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Superior Court Of California,
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echang
By _____, Deputy
Case Number:
34-2017-80002581

9 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
10 **COUNTY OF SACRAMENTO**

11 ALLIANCE FOR CONSTITUTIONAL
12 SEX OFFENSE LAWS, a California non-profit
13 corporation; and JOHN DOE, an individual,

14 Petitioners,

15 vs.

16 CALIFORNIA DEPARTMENT OF
17 CORRECTIONS AND REHABILITATION;
18 and, SCOTT KERNAN, in his official capacity
19 as Secretary of the California Department of
20 Corrections and Rehabilitation

21 Respondents.

Case No.:

**PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

22 **INTRODUCTION**

23 1. Respondent California Department of Corrections and Rehabilitation (“CDCR”) has
24 disregarded the will of California voters and defied the California Constitution by issuing
25 emergency regulations that undermine a key provision of the recently enacted Public Safety and
26 Rehabilitation Act of 2016, a ballot initiative popularly known as “Proposition 57.”

27 2. The objectives of Proposition 57 are to reduce the size of the prison population in this state,
28 as well as to increase the incentives and opportunity for inmates to rehabilitate themselves. In

1 CDCR's own words, "California voters overwhelmingly passed Proposition 57 (64% to 35%) to
2 enhance public safety, stop the revolving door of crime by emphasizing rehabilitation, and prevent
3 federal courts from indiscriminately releasing inmates."¹ To achieve these objectives, Proposition
4 57 amended the California Constitution "to make individuals who are convicted of '*nonviolent*
5 *felony*' offenses eligible for parole consideration after serving the full prison term for their primary
6 offense."² As amended by Proposition 57, the California Constitution now provides:

7 **Parole Consideration: Any person convicted of a nonviolent felony offense and**
8 **sentenced to state prison shall be eligible for parole consideration after**
9 **completing the full term for his or her primary offense.**

10 CAL. CONST. art. I, § 32(a)(1) (emphasis added).³ This "early parole consideration" provision is
11 mandatory and leaves no discretion for CDCR to pick and choose the nonviolent felony offenses to
12 which it applies.

13 3. Section 667.5(c) of the Penal Code already lists the 23 specific offenses that constitute
14 "violent felonies" under state law. State law treats all remaining offenses as non-violent.
15 Proposition 57 therefore renders all individuals eligible for early parole consideration if they are
16 incarcerated for offenses other than those listed in Section 667.5(c).

17 4. Proposition 57 directs CDCR to issue regulation consistent with its mandate. CAL. CONST.
18 art. I, § 32(b). However, on March 24, 2017, CDCR issued emergency regulations that significantly
19 undercut Proposition 57 by categorically denying early parole consideration to a significant portion
20 of the prison population: individuals incarcerated for offenses for which registration is required by
21 Section 290, *et seq.* of the Penal Code (hereinafter "Registrable Offenses"). Specifically, in
22 defining the term "nonviolent offender" for the purpose of early parole consideration under

23 ¹ PROPOSITION 57, THE PUBLIC SAFETY AND REHABILITATION ACT OF 2016,
24 <http://www.cdcr.ca.gov/proposition57/> (last visited April 24, 2017).

25 ² *Prop 57 Analysis, Official Voter Information Guide, California Secretary of State*, (emphasis
26 added), <http://voterguide.sos.ca.gov/en/propositions/57/analysis.htm> (last visited April 24, 2017)
(hereinafter "VOTER INFORMATION GUIDE").

27 ³ Although Article I, Section 32 of the California Constitution is now the governing law, for ease of
28 reference this Complaint will refer to both that constitutional provision and Proposition 57
interchangeably.