black people. Many capital statutes in the American colonies were applicable only to Black defendants and applied even to minor property crimes. Stuart Banner, *The Death Penalty: An American History* 8–9 (2002). Northern states later moved towards abolition, but in contrast, the Southern states "saw no solution other than capital punishment" to maintain the regime of racial domination over two million enslaved people. *Id.* at 131, 142; *see, e.g.*, *McCleskey v. Kemp*, 481 U.S. 279, 328–30 (1987) (Brennan, J., dissenting)

Document received by the CA Supreme Court.

(describing Georgia's "dual system of crime and punishment" for Black and White defendants).

The Southern dismantling of Reconstruction meant that any improvements in conditions for Black Americans after the Civil War were instead replaced by a "caste system based . . . on race." Isabel Wilkerson, *The Warmth of Other Suns: The Epic Story of America's Great Migration* 37–38 (2010). In particular, the Southern "[s]tates began to look to the criminal justice system" to "maintain the subordination of African Americans" and "routinely charged" Black people with "a wide range of 'offenses,' some of which whites were never charged with." Bryan Stevenson, *A Presumption of Guilt*, N.Y. Rev. Books (July 13, 2017).[12] The "tension" between the South's determination to maintain the regime of White supremacy and the ambition of African Americans to "rise up from slavery . . . [l]ed to an era of lynching and violence that traumatized black people for decades." *Id.*[13] Although the true number may never be known, a recent

---

[12] https://www.nybooks.com/articles/2017/07/13/presumption-of-guilt/ (last accessed December 3, 2024).

[13] Across the South, "someone was hanged or burned alive every four days from 1889 to 1929." Wilkerson, *supra*, at 39.

Document received by the CA Supreme Court.

study documented 4,084 racial terror lynchings in twelve Southern states between 1877 and 1950. Equal Just. Initiative, *Lynching in America: Confronting the Legacy of Racial Terror* 4 (3d ed. 2017) (hereinafter EJI, *Lynching in America*).[14]

The eventual decline of lynching "relied heavily on the increased use of capital punishment imposed by court order following an often accelerated trial." EJI, *Lynching in America*, *supra*, at 5. Non-unanimous verdicts were one of the tools used to increase courtroom "'efficiency'" and provide a swift alternative "for less tasteful forms of racial violence." *See* Thomas W. Frampton, *The Jim Crow Jury*, 71 Vand. L. Rev. 1593, 1612–14 (2019) (citations omitted) (referencing a Mississippi newspaper that advertised non-unanimity as a "Remedy for Lynching"). The through-line from lynchings to today's capital punishment regime

---

[14] A conservative estimate is that African Americans comprised seventy percent of the nearly five thousand individuals lynched across the nation between 1882 and 1968. NAACP History of Lynching in America, *available at* https://naacp.org/find-resources/history-explained/history-lynching-america (last accessed December 3, 2024). Ken Gonzales-Day acknowledged that the actual number of lynchings may never be known, noting, for example, Dorothy Sterling's claim that between 1868 and 1871 alone, the Ku Klux Klan ("KKK") killed nearly twenty-thousand African Americans. *Ken Gonzales-Day, Lynching in the West, 1850-1935* at 247–48 n.95 (2006).

Document received by the CA Supreme Court.

led the Equal Justice Initiative to conclude that "the death penalty's roots are sunk deep in the legacy of lynching." EJI, *Lynching in America*, *supra*, at 5.

2. The death penalty in California is rooted in the state's history of racial domination, exploitation, and terror.

As with the nation, California's death penalty is inextricably tied to the state's history of racial terror and subjugation. Although California entered the Union in 1850 as a "free" state, the enterprises of human enslavement, forced labor, and exploitation, were commonplace in California since its founding. During the nineteenth century Gold Rush, plantation owners from the South transported about two thousand enslaved Black Americans to California to toil along riverbeds and mountain foothills for gold. Jean Pfaelzer, *California: A Slave State* 120–22 (2023). Until 1870, downtown Los Angeles hosted a "flourishing" slave market where Native people were sold through a system of convict leasing that was slavery in all but name.[15]

---

[15] ACLU of N. Cal., *Slavery by Another Name*, Gold Chains: The Hidden History of Slavery in California (2019), aclunc.org/sites/goldchains/explore/native-american-slave-market.html; Michael F.

Document received by the CA Supreme Court.

The 1849 ratification of the California Constitution brought a de jure end to formal slavery; however, the lack of specific laws criminalizing enslavement was exploited by proslavery White Southerners who infiltrated the nascent California government. Cal. Task Force to Study and Develop Reparation Proposals for African Americans, *Final Report*, 108 (2023) ("Cal. Reparations Task Force").[16] Two years later, the California Legislature passed the Criminal Practices Act of 1851, legalizing executions statewide. Mary-Beth Moylan & Linda E. Carter, *Clemency in California Capital Cases*, 14 Berkeley J. Crim. L. 37, 45 (2009).[17]

The next year, in 1852, the California Legislature enacted its own fugitive slave law that allowed enslavers to capture and arrest enslaved people in California and return them to captivity.

Magliari, *Free State Slavery: Bound Indian Labor and Slave Trafficking in California's Sacramento Valley, 1850-1864*, 81 Pac. Hist. Rev. 155, 157 (2012).

[16] https://oag.ca.gov/ab3121/report (last accessed December 3, 2024).

[17] Local sheriffs—not the State—were responsible for overseeing all death sentences. Crim. Proc. Act of 1851, Cal. Stats. 1851, ch. 29, §§ 463–480. It was not until 1872 that the California Legislature required that all executions be committed "within the walls or yard of a jail, *or some convenient private place in the county*." Moylan & Carter, *supra*, at 45 (emphasis added). Nearly two decades later, the Legislature required that all executions be performed by the state prisons. *Id.*

Document received by the CA Supreme Court.

Cal. Reparations Task Force, *supra*, at 109. The following years wrought a series of judicial and extrajudicial executions of Black Americans and other racial and ethnic minorities in California. Robert M. Carter & A. LaMont Smith, *The Death Penalty in California: A Statistical and Composite Portrait* 66–67 (1969); *see generally* Lynn M. Hudson, *West of Jim Crow: The Fight Against California's Color Line* 134–137 (2020) (discussing the history of lynchings in California in response to alleged crime).

Vigilantism was commonplace in California. Extrajudicial lynchings of alleged criminals were commonplace as an accepted mechanism of "frontier justice." Hudson, *supra*, at 134. Although often associated with the Deep South, extrajudicial executions and organized hate groups have a long history in California. Knute Berger, *Our Dishonorable Past: KKK's Western Roots Date to 1868*, Crosscut (Mar. 19, 2017)[18]; Margaret W. Cahalan & Lee Anne Parsons, *Historical Corrections Statistics in the United States, 1850–1984*; U.S. Dept. of Just. Bureau of Just. Stats. 12–

---

[18] https://crosscut.com/2017/03/history-you-might-not-want-to-know-the-kkks-deep-local-roots-west-california-washington-oregon (last accessed December 3, 2024). *Id.* ("[T]he first signs of the Ku Klux Klan in California and Oregon go back nearly to the birth of the Klan itself . . . .").

Document received by the CA Supreme Court.

17 (1986) ("[L]ynchings were occurring in the South and West much more frequently than in the North East[]"). For decades, especially during the 1840s–1920s, White vigilantes routinely hunted and lynched people of color throughout California. William D. Carrigan & Clive Webb, *The Lynching of Persons of Mexican Origin or Descent in the United States, 1848 to 1928*, 37 J. Soc. Hist. 411, 416, 421–22 (2003). There were 352 documented lynchings in California between 1850 and 1927. Gonzales-Day, *supra*, at 46. Eight of the victims were Black, but most victims of lynching were Native American, Chinese, and Latino. Carrigan & Webb, *supra*, at 416, 421–22.

Perpetrated by both law enforcement and vigilante mobs, lynchings were a common mechanism to inflict racial violence in response to alleged crime. California's early legal system, far from acting as a check on extra-legal executions, instead "served as an instrument" of oppression by creating a permissive environment in which "almost no white man was ever made to stand trial for the lynching of a Mexican." *Id.* at 417; Comm. on Revision of the Penal Code, *Death Penalty Report* 18 (2021) ("Death Penalty Report") ("Although lynching was an extra-judicial process, the practice was closely tied to the criminal legal

Document received by the CA Supreme Court.

system because it regularly occurred in response to an allegation of serious crime”). In San Francisco, between 1850 and 1890, nearly a third of executions were extra-judicial lynchings perpetrated by “vigilance committees.” S.F. Sheriff's Dept. Hist. Rsch. Project, *Executions in San Francisco 1851–1890* (2023).[19]

Black Californians were often lynched in response to alleged crime. Rudolph M. Lapp, *Blacks in Gold Rush California* 261 (1977). Asian Americans also suffered under this regime of racial terror. For example, in 1871, a Los Angeles mob lynched seventeen Chinese men and boys because the mob believed that Chinese people had killed a White saloon owner. Cal. Reparations Task Force, *supra*, at 149.

The state saw a resurgence of KKK activity in the 1920s and 1930s. Berger, *supra*. Klan activity extended throughout the state, as “San Francisco, Oakland, Fresno, Sacramento, Kern County, the Imperial Valley and several other locations were each represented by one or more local klaverns.” Richard Melching, *The Activities of the Ku Klux Klan in Anaheim,*

[19] https://www.sfsdhistory.com/research/executions-in-san-francisco-1851-1890 (last visited December 3, 2024).

Document received by the CA Supreme Court.

California 1923–1925, 56 S. Cal. Q. 175, 175 (1974); Edward Humes, *Mean Justice: A Town's Terror, A Prosecutor's Power, A Betrayal of Innocence* 24 (1999) ("KKK violence in California, particularly in Kern County, rivaled that of the Deep South . . . [d]octors, dentists, detectives and businessmen were beaten, threatened and driven from town for opposing the KKK's 'invisible empire.'"). The Klan exerted significant power over state and local politics, for instance, helping to elect Governor Friend Richardson and overtaking the municipal government of Bakersfield in 1922. Chris Rhomberg, *White Nativism and Urban Politics: The 1920s Ku Klux Klan in Oakland, California*, 17 J. Am. Ethnic Hist. 39, 44 (1998); Humes, *supra*, at 24.

During the KKK's 1920s resurgence, "the true strength of the Klan in California lay in Los Angeles" where it exerted "significant power in local politics." Melching, *supra*, at 175. Well into the 20th century, the city resisted desegregation efforts, with a wave of lawsuits seeking to enforce racial covenants to evict African American homeowners. Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* 81 (2017). Others resorted to racial terror to enforce segregation; in 1945, "an entire [African American] family—

Document received by the CA Supreme Court.

father, mother, and two children—was killed when its new home in an all-white neighborhood was blown up." *Id.* at 147.

This historical record provides critical context to understanding the racial disparities that have persisted throughout California's use of the death penalty. From 1850 to 1890, for instance, over half of those executed by the San Francisco sheriff were people of color. S.F. Sheriff's Dept. Hist. Rsch. Project, *supra*. From 1938–1963, Black Californians accounted for twenty-two percent of the state's executions despite representing less than six percent of our population. Carter & Smith, *supra*, at 66–67; *see also* Subcomm. on Cap. Punishment, *Problems of the Death Penalty and its Administration in California* 26 (1957) (noting that the rate of Black executions from 1938 to 1953 was "far in excess of the proportion of [Black residents] in the population of California.") This discrimination was expressly acknowledged when Governor Edmund G. Brown declared in 1963: "The Negro who kills in a robbery is much more likely to die in our gas chamber than the influential executive who kills for community property." California Legislature, Senate Daily Journal, Gov. Edmund G. Brown, *Message from the Governor: Statement on Capital Punishment* 273, 278 (1963).

Document received by the CA Supreme Court.

Amici have shown that the thread of racial discrimination runs through the administration of the death penalty from the state's founding to the temporary halt in its application in the early 1970s. *See Furman*, 408 U.S. at 238; *People v. Anderson*, 6 Cal. 3d 628 (1972). This record cannot be de-coupled from our state's history of racial oppression and violence. Whether extrajudicial or judicially imposed, execution was often a vehicle for this violence. The original writ petition calls upon the Court to examine the state's post-*Anderson* record based upon an unprecedented number of geographically and temporally diverse empirical studies by highly respected social scientists.

There is thus a moral imperative for the Court to decide the merits of petitioners' claims. As amici explain below, the legal imperative flows from the longstanding tradition of deciding questions of statewide import based on California's independent constitutional guarantees.

Document received by the CA Supreme Court.

II. INDEPENDENT STATE CONSTITUTIONAL INTERPRETATION IS AT THE CORE OF CALIFORNIA'S JURISPRUDENTIAL TRADITION.

A. Jurists and Scholars Across Ideological and Geographic Divides Agree that the Push and Pull between State Constitutions and the Federal Constitution is a Vital Feature of our Judicial System.

Independent state constitutional interpretation is a critical aspect of the American judicial tradition that benefits both individual states and the federal judiciary. William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 Harv. L. Rev. 489 (1977). Fundamental to federalism is the ability of states to protect greater rights and to do so more expansively than the United States Constitution. Since the founding of the country, it has been recognized that states may chart their own constitutional paths both as a matter of experimentation and for the protection of individual liberties. There is widespread consensus that the federal Constitution is the floor, not the ceiling of individual liberties. States are free to rise above it.

Former Oregon Supreme Court Justice Hans Linde was among the first in the modern era of judicial federalism to champion the independence of state courts, seeing them as "first

Document received by the CA Supreme Court.

in time" and "first also in the logic of constitutional law." J. Hans A. Linde, *First Things First: Rediscovering the States' Bills of Rights,* 9 U. Balt. L. Rev. 379, 383 (1980). He theorized that state courts ought to approach legal questions in light of their state constitutions and decide on that basis if a conclusion could be reached without engaging in federal constitutional analysis.[20] *Id.* Justice Linde's analysis was grounded in the fundamentally differing structures and functions of government at the federal and state levels. J. Hans A. Linde, *The State and the Federal Courts in Governance: Vive la Différence!,* 46 Wm. & Mary L. Rev. 1273, 1274 (2005). As such, any expectation that state courts should move in lockstep with the federal judiciary is antithetical to the intended function of the American judicial system. *Id.* This difference, Justice Linde observed, necessitates that state high courts take on distinct and varied roles as compared to the United States Supreme Court. *See*, *e.g.*, *id.* at 1277.

---

[20] This was precisely the Washington Supreme Court's approach in *Gregory*, 427 P.3d at 632 ("[W]e adhere to our duty to resolve constitutional questions under our own constitution, and accordingly, we resolve this case on adequate and independent state constitutional principles.").

Document received by the CA Supreme Court.

Former California Supreme Court Justice Stanley Mosk also championed the primacy of the state Constitution as a guarantor of individual rights. Noting that "[t]oday states' rights are associated with increased, not lessened, individual guarantees," Justice Mosk reinforced what is broadly understood by proponents of independent state constitutionalism: state courts must recognize that the United States Supreme Court's rulings are the floor of civil rights and civil liberties. Stanley Mosk, *The Power of State Constitutions in Protecting Individual Rights*, 8 N. Ill. U. L. Rev. 651, 662 (1988).

Justice Joseph Grodin, also a former member of this Court, expressed the view that state constitutions are "logically prior" to the federal constitution. J. Joseph R. Grodin, *In Pursuit of Justice: Reflections of a State Supreme Court Justice*, 123 (1989). He wrote:

> When a statute is challenged as being unconstitutional, a court will confront the meaning of the statute first; if the statute can reasonably be interpreted to avoid reaching the constitutional question, that is what a court will do. This procedure is part of appropriate judicial restraint. Why shouldn't that same restraint operate within the constitutional arena? . . . If a state statute is under challenge, and there is no room for interpretation that would avoid the constitutional question, why not look first to the *state* constitution since if the statute is

Document received by the CA Supreme Court.

> unconstitutional under that document, there is no need to look further.

Id. Justice Goodwin Liu of this Court explains that this approach is grounded in the primacy of "*analytical independence*, as opposed to a posture of deference." J. Goodwin Liu, State Courts and Constitutional Structure, 128 Yale L.J. 1304, 1331 (2019). *Id.* (observing that "[a] state court should give respectful consideration to federal precedent as well as decisions of other state courts, but it must decide for itself what approach is most persuasive and worthy of adoption as a matter of state constitutional law").

Federal jurists, who have widely divergent views on the interpretation of the United States Constitution, agree on the importance of state courts giving independent meaning to their state constitutions. For example, Justice Brennan viewed state constitutionalism as essential to American democracy, observing that "[state constitutional] protections often extend[] beyond those required by the Supreme Court's interpretation of federal law." Brennan, *supra*, at 491. He wrote that the prominence of federal law "must not be allowed to inhibit the independent

Document received by the CA Supreme Court.

protective force of state law—for without it, the full realization of our liberties cannot be guaranteed." *Id.*

Time and again, the Supreme Court has recognized that states may protect greater rights under their constitutions than are found in the United States Constitution. *See, e.g.*, *PruneYard Shopping Center v. Robins*, 447 U.S. 74, 86–88 (1980) (upholding the California Supreme Court's decision recognizing a state constitutional right to freedom of expression in shopping centers after the United States Supreme Court held that no such right exists on the private property of business establishments under the First Amendment). In *Michigan v. Long*, 463 U.S. 1032, 1040 (1983), Justice Sandra Day O'Connor explained the crucial authority of state courts to decide cases based on independent and adequate state law grounds: "Respect for the independence of state courts, as well as avoidance of rendering advisory opinions, have been the cornerstones of this Court's refusal to decide cases where there is an adequate and independent state ground."

Former and current federal appellate judges have also applauded the importance of state constitutionalism as a vehicle for protecting and expanding individual rights. Judge J. Skelly Wright, who sat on the District of Columbia United States Court

Document received by the CA Supreme Court.

of Appeals, applauded the "state judges who have resumed their historic role as the primary defenders of civil liberties and equal rights." J. Skelly Wright, *In Praise of State Courts: Confessions of a Federal Judge*, 11 Hastings Const. L.Q. 165, 165, 188 (1984). Similarly, Sixth Circuit Judge Jeffrey Sutton has praised the accomplishments of state courts in succeeding where federal law has failed to protect fundamental rights. He argued, for example, that in the arena of school funding, most states have broken from the under-protective standards of *San Antonio v. Rodriguez*, 411 U.S. 1 (1973). Jeffrey S. Sutton, *51 Imperfect Solutions: States and the Making of American Constitutional Law*, 31, 51 (2008).

As legal scholars have recognized, state constitutionalism is a necessary counterweight to the rigidity of decision-making by the Supreme Court, which can be bound by institutional constraints in a way that state high courts are not. *See* Lawrence Gene Sager, *Fair Measure: The Legal Status of Underenforced Constitutional Norms*, 91 Harv. L. Rev. 1212, 1217–18 (1978). Supreme Court decisions may reflect interpretations of the United States Constitution that are inapplicable to state constitutions.

Document received by the CA Supreme Court.

State constitutional independence is an asset to state and federal legal systems alike. Opinions based on independent state constitutional grounds may ultimately influence the future direction of United States Supreme Court jurisprudence. By making independent decisions, state high courts protect individual liberties in alignment with their state constitutional values.

B. This Court Has Been a Leader in its Reliance on California's Constitution as a Guarantor of Fundamental Rights.

California's constitutional law differs in significant respects from that of the United States Supreme Court. From free speech to equal protection to due process, the California Supreme Court has designed its own tests and defined rights more broadly than the United States Supreme Court. *See, e.g.*, *Brown v. Merlo*, 8 Cal. 3d 855, 865, n.7 (1973) (construing rational basis review as more protective than the federal version); *Robins v. PruneYard Shopping Center*, 23 Cal. 3d 899, 910 (1979) (holding that California protects free speech more broadly than the First Amendment); *People v. Hanson*, 23 Cal. 4th 355, 366 (2000) (holding that California's due process clause is more protective than federal due process in the resentencing-after-appellate-

Document received by the CA Supreme Court.

reversal context); *Crawford v. Bd. of Education*, 17 Cal. 3d 280, 290 (1976) (holding that California school boards have a constitutional obligation to end segregation, irrespective of how the Supreme Court construes the federal Constitution).

Particularly in the equal protection context, this Court has built a robust jurisprudence independent from—and more expansive than—federal case law. The Amici Curiae Letter of Former California Jurists ("Former Jurists' Letter") reviews California equal protection and due process doctrines with clarity and precision, discussing cases such as *Serrano v. Priest*, 18 Cal. 3d 728, 764 (1976) (*Serrano II*); *Brown*, 8 Cal. 3d at 865, n.7; *People v. Barnett*, 17 Cal. 4th 1044, 1183 (1998); *In re Marriage Cases*, 43 Cal. 4th 757, 757 (2008); and *People v. Wheeler*, 22 Cal. 3d 258, 276–77 (1978). Former Jurists' Letter at 10–13. For that reason, here, amici focus on the importance of constitutional independence in the arena of criminal law and procedure. This case falls squarely in this tradition.

1. State constitutional independence is vital in the arena of criminal law and procedure.

State high courts have an elevated responsibility to exercise their independent constitutional authority in criminal

Document received by the CA Supreme Court.

cases. In 2021, 74,465 criminal cases were filed in all federal district courts. United States Courts, *U.S. District Courts — Judicial Business 2021*, Table 5.[21] That same year, over 12 million criminal cases were filed in state courts. National Center for State Courts, *Court Statistics Project Releases Trial Court Caseload Trends* (2021).[22] Simply put, state courts are adjudicating criminal cases at more than 160 times the rate of federal courts. State courts have unique expertise in the operation of criminal law and procedure. Former Wisconsin Supreme Court Chief Justice Shirley Abrahamson saw these high caseloads as creating an imperative to "attempt to formulate rules to achieve stability of state law, relatively free of the changes wrought by the United States Supreme Court, and to achieve uniformity within the state judicial system." Shirley S. Abrahamson, *Criminal Law and State Constitutions: The*

---

[21] https://www.uscourts.gov/statistics-reports/analysis-reports/judicial-business-united-states-courts (last accessed December 3, 2024).
[22] https://www.ncsc.org/newsroom/at-the-center/2024/court-statistics-project-releases-trial-court-caseload-trends (last accessed December 3, 2024).

Document received by the CA Supreme Court.

Emergence of State Constitutional Law, 63 Tex. L. Rev. 1141, 1150 (1985).

A snapshot of the stark difference in the volume of capital trial-level cases between the California superior courts and federal district courts is instructive. Between 1989 and 2024, United States District Courts in California handled eight federal death penalty cases involving a total of nineteen defendants and a total of eleven trials. *See* Decl. Matthew Rubenstein Regarding the Geographic Location of Federal Cases, the Frequency of Authorizations, Death Sentences and Executions and the Race and Gender of Defendants and Victims at 8 (June 3, 2024).[23] By contrast, between 1989 and October 2024, California courts imposed 590 death sentences on 586 defendants.[24]

---

[23] https://fdprc.capdefnet.org/sites/cdn_fdprc/files/Assets/public/project_declarations/race__gender/declaration_location_and_frequency_of_capital_prosecutions_and_racegender_of_defendants_and_victims_rubenstein_june_2024_0.pdf.

[24] Death Penalty Information Center, *Death Penalty Census Database*, *available at* https://deathpenaltyinfo.org/database/sentences (last accessed December 3, 2024). The breakdown by year is as follows: 1989 – 19 capital sentences, 1990 – 19, 1991 – 11, 1992 – 31, 1993 – 20, 1994 – 18, 1995 – 30, 1996 – 32, 1997 – 25, 1998 – 26, 1999 – 37, 2000 – 29, 2001 – 18, 2002 – 12, 2003 – 17, 2004 – 7, 2005 – 17, 2006 – 14, 2007 – 16, 2008 – 19, 2009 – 27, 2010 – 31, 2011 – 8, 2012 – 14, 2013 – 24, 2014 – 13, 2015 – 15,

Document received by the CA Supreme Court.

Expertise and volume position state high courts to enforce independent state constitutional guarantees in the administration of the death penalty. Several state supreme courts have decided as-applied challenges to their death penalty schemes based on independent constitutional guarantees. As discussed in petitioner's brief, Washington, New York, Connecticut, and Massachusetts all found the death penalty unconstitutional under their state constitutions or common law. *See* Petition for Writ of Mandate at 60. *See Gregory*, 427 P.3d at 633 (holding that Washington's death penalty is administered in an arbitrary and racially biased manner and therefore violates the state prohibition against "cruel punishment"); *People v. LaValle*, 817 N.E. 2d 341, 364–65 (N.Y. 2004) (declaring the statutory "deadlock instruction" unconstitutional under New York Constitution's Due Process Clause and reaffirming its oft-

---

2016 – 8, 2017 – 11, 2018 – 4, 2019 – 3, 2020 – 5, 2021 – 5, 2022 – 2, 2023 – 3, and 2024 – 1. Amici are unaware of any publicly available source that provides information about the number of capital cases filed annually in California courts by county or in total. Because not every capital case results in a death sentence, the number of death sentences significantly undercounts the total number of death penalty cases handled by California superior courts.

Document received by the CA Supreme Court.

repeated interpretation of the [New York] State Constitution's Due Process Clause to provide greater protection than its federal counterpart as construed by the Supreme Court")[25]; *Santiago*, 122 A.3d at 55 (holding that Connecticut's capital punishment scheme "no longer comports with [the] state's contemporary standards of decency [and] therefore offends the state constitutional prohibition against excessive and disproportionate punishment"); *Watson*, 411 N.E. 2d at 1283–1286 (holding that the death penalty violates Article 26 of the Massachusetts' Declaration of Rights, which forbids the inflict[ion] of cruel or unusual punishments because "[i]t is inevitable that the death penalty will be applied arbitrarily. . . . [and] experience has shown that the death penalty will fall discriminatorily upon minorities, particularly blacks"); *Com. v. Colon-Cruz*, 470 N.E.2d

---

[25] In *LaValle*, the court explained the imperative of reaching the constitutional question, writing, "The dissent contends that the majority is ignoring the will of the Legislature. The Court, however, plays a crucial and necessary function in our system of checks and balances. It is the responsibility of the judiciary to safeguard the rights afforded under our State Constitution. While the Legislature may vote to have a death penalty, it cannot create one that offends constitutional rights." *Id*. at 365. The decision was also guided by this Court's reasoning in *People v. Ramos*, 37 Cal.3d 136, 159 (1984). *Id*. at 362.

Document received by the CA Supreme Court.

116, 118, 128–29 (Mass. 1984) (declaring that a post-*Watson* initiative and statute reinstating capital punishment, which permitted the dealth penalty for defendants who pleaded guilty, was void under the right against self-incrimination and the right to a jury trial guaranteed by Article 12 of the Massachusetts Constitution).

Petitioners and the Former Jurists ably explain why neither the adjudication of individual death penalty cases nor of claims under the Racial Justice Act can properly address the systemic issues presented here. *See* Petition at 56–61; Letter of Former Jurists at 6–7; A.B. 2542, 2019-2020 Leg., Reg. Sess. § 2(g) (Cal. 2020) (codifying Pen. Code § 745); A.B. 256, 2021-2022 Leg., Reg. Sess. (Cal. 2022) (amending Pen. Code § 745). Amici take this opportunity to reiterate several points and add others that underscore the futility, indeed the cruelty, of asking individuals sentenced to death to wait for a decision by this Court on these issues. As of December 2023, twenty people who had been sentenced to death were waiting for appointment of appellate counsel. Habeas Corpus Resource Ctr., *Annual Report* at 18 (2023) ("HCRC Report"). The average wait for such counsel was three years. *Id.* Over 364 people who had been sentenced to

Document received by the CA Supreme Court.

death were in line for the appointment of state habeas counsel. *Id*. About a third of them had been in the queue for more than twenty years. *Id*. Even for defendants who have counsel, proceedings are protracted. As of December 2023, there were 126 people whose appeals were fully briefed and awaiting decision by this Court. *Id*. The resolution of a direct appeal took an average of eleven years. *Id*. The resolution of habeas proceedings was far slower, averaging more than thirty years. Death Penalty Report, *supra*, at 9, 11; *see also People v. Potts*, 6 Cal. 5th 1012, 1063 (2019) (Liu, J., concurring) (noting that delays between twenty to twenty-five years were "typical").[26]

---

[26] California's postconviction death penalty system has long been broken. In 2008, a blue-ribbon commission created by the California Senate concluded that the system was dysfunctional, owing both to lengthy delays in the appointment of appellate and habeas counsel and this Court's extensive backlog of briefed cases waiting for decision. Cal. Comm. on the Fair Admin. of Justice, *Final Report* at 111, 114–15 (2008). Several years later, United States District Court Judge Cormac J. Carney agreed that systemic delay rendered administration of the California death penalty system dysfunctional. *Jones v. Chappell*, 31 F. Supp. 3d 1050, 1053 (C.D. Cal. 2014), *revd. sub nom*. *Jones v. Davis*, 806 F.3d 538 (9th Cir. 2015) (reversing the district court decision on procedural grounds). In 2019, Justice Liu called the state scheme "an expensive and dysfunctional system that does not deliver justice or closure in a timely manner, if at all." *Potts*, 6 Cal.5th at 1063 (Liu, J., concurring). *Id*. at 1063-1064 (observing that two of

Document received by the CA Supreme Court.

This case presents an opportunity for the Court to perform its essential role by correcting a state constitutional wrong without resorting to piecemeal justice through the case-by-case adjudication of constitutional or statutory claims. The state constitutional violations in the administration of California's death penalty scheme are plainly exposed in this litigation. The alternative to providing relief in these cases would be for the Court to defer examination of these disparities for adjudication in individual capital cases or Racial Justice Act claims. This approach would "ignore inherent defects in the system which [the Court is] called upon to examine." *Serrano II*, 18 Cal. 3d at 757.

Across time and subject matter area, the Court has upheld the California Constitution's independent protection of fundamental rights. This case calls for that same moral and legal clarity.

Document received by the CA Supreme Court.

---

the state's former Chief Justices had concluded that the system is so flawed as to be ineffective).

2. In criminal cases, this Court has often held that our State Constitution is more protective of fundamental rights than is the Federal Constitution.

This Court's experience with the application of criminal law and procedure, as well as its historical commitment to meaningful remedies for constitutional violations, is best served by deciding this case, which presents a critical state constitutional question. Allowing petitioners' as-applied challenge to proceed would align with the Court's long-standing jurisprudential tradition. In the area of criminal law, in addition to its opinions on equal protection and due process, this Court has provided greater protections than the United States Constitution in upholding the right to counsel, the right to trial by jury, and the prohibition against double-jeopardy.

California's right to counsel exceeds the federal floor in a several ways and at several stages of the criminal process. For example, the California Constitution provided, "In criminal prosecutions, in any court whatever, the party accused shall have the right . . . to appear and defend, in person, and with counsel."

Document received by the CA Supreme Court.

Cal. Const. art. I, §13.[27] This Court has held that the right to counsel is "not limited to felony cases but is equally guaranteed to persons charged with misdemeanors." *In re Johnson*, 62 Cal. 2d 325, 329 (1965); *see also Mills v. Mun. Ct.*, 10 Cal. 3d 288, 301 (1973) (departing from the Supreme Court's holding in *Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972) to the extent it can be read to extend the right to counsel "only to instances of actual imprisonment"). *Id*. at 300 (observing that "the constitutional rights with which [a waiver of the right to counsel] are concerned—the privilege against self-incrimination, right to jury trial, and right of confrontation—are, in California, applicable to all misdemeanor proceedings, not only those resulting in actual imprisonment" and rejecting the notion that this Court should "adopt blindly" the Supreme Court's interpretation of fundamental rights). In *Barber v. Mun. Ct.*, 24 Cal. 3d 742, 755 (1979), the Court confirmed its position that California's right-to-counsel decisions "since *Powell* [*v. Alabama*] have relied on California law and have not rereferred to the federal

Document received by the CA Supreme Court.

---

[27] The substantive law of art. 1, § 13 was amended to art. l, § 15 by Prop. 7 (Nov. 5, 1974).

Constitution." *See Powell v. Alabama*, 287 U.S. 45 (1932). Four decades later, the Court restated its holding that the right to counsel under article I, section 15 of the California Constitution "has been understood to extend more broadly than its federal counterpart." *Gardner v. App. Div. of Super. Ct.*, 6 Cal. 5th 998, 1004 (2019). *Id.* at 1011 (holding that a defendant who responds to the prosecution's appeal of a suppression order in a misdemeanor case is entitled to appointed counsel).

California's opinions on the right to a jury trial evidence the same adherence to state constitutional independence. In *Mitchell v. Super. Ct.*, 49 Cal. 3d 1230, 1241 (1989), this Court held that defendants charged with contempt—then punishable by a maximum of six months incarceration—were entitled to a jury trial. The Court based its decision on the "fundamental difference between the reach of the federal and state constitutional guarantees of the right to a jury trial," which it had earlier defined in *Mills*, 10 Cal. 3d at 298 & n.8. *See id.* (contrasting the Supreme Court's interpretation of the jury-trial right under the Sixth Amendment, which extends only to "serious" offenses, and citing *Blanton v. City of North Las Vegas*, 489 U.S. 538, 555 (1989)).

Document received by the CA Supreme Court.

Recently, in *People v. Aranda*, this Court reflected on its extensive precedent, which construes the "state double jeopardy clause to be more protective than its federal counterpart." 6 Cal. 5th 1077, 1087 (2019) (holding that the California Constitution's double jeopardy clause bars retrial after a partial verdict of acquittal). The Court emphasized that "the state double jeopardy clause was included in both the 1849 and 1879 California Constitutions, long before the high court applied the federal clause to the states," and survived the adoption of article I, § 24. *Id*. (citing *Raven*, 52 Cal. 3d at 353). *Id*. at 1088 (holding that "nothing . . . suggests we should now abandon our long-established precedent").

This robust record of independence is at the heart of California criminal law constitutional jurisprudence. If the Court is prepared to reject the federal constitutional floor in misdemeanor cases, there is no question that this Court must be ready to do the same here, where the ultimate punishment is at issue.

CONCLUSION

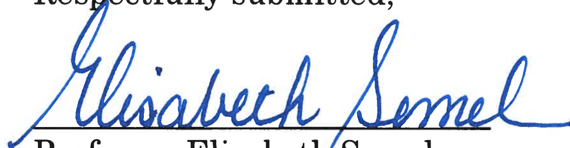
Independent state constitutional interpretation is a vital feature of the nation's legal system. This Court has long

Document received by the CA Supreme Court.

championed this approach, as evidenced by its embrace of state constitutional rights in a myriad of areas of constitutional law. This case calls upon the Court to recognize the centuries-long history of racism in the criminal justice system in California and in the administration of the state's death penalty. It asks this Court to fulfill its obligation to give independent meaning to the California Constitution to remedy a pernicious and enduring injustice.

For the foregoing reasons, amici respectfully urge the Court to issue an order prohibiting future prosecutions under California's current capital punishment scheme and the enforcement or execution of death sentences previously imposed. In the alternative, the Court should review the merits of each of petitioners' constitutional claims in light of the supporting evidence.

Dated: December 3, 2024 Respectfully submitted,



Professor Elisabeth Semel
Co-Director, Death Penalty Clinic
U.C. Berkeley School of Law

Attorney for Amici Curiae
Constitutional Law Scholars

Document received by the CA Supreme Court.

CERTIFICATE OF WORD COUNT

Pursuant to Rule 8.520(c)(1) of the California Rules of Court and in reliance on the word count of the computer program used to prepare this *Amici Curiae* Brief, counsel certifies that the text of this brief (including footnotes) was produced using 13-point type and contains 8,406 words. This includes footnotes but excludes the tables required under Rule 8.204(a)(1), the cover information required under Rule 8.204(b)(10), the Certificate of Interested Entities or Persons required under Rule 8.208, the Application to File *Amici Curiae* Brief required under Rule 8.520(f), this certificate, and the signature blocks. *See* Rule 8.204(c)(3).

Dated: December 3, 2024

Professor Elisabeth Semel

Document received by the CA Supreme Court.

PROOF OF SERVICE

I, Stephanie Shattuck, declare that I am over the age of eighteen and not a party to the above action. My business address is 353 Law Building, Berkeley, CA 94720. My electronic service address is sshattuck@clinical.law.berkeley.edu. On December 3, 2024, I served the attached,

Application for Leave to File *Amici Curiae* Brief and

Proposed Brief of *Amici Curiae* Constitutional Law Scholars

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused to be transmitted to the following case participants a true electronic copy of the document via this Court's TrueFiling system:

Counsel for Petitioners:

Jessica E. Oats
Jessica.oats@ospd.ca.gov
docketing@ospd.ca.gov
Office of the State Public Defender
1111 Broadway, Suite 1000
Oakland, CA 94607

Claudia Van Wyk
cvanwyk@aclu.org
American Civil Liberties Union Capital
Punishment Project
201 W. Main Street, Suite 402
Durham, NC 27701

Avram Frey
afrey@aclunc.org
American Civil Liberties Union of Northern California
39 Drumm Street
San Francisco, CA 94111

Kathryn D. Zalewski
kathryn.zalewski@wilmerhale.com
Wilmer Cutler Pickering Hale & Dorr LLP
2600 El Camino Real, Suite 400
Palo Alto, CA 94306

Document received by the CA Supreme Court.

Patricia Okonta
pokonta@naacpldf.org
NAACP Legal Defense and
Educational Fund, Inc.
40 Rector Street, 5th Floor
New York, NY 10006

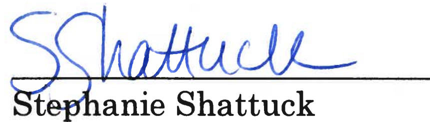
Robert D. Bacon,
Attorney at Law
484 Lake Park Avenue, PMB 110
Oakland, California 94610
Bacon2254@aol.com

Counsel for Respondent:

Rob Bonta
Kenneth N. Sokoler
kenneth.sokoler@doj.ca.gov
sacawttruefiling@doj.ca.gov
Office of the Attorney General
California Department of Justice
1300 "I" Street, Suite 1740
Sacramento, CA 95814

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

Executed on December 3, 2024, in Berkeley, CA.



Stephanie Shattuck

Document received by the CA Supreme Court.