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7 Governor Edmund G. Brown Jr. and
the California Department of Corrections
8 and Rehabilitation

9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SACRAMENTO

11 GOVERNOR EDMUND G. BROWN JR.,
in his official capacity, and the CALIFORNIA
12 DEPARTMENT OF CORRECTIONS AND
REHABILITATION,

13 Petitioners,

14 vs.

15 SECRETARY OF STATE ALEX PADILLA,
in his official capacity,

16 Respondent,

17
18 NINA SALARNO BESSELMAN,

19 Real Party in Interest.
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FILED/ENDORSED

DEC 20 2018

By: E. Toscano
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**VERIFIED PETITION FOR WRIT OF
MANDATE**

Hearing:

Date: TBD
Time: TBD
Dept.: TBD
Judge: TBD

**No Filing Fee:
Gov. Code, § 6103**

INTRODUCTION

Petitioners Governor Edmund G. Brown Jr. and the California Department of Corrections and Rehabilitation (“CDCR”) bring this petition to prevent an initiative from being placed on the November 3, 2020, ballot because the initiative is beyond the power of the voters to adopt.

Initiative No. 17-0044, which has gathered enough signatures to qualify a statutory initiative for the November 2020 election, seeks to override a provision of the California Constitution, which was added by the Public Safety and Rehabilitation Act of 2016 (“Proposition 57”). The voters overwhelmingly approved Proposition 57 at the November 2016 election to protect and enhance public safety by focusing on rehabilitation rather than mass incarceration. Proposition 57 added section 32 to article 1 of the California Constitution to require parole consideration for nonviolent offenders after they complete the full term for their primary offense, and to authorize CDCR to award credits to inmates for good behavior and approved rehabilitative or educational achievements. Importantly, for purposes of this petition, section 32 of the Constitution vests authority in CDCR to implement the parole provisions by promulgating regulations in furtherance of Proposition 57, “notwithstanding anything in this article or any other provision of law.” As directed, CDCR has now promulgated such regulations pursuant to the Administrative Procedure Act, defining which inmates are eligible for nonviolent parole consideration and how parole consideration must be implemented.

The proponent and backers of Initiative No. 17-0044 opposed Proposition 57. Unable to defeat it at the polls in 2016, they seek to accomplish their goal through statutory changes that would supplant regulations adopted by CDCR, effectively gutting Proposition 57’s core provision while subverting its substantive focus on rehabilitation. The measure would divest CDCR of its authority to implement this constitutional provision and deprive Californians of the procedural protections afforded by the Administrative Procedure Act, while furthering the purposes of Initiative No. 17-0044 rather than Proposition 57. Moreover, these statutes would override CDCR’s new regulations in ways that ensure far fewer inmates receive early parole consideration, in defiance of the intent of the voters who amended the Constitution to authorize early parole consideration for nonviolent offenders. Yet rather than making these changes in the only constitutionally permissible manner – by seeking to amend Proposition 57’s constitutional provision through another voter-

1 approved constitutional amendment – the supporters of measure 17-0044 would undo Proposition 57
2 through a mere statutory initiative. This they cannot do.

3 Initiative No. 17-0044 unlawfully seeks to amend the Constitution via statute in two
4 different ways. First, although the Constitution requires CDCR to implement Proposition 57's
5 constitutional mandate, Initiative No. 17-0044 would divest CDCR of that authority by overriding
6 CDCR's nonviolent parole regulations through new statutes. For example, CDCR has now
7 promulgated regulations defining who qualifies as a "nonviolent offender" for purposes of early parole
8 consideration, and setting forth specific procedures to govern the parole process, including by defining
9 the term "primary offense." Initiative No. 17-0044 would redefine qualified nonviolent offenders to
10 exclude many inmates who are eligible for early parole consideration under the current regulations,
11 and materially change the parole process to make it far more difficult for parole to be granted. In
12 addition, the measure would grant the Legislature the power to make additional changes that further
13 the purposes of the new measure rather than Proposition 57's constitutional mandate.

14 Second, Initiative No. 17-0044 would thwart the voters' intent in adopting
15 Proposition 57 by replacing CDCR's regulations with statutes that undermine Proposition 57's
16 purposes. The voters were clear that the goals of Proposition 57 were to:

- 17 (1) Protect and enhance public safety.
18 (2) Save money by reducing wasteful spending on prisons.
19 (3) Prevent federal courts from indiscriminately releasing prisoners.
20 (4) Stop the revolving door of crime by emphasizing rehabilitation,
21 especially for juveniles.

22 Proposition 57, § 2.

23 The proposed measure is specifically designed to contravene those goals by restricting
24 parole eligibility, imposing overwhelming obstacles to the grant of parole, prolonging the parole
25 consideration process, reducing incentives for rehabilitation, and extending the time for
26 reconsideration of the denial of parole. In these and other ways, Initiative No. 17-0044 would result in
27 more prison overcrowding and higher prison spending, increase the risk that the federal courts will
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1 order the indiscriminate release of prisoners, and undermine the incentives that Proposition 57 has
2 given inmates to rehabilitate themselves.

3 If Proposition 57 is to be amended, its opponents must circulate and qualify a
4 constitutional amendment for the ballot. They cannot use the lower signature requirements for
5 statutory measures to put a measure on the ballot that would ignore Proposition 57's procedures and
6 eviscerate its substantive goals.¹

7 For these reasons and for all the reasons stated below, petitioners allege as follows:

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9 **PARTIES**

10 1. Petitioner EDMUND G. BROWN JR. is the Governor of the State of California.
11 The supreme executive power of the State is vested in his office, and he is charged with faithfully
12 executing the laws of the State of California, including the state Constitution. He is also charged with
13 the supervision of various agencies of the executive branch, including the Department of Corrections
14 and Rehabilitation.

15 2. Petitioner the CALIFORNIA DEPARTMENT OF CORRECTIONS AND
16 REHABILITATION ("CDCR") is the agency in charge of California's prison and parole system.
17 Under section 32 of article I of the California Constitution, CDCR is required to adopt regulations to
18 implement parole consideration for nonviolent offenders, and the Secretary of the Department of
19 Corrections and Rehabilitation is required to certify that these regulations "protect and enhance public
20 safety."

21 3. Respondent ALEX PADILLA is the Secretary of State of the State of California.
22 In that capacity, he is responsible for certifying that an initiative measure has qualified for the
23 statewide ballot pursuant to Elections Code section 9033 and for including the measure in a published
24 list of measures that are eligible to be placed on the ballot at the November 2020, statewide election.

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26 ¹ In July of 2018, when the Secretary of State certified that the proponents had gathered a sufficient
27 number of signatures, the threshold for qualifying a statutory initiative was 365,880 signatures while
28 qualifying a constitutional amendment required 585,407 signatures.

1 4. Real party in interest NINA SALARNO BESSELMAN is the official proponent
2 of Initiative No. 17-0044, a statutory measure titled the Reducing Crime and Keeping California Safe
3 Act of 2018. She submitted 430,617 valid signatures, a sufficient number to qualify the measure as an
4 initiative statute for the November 2020 ballot, but more than 150,000 signatures fewer than would
5 have been required for a constitutional amendment.
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7 BACKGROUND

8 5. Between the 1980s and 2011, California's prison population exploded by
9 500 percent and prison spending ballooned to more than \$10 billion per year. Overcrowding and
10 unconstitutional conditions led the United States Supreme Court to order the State to reduce its prison
11 population. *Brown v. Plata*, 563 U.S. 493 (2011). In order to comply, the State undertook several
12 measures to reduce the number of inmates housed in its prisons without jeopardizing public safety, but
13 those measures were not enough to meet the court-ordered mandate that the State implement a durable
14 remedy to prison overcrowding. The State therefore faced the possibility that a federal court would
15 order the indiscriminate release of prisoners.

16 6. At the same time, policymakers and prison reform advocates were increasingly
17 aware that in order to address the problems of prison overcrowding, mass incarceration, and out-of-
18 control prison spending, California needed to stop the revolving door of crime by focusing on
19 rehabilitation. It was clear that there needed to be more incentives for inmates to participate in
20 rehabilitation and there needed to be more effective rehabilitation programs to help them.

21 7. The answer was Proposition 57, a constitutional amendment placed on the ballot
22 by popular initiative. Proposition 57 added section 32 to article I of the California Constitution to read:

23 (a) The following provisions are hereby enacted to enhance public safety,
24 improve rehabilitation, and avoid the release of prisoners by federal court
25 order, notwithstanding anything in this article or any other provision of
26 law:

27 (1) Parole Consideration: Any person convicted of a nonviolent felony
28 offense and sentenced to state prison shall be eligible for parole
consideration after completing the full term for his or her primary offense.

(A) For purposes of this section only, the full term for the primary offense
means the longest term of imprisonment imposed by the court for any

1 offense, excluding the imposition of an enhancement, consecutive
2 sentence, or alternative sentence.

3 (2) Credit Earning: The Department of Corrections and Rehabilitation
4 shall have authority to award credits earned for good behavior and
5 approved rehabilitative or educational achievements.

6 (b) The Department of Corrections and Rehabilitation shall adopt
7 regulations in furtherance of these provisions, and the Secretary of the
8 Department of Corrections and Rehabilitation shall certify that these
9 regulations protect and enhance public safety.²

10 8. The express purposes of Proposition 57 were, in relevant part, to: (1) protect
11 and enhance public safety; (2) save money by reducing wasteful spending on prisons; (3) prevent
12 federal courts from indiscriminately releasing prisoners; and (4) stop the revolving door of crime by
13 emphasizing rehabilitation, especially for juveniles. Proposition 57, § 2.

14 9. Thus, Proposition 57 was designed to focus resources on keeping dangerous
15 criminals behind bars, while providing CDCR the tools to give inmates incentives to rehabilitate
16 themselves in the form of early parole consideration for nonviolent felons and credits earned for good
17 behavior, rehabilitation, and educational achievements. It was intended to reduce overcrowded prisons
18 by making nonviolent felons eligible for early parole consideration and providing good behavior
19 credits, to save the taxpayers the costs of over-incarceration, to prevent the court-ordered release of
20 prisoners, and to reduce recidivism by fostering opportunities and incentives for inmate rehabilitation.
21 It does not require that any inmate in fact be released. A true and correct copy of the ballot materials
22 that were before the voters when they passed Proposition 57 is attached as Exhibit A to this petition,
23 and incorporated herein.

24 10. Proposition 57 placed responsibility for implementing the parole provisions of
25 section 32 on CDCR because it has the knowledge and expertise necessary to accomplish the task and
26 because its adoption of regulations is subject to the Administrative Procedure Act, which ensures the
27 opportunity for broad public input, review by the Office of Administrative Law ("OAL"), and judicial
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² Proposition 57 also contained statutory provisions addressing juvenile justice, but Initiative No. 17-0044 does not seek to change those provisions. Initiative No. 17-0044 also declares that "[n]othing in this act is intended to affect the ability of the California Department of Corrections and Rehabilitation to award educational and merit credits." Initiative No. 17-0044, § 3(A)(11).

1 review. The voters imposed an additional check on CDCR by requiring the Secretary to certify that
2 any proposed regulations protect and enhance public safety. Proposition 57, art. I, § 32(b).

3 11. Once the voters approved Proposition 57, CDCR commenced the rulemaking
4 process to implement section 32. It submitted proposed emergency regulations to the Office of
5 Administrative Law pursuant to the Administrative Procedure Act, California Government Code
6 section 11340 et seq. The emergency regulations went into effect on April 13, 2017, following OAL
7 approval. On July 14, 2017, CDCR published a Notice of Proposed Regulations for "Credit Earning
8 and Parole Consideration," which began the initial public comment period under the regular
9 rulemaking process. The proposed text was made available for public comment from July 14, 2017,
10 through September 1, 2017. Over 12,000 organizations and members of the public submitted
11 comments, and CDCR responded to a total of 41,000 individual comments in what would ultimately be
12 over 1,300 pages of text. CDCR also held a public hearing on September 1, 2017, with 108 speakers
13 providing verbal or written comments. CDCR modified the text of the regulations in response to
14 public comment, and made the modified text available for additional public comment from
15 December 8, 2017 through December 26, 2017, eliciting comments from 269 commenters. CDCR
16 once again responded to comments. On January 26, 2018, CDCR distributed a second Renotice with
17 further revisions to the regulations, and accepted another round of public comments until February 12,
18 2018. During this period, 31 commenters submitted comments to which CDCR responded. On May 1,
19 2018, the OAL approved a final version of the rules. On December 11, 2018, CDCR submitted new
20 and amended emergency regulations providing supplemental reforms to the parole consideration
21 process.

22 12. On the last day of the initial comment period, September 1, 2017, an
23 organization called Crime Victims United of California submitted comments concerning the proposed
24 regulations. Real party BESSELMAN is the President of Crime Victims United of California.
25 Approximately two months later, on October 31, 2017, without waiting for the rulemaking process to
26 be completed or for the permanent regulations to take effect, real party BESSELMAN submitted a
27 proposed initiative, entitled The Reducing Crime and Keeping California Safe Act. On November 28,
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2017, real party submitted an amended version of her initiative. A true and correct copy of the amended initiative appears as Exhibit B to this petition, and is incorporated herein. On July 25, 2018, the Secretary of State confirmed that real party had collected a sufficient number of signatures to qualify the measure as a statutory initiative eligible for the November 2020 ballot.

13. The Attorney General's title and summary for Initiative No. 17-0044, which is attached as Exhibit C to this petition, reads as follows:

RESTRICTS PAROLE FOR NON-VIOLENT OFFENDERS. AUTHORIZES FELONY SENTENCES FOR CERTAIN OFFENSES CURRENTLY TREATED ONLY AS MISDEMEANORS. INITIATIVE STATUTE. Imposes restrictions on parole program for non-violent offenders who have completed the full term for their primary offense. Expands list of offenses that disqualify an inmate from this parole program. Changes standards and requirements governing parole decisions under this program. Authorizes felony charges for specified theft crimes currently chargeable only as misdemeanors, including some theft crimes where the value is between \$250 and \$950. Requires persons convicted of specified misdemeanors to submit to collection of DNA samples for state database. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: Increased state and local correctional costs likely in the tens of millions of dollars annually, primarily related to increases in penalties for certain theft-related crimes and the changes to the nonviolent offender release consideration process. Increased state and local court-related costs of around a few million dollars annually related to processing probation revocations and additional felony theft filings. Increased state and local law enforcement costs not likely to exceed a couple million dollars annually related to collecting and processing DNA samples from additional offenders.

14. The Legislative Analyst's analysis of the measure, which is included in full in Exhibit D to this petition, described the impact of the measure on existing law as follows:

Changes Nonviolent Offender Release Consideration Process.

The measure makes various changes to the current nonviolent offender release consideration process. Some of these changes include:

- Excluding certain inmates who would otherwise qualify for the release consideration process. For example, inmates convicted of specified human trafficking crimes and solicitation to commit murder would no longer be eligible.
- Allowing prosecuting agencies to appeal a release decision made by BPH.
- Requiring BPH to deny release to inmates who pose an unreasonable risk of creating victims as a result of future felony activity, rather than only those who pose an unreasonable risk of violence.

- Requiring CDCR to make reasonable efforts to locate victims regardless of whether they are registered with the state and notify them of the review.

15. For the reasons stated below, real party's proposed statutory initiative conflicts with article I, section 32, of the California Constitution and should not be allowed to appear on the ballot for the November 3, 2020 election. Petitioners have a direct and substantial interest in ensuring that Initiative No. 17-0044 is not permitted to interfere with the voters' purposes and intent in enacting Proposition 57, or with CDCR's ability to effectuate that intent by promulgating the regulations mandated by the Constitution.

PROPRIETY OF PRE-ELECTION REVIEW

16. Pre-election review is proper and essential. "[P]reelection review of an initiative measure may be appropriate when the challenge . . . rests . . . on a contention that the measure is not one that properly may be enacted by initiative." *Independent Energy Producers Ass'n. v. McPherson*, 38 Cal. 4th 1020, 1029 (2006) (emphasis, citations omitted). It is hornbook law that a statutory initiative cannot be used to amend the Constitution and that any statute that conflicts with the Constitution is invalid.

17. Pre-election review is necessary to avoid voter confusion and diversion of resources and attention away from candidates and measures that are validly on the ballot. "The presence of an invalid measure on the ballot steals attention, time, and money from the numerous valid propositions on the same ballot. It will confuse some voters and frustrate others, and an ultimate decision that the measure is invalid, coming after the voters have voted in favor of the measure, tends to denigrate the legitimate use of the initiative procedure." *Senate of State of Cal. v. Jones*, 21 Cal. 4th 1142, 1154 (1999) (quoting *American Federation of Labor v. Eu*, 36 Cal. 3d 687, 697 (1984)).

FIRST CAUSE OF ACTION

(Proposed Statutory Initiative Exceeds the People's Power of Initiative)

18. Petitioners hereby reallege and incorporate paragraphs 1 through 17 as if fully set forth herein.

19. Initiative No. 17-0044 conflicts with article I, section 32 of the Constitution, which expressly states that it was adopted "to enhance public safety, improve rehabilitation, and avoid

1 the release of prisoners by federal court order, *notwithstanding anything in this article or any other*
2 *provision of law.*” Cal. Const. art. I, § 32(a) (emphasis added). Section 32 contains three clear
3 requirements relevant here: (1) “[a]ny person convicted of a nonviolent felony offense and sentenced
4 to state prison shall be eligible for parole consideration after completing the full term for his or her
5 primary offense”; (2) “[t]he Department of Corrections and Rehabilitation shall adopt regulations in
6 furtherance of these provisions . . .”; and (3) “the Secretary of the Department of Corrections and
7 Rehabilitation shall certify that these regulations protect and enhance public safety.” Rather than leave
8 these determinations in the hands of the Legislature (or the people acting through a statutory initiative),
9 the voters determined that the implementation of Proposition 57, notwithstanding any other provision
10 of law, should be vested in a body with expertise concerning public safety and parole consideration,
11 subject to a process – the Administrative Procedure Act – that ensures the opportunity for extensive
12 public input, review and approval by the Office of Administrative Law, and judicial review. And the
13 voters imposed a further check on CDCR’s authority to ensure that the goals of Proposition 57 are
14 satisfied by requiring the Secretary of CDCR to certify that the proposed regulations will “protect and
15 enhance public safety.” *Id.* § 32(b).

16 20. The proposed measure would subvert the constitutional delegation of authority
17 established under Proposition 57 by superseding CDCR’s authority to implement a nonviolent parole
18 consideration process and making amendments that further the purposes of Initiative No. 17-0044 and
19 undermine the purposes of Proposition 57. In doing so, voters will lose the procedural protections they
20 placed into the Constitution: (1) the assurance that the law would be implemented by those with true
21 expertise in public safety; (2) the protections of the Administrative Procedure Act, including the
22 guarantee that the public will have ample opportunity to comment on all regulations before they go
23 into effect and the requirement that the Office of Administrative Law review the proposed regulation
24 for consistency with the law; (3) the assurance that no procedure for implementing the law will go into
25 effect unless the Secretary of the Department of Corrections and Rehabilitation has certified that the
26 procedure protects and enhances public safety; (4) the availability of judicial review to ensure
27 Proposition 57 is implemented as the voters intended when they voted to amend their Constitution to
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1 advance its goals; and (5) the assurance that the substantive intent and procedural requirements that the
2 voters embedded in the Constitution could not be overridden by mere statutory changes.

3 21. In addition, many of the statutory changes included in Initiative No. 17-0044
4 would undermine Proposition 57's substantive focus on rehabilitation rather than mass incarceration by
5 replacing CDCR's regulations, which advance Proposition 57's goals, with statutory provisions that
6 would reduce incentives for rehabilitation, restrict parole eligibility, and increase the possibility of
7 prisoner releases by federal court order.

8 22. For example, Initiative No. 17-0044 would undermine the voters' purposes in
9 passing Proposition 57 by dramatically enlarging the definition of "violent felony offenses" that render
10 an inmate convicted under these offenses ineligible for parole consideration, thereby reducing the
11 number of individuals who would be eligible for parole. CDCR's regulations define "violent felony"
12 as a crime or enhancement defined in subdivision (c) of Penal Code section 667.5, which contains
13 23 subparagraphs. Cal. Code Regs. tit. 15, § 3490(c); Cal. Penal Code § 667.5(c). Initiative No. 17-
14 0044 contains those same 23 subparagraphs and then adds 28 more. As the Legislative Analyst noted,
15 this new definition would exclude "certain inmates who would otherwise qualify for the release
16 consideration process." Ex. D at 4. In this way, Initiative No. 17-0044 exacerbates the very problems
17 that Proposition 57 was intended to address.

18 23. The proposed initiative would also change the standards and requirements that
19 govern parole decisions currently set forth in CDCR's regulations. Under current CDCR regulations, a
20 Board of Parole Hearings hearing officer who is considering whether to grant parole to an inmate must
21 consider the express factors set forth in the regulations, and "based on the totality of the circumstances,
22 determine if the inmate poses a current, unreasonable risk of violence or a current, unreasonable risk of
23 significant criminal activity." Cal. Code Regs. tit. 15, § 2449.5(a). Additionally, the hearing officer
24 shall approve an inmate for release if specified factors aggravating the inmate's risk do not exist or are
25 outweighed by specified factors mitigating the inmate's risk. *Id.* Among other things, the factors set
26 forth in the regulations focus on violent felony convictions within the last 15 years, and other felony
27 convictions or certain violent misdemeanor convictions within five years of the inmate's current
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1 conviction. *See id.* §§ 2449.5(b), (c), & (e). Under the proposed initiative, these standards would be
2 replaced. The hearing officer would instead be required to consider “whether the inmate will pose an
3 unreasonable risk of creating victims as a result of felonious conduct if released from prison,” and do
4 so while weighing dozens of new factors that increase the likelihood that parole will be denied, such as
5 the inmate’s *past* attitude towards his crime and past criminal conduct while a juvenile, regardless of
6 how distant in the past such criminal conduct occurred. *Compare* Proposed Cal. Penal Code § 3040.2,
7 with Cal. Code Regs. tit. 15, § 2449.5. As a result, the proposed initiative would reduce the number of
8 inmates who otherwise would be granted release through the parole consideration process.

9 24. Additionally, CDCR exercised its authority under Proposition 57 to restrict who
10 has the right to seek review of a decision denying release after parole consideration to the inmate
11 alone. Initiative No. 17-0044 would also grant the prosecuting agency the right to request review,
12 thereby further changing the parole consideration process conceived under the authority of
13 Proposition 57. *Compare* Proposed Cal. Penal Code § 3040.4(g), with Cal. Code Regs. tit. 15,
14 § 2449.4(g). At best, this will delay the release of inmates granted release; at worst, it will further
15 reduce the number of inmates who are ultimately released through the parole consideration process.

16 25. The proposed initiative further interferes with the authority the voters vested in
17 CDCR by requiring that an inmate who has been denied release “under the Nonviolent Offender Parole
18 provisions of Section 32 of Article I of the Constitution” shall not be eligible for parole consideration
19 for two calendar years from the date of the denial, whereas under CDCR regulations the inmate is
20 eligible for review after one year. *Compare* Proposed Cal. Penal Code § 3040.4(h), with Cal. Code
21 Regs. tit. 15, § 3492(e). This too can be expected to result in fewer inmates being released.

22 26. Moreover, current regulations require the Board within five days of determining
23 that an inmate is eligible for parole consideration to notify any victim of that inmate who has registered
24 with CDCR to receive notice that the inmate will receive parole review. The registered victim is then
25 provided thirty days to respond in writing to the Board. Cal. Code Regs. tit. 15, § 2449.3(b). Initiative
26 No. 17-0044 would modify the foregoing requirements by also requiring that the Board “make
27 reasonable efforts to locate and notify” other victims who have not registered to receive notice, and to
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1 provide all victims with *ninety* days to provide written responses to the Board. Proposed Cal. Penal
2 Code §§ 3040.4(a) & (e). Taken together, these new provisions will considerably delay and obstruct
3 the parole consideration process.

4 27. CDCR recently filed emergency regulations with the Office of Administrative
5 Law to allow non-violent third-strikers to be considered for Proposition 57 parole, following the Court
6 of Appeal's decision that the voters who approved Proposition 57 plainly intended that non-violent
7 third-strikers be eligible for early parole consideration. *In re Edwards*, 26 Cal. App. 5th 1181 (2018).
8 The proposed initiative would nullify those emergency regulations by excluding from early parole
9 consideration all inmates serving indeterminate sentences, including non-violent third-strike offenders.
10 Proposed Cal. Penal Code § 3040.3(b).

11 28. In addition to overriding CDCR's current and proposed regulations, the
12 proposed initiative seeks to eliminate CDCR's authority and flexibility to amend the regulations
13 implementing Proposition 57 in response to changing circumstances and new information. For
14 example, CDCR has already promulgated a regulation defining the phrase "full term for the primary
15 offense," which Proposition 57 added to the Constitution. Cal. Const. art. 1, § 32(a)(1)(A) ("For
16 purposes of this section only, the full term for the primary offense means the longest term of
17 imprisonment imposed by the court for any offense . . ."). According to CDCR, the phrase "full
18 term" "means the actual number of days, months, and years imposed by the sentencing court for the
19 inmate's primary offense, not including any sentencing credits." Cal. Code Regs. tit. 15, § 3490(e).
20 Initiative No. 17-0044, however, would provide that "[f]or purposes of Section 32 of Article I of the
21 Constitution, the 'full term' of the 'primary offense' shall be calculated based only on actual days
22 served on the commitment offense." Proposed Cal. Penal Code § 3040.3(d). By embedding this
23 definition into a statute, the proposed initiative seeks to override CDCR's definition and eliminate
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1 CDCR's ability to revise the definition of "full term" to ensure that the parole consideration process
2 actually effectuates Proposition 57's goals.

3 29. Real party and her supporters are free to draft and circulate an initiative to
4 amend or repeal article I, section 32 of the Constitution. In order to do that, however, they will have to
5 style their measure as a constitutional amendment and they will have to gather enough valid signatures
6 to equal eight percent of the votes cast for Governor in the last gubernatorial election. Cal. Const.
7 art. II, § 8(b).

8 30. Because Initiative No. 17-0044 is a statutory measure, not a constitutional
9 amendment, and because it conflicts with article I, section 32 of the Constitution, it is beyond the
10 power of the voters to adopt and should be removed from the ballot.

11 SECOND CAUSE OF ACTION

12 (Writ of Mandate –Cal Civ. Proc. Code §§ 1085 & 1086)

13 31. Petitioners hereby reallege and incorporate paragraphs 1 through 30 as if fully
14 set forth herein.

15 32. Because real party in interest's initiative is invalid, respondent has a ministerial
16 duty to refrain from certifying the measure for the November 3, 2020 election ballot or any ballot
17 thereafter. Petitioners do not have a plain, speedy, and adequate remedy in the ordinary course of the
18 law because respondent Secretary of State is currently required to place Initiative No. 17-0044 on the
19 November 3, 2020 ballot.

20 WHEREFORE, petitioners pray for judgment as follows:

21 1. That this Court issue its writ of mandate pursuant to Code of Civil Procedure
22 sections 1085 and 1086 prohibiting respondent and all persons acting pursuant to his direction and
23 control from taking any steps to place real party's initiative on any statewide election ballot or
24 submitting the initiative to the voters for approval.

25 2. For costs.

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2 3. That this Court grant such other, different, or further relief, as the Court may
3 deem just and proper.

4 Dated: December 20, 2018

Respectfully submitted,

5 Robin B. Johansen
6 James C. Harrison
7 Thomas A. Willis
8 Margaret R. Prinzing
9 REMCHO, JOHANSEN & PURCELL, LLP

10 By: 
11 James C. Harrison

12 Attorneys for Petitioners Governor Edmund G. Brown Jr.
13 and the California Department of Corrections and
14 Rehabilitation

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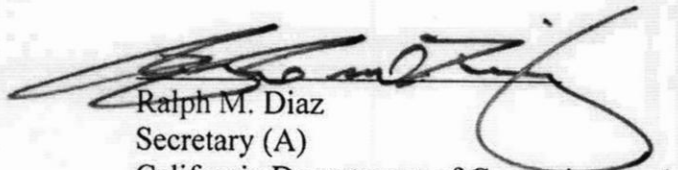
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VERIFICATION

I, Ralph M. Diaz, hereby declare as follows:

I am the Acting Secretary of the California Department of Corrections and Rehabilitation, one of the petitioners in this action. I have read the foregoing Verified Petition for Writ of Mandate and know the contents thereof. I certify that the facts contained therein are true of my own knowledge except as to those facts which are stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 20TH day of December, 2018 at Sacramento, California.


Ralph M. Diaz
Secretary (A)
California Department of Corrections and
Rehabilitation