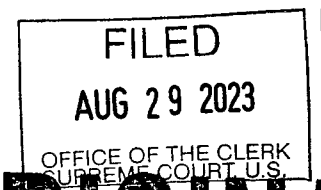
DOCKET NO: 22A1085

IN THE

SUPREME COURT OF THE

UNITED STATES OF AMERICA



ORIGINAL

ALICIA RICHARDS & LAWRENCE REMSEN

Petitioners, et al.

- Against -

KATHLEEN ALLISON, Secretary, California Department of Corrections & Rehabilitation; JENNIFER SHAFFER, Exec. Officer of the State's Parole Agency; ROB BONTA, as State Attorney General; GAVIN C. NEWSOM, Governor of California

Respondents, et al.

ON PETITION FOR WRIT OF CERTIORARI FROM THE

SUPREME COURT OF THE STATE OF CALIFORNIA

PETITION FOR A WRIT OF CERTIORARI

ALICIA RICHARDS
LAWRENCE REMSEN
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PURSUANT TO RULE 14, ET SEQ., the QUESTIONS PRESENTED AND REASONS FOR GRANTING CERT., ARE AS FOLLOWS:

1. Did the States Highest Court abuse its discretion when it failed to acknowledge the State's Legislature had repealed its indeterminate Sentencing Law (ISL) and replaced it with the Determinate Sentencing Law (DSL) with a new purpose and policy declaration and that in order to reenact the repealed ISL by way of Initiative, the subject had to be presented in the proposition because the State Constitution prevented the Author/Drafter of the 1978 Prop. 7 Initiative from adopting a section of the repealed law without reenacting it as amended?

2. Did the States Highest Court abandon and ignore State and Federal precedent and the Rule of Law when they knew that Prop. 7's Author/Drafter as a State Senator, could not use the People's Initiative via Prop. 7, when he did not have the votes for a Referendum, to circumvent the DSL and the Legislative Declared Policy, passed as an urgency measure, that mandated that **ALL** persons whose crime was committed (along with their family members) had a vested right to know at sentencing the exact punishment for the crime itself as determined by the Legislature and imposed to a finality by a court of law?

3. Did the States Highest Court abuse its discretion by ignoring controlling USSC authority and its own precedent that forbids vesting in a Statewide Ministerial Agency, under the same branch charged with a person's prosecution, to decide the strictly judicial power of who is and who is not a threat to public safety without a jury trial that has resulted in different persons committing the same crime serving different punishments within the sentencing structure in violation of the State Constitution and the U.S. Constitution's Fifth, Sixth, Seventh, and Eighth Amendments, as codified under the Fourteenth Amendment in direct conflict with Alleyne, Apprendi, Ring, Specht, & Olivas, infra?

4. Did the California Courts violate this Court's precedent as well as its own Constitutional mandate when failing to give Petitioners a decision on the merits of their claims (See: Cal. Const Art VI §§ 13 & 14 and infra at pg. 5).

5. Lastly, because the Legislature mandated in its Legislative Declaration that every person committing the same crime must serve the same punishment that can only be reduced by the earning of good-time and participation credits, has the State's failure to administer its sentencing laws according to their terms and provisions and by taking their earned Pen. Code § 2931 credits without a hearing and/or in violation of the authority of law (See: infra at pgs. 8-14 & 17).

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PETITION FOR WRIT OF CERTIORARI COMPENDIUM

1. Has the California Supreme Court (CSC) prejudicially abused its discretion and the Rule of Law by repudiating United States Supreme Court (USSC) controlling authority and the will of the State Voters by changing and disregarding Senate Bill 42 (1976) and its "Seven Category Sentencing Structure" (See; Appendix # 3 at Sentencing Classifications -- Section 1170(a)(2)(b) at Pg.2; Cf. Assembly Bill 476 (1977) Legislative Declaration declaring the punishment for crime is determined by the Legislature and imposed to a finality by a court of law as Determinate Terms)? Did this abuse of discretion include concealing that State Senator John V. Briggs, who did not have the votes for a referendum, to adopt a section of a repealed law to change the Legislative purpose for imprisonment from "Punishment for the Crime Itself" into uncertain terms under the repealed Indeterminate Sentencing Law (ISL); without any notice of the ISL subject to the voters, violating Art. II § 8(d); Art. III § 3 and Art. IV § 9)? Based on these facts has the CSC violated it's own precedent and this Court's authority in violation of the State Constitution and the 14th Amendment to the United States Constitution (See: Infra. at Para. 20)?

2. Based on the facts presented herein, has the CSC and the State Attorney General abused their discretion and abandoned the Rule of Law by disregarding the mandatory provisions of the State Constitution and USSC controlling precedent when they knew State Legislator Briggs could not lawfully use the initiative process via Proposition Seven (Prop. 7) to circumvent the Legislative Policy that could not be considered by Referendum because he did not have the votes, in exchange for Quid Pro Quo contributions from the Prison Guards' Union and special interest groups whose goal was to impose uncertain and disproportinate punishment on a class of thousands of the mostly Black, Hispanic and recovering substance abuse inmates who were part of the Determinate Sentencing Law (DSL) Class?

3. Has the CSC prejudicially abused its discretion and the Rule of Law by ignoring its governing authority and USSC controlling precedent when they allow an Executive Branch Ministerial Agency, without jurisdiction or term fixing and extending powers, to violate the Purpose and Policy declared by the Legislature to decide different punishment for different persons committing the same crime? (See: Cal. Const. Art. III § 3 & Art. VI §§ 1, 13 & 14). Did the Calfornia Legislators allow and provide unlawful Judicial Article III power to a non-constitutional ministerial agency and make law to illegally extend the terms of those within the class beyond their credit earning date and to usurp that Judicial Power to determine who is and who is not a threat to public safety; without a trial on whether or not those within the class for which the law was made are a public safety risk and extend their term for crimes not yet committed?

INTRODUCTION

(1). This case originated in the State Superior Court in and for the

County of Los Angeles as a Civil Taxpayer's Writ of Mandamus to compel officials to enforce state statutes according to their terms and provisions based on the ordinary language used in those statutes, and to enjoin a statewide ministerial agency from exceeding its jurisdiction and authority at Taxpayers expense in violation of substantive due process, equal protection of the law, and the law of contracts (See: Infra.)

PARTIES

(2). The Petitioner's are: 1. Lawrence Remsen is a Taxpaying prisoner at the California Institution for Men in Chino, California; 2. Alicia Richards is the Daughter of Lawrence Remsen and a taxpaying Petitioner. Both Petitioner's are taxpayers and requesting a decision on the merits from this esteemed Court for dramatic and compelling reasons including an order requiring Respondents to comply with their own statutory law in accordance with Due Process and this Courts precedent (See: F.R.C.P. Rule 71). Otherwise the irreparable loss of liberty for the class discriminated against will continue costing the taxpayer class billions of dollars and impacting thousands of State prisoners who are mostly black and Hispanic (many are illiterate) that are being unlawfully imprisoned under a repealed laws sentencing structure that was never constitutionally reenacted after it's repeal (emphasis supplied). The Respondents are: 1. Jeffrey McComber successor in interest to Kathleen Allison who was the successor in interest to Ralph M Diaz, Secretary of the California Department of Corrections and Rehabilitation (CDCR); 2. Jennifer Shaffer, Executive Officer of the Parole Agency, aka. Board of Parole Hearings (BPH); 3. Rob Bonta, successor in interest to Attorney General Xavier Becerra, State of California Attorney General (AG); 4. Kamala Harris

(previously notified and served as California's AG) and 5. Gavin C. Newsom, Governor of the State of California, et al.

DECISIONS BELOW

(3). Decision denying Petition for Review from the California Supreme Court (CSC) filed on April 12, 2023. Decision to grant an USSC extension of time is attached to the Petition as Appendix 1.

JURISDICTION

(4). The Judgement of the CSC was entered on April 12, 2023 and Petitioner's were granted an extension of time by the USSC up to and including September 9, 2023. Jurisdiction is conferred pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

(5). This case is brought under the Eighth and Fourteenth Amendments to the United States Constitution which provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflected.

(6). This case also involves Amendment XIV to the United States Constitution, which provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of Citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law nor deny to any person within its jurisdiction the equal protection of the laws.

I. STATEMENT OF THE CASE & COMPELLING REASONS TO GRANT CERT.

(7). The taxpayer class, has standing to protect their interest and to see that our laws are being fully enforced pursuant to the "Rule of Law". For example, this case shows irrefutable evidence that the Taxpayers are being massively damaged because Respondents have illegally

administered SB-42's category four and below sentences under the repealed Indeterminate sentencing Law (ISL) in violation of the Legislative Declaration that all persons who's crime was committed on of after July 1, 1977 would be sentenced under the Determinate Sentencing Law (DSL) and it's "Purpose, Policy, Ways, and Means" (PPWM) (See: Appendix # 3 at AB-476, Pg.17:21-36). The unlawful and unconstitutional violation of the 8th Amendment and 14th Amendment rights of those within the class discriminated against has resulted in unconstitutional loss of liberty by uncertain, excessive and disproportinate sentencing which continues to be grossly unfair and unequal to the crime as compared to the greater Category Five Crime of penal Code § 187 in the first degree thus costing the offenders their liberty and taxpayers Billions of dollars. Based on all the compelling reasons to grant certiorari including facial sentencing facts lodged herein, once construed in accordance with the Constitutional Rule of Law, a decision on the merits would entitle the taxpayers relief along with protecting the liberty interests of thousands of illegally and unconstitutionally sentenced prisoners from an absence of all jurisdiction and a lawless and unjust sentence (See: SB-42 at Appendix # 3 & Pen. Code §§ 12 & 13, 1170(a)(1), 2931 and 3000). Relief will also unburden the California Taxpayers whose funds are being illegally used in the multiple billions of dollars to support an illegal sentencing structure which was repealed and never lawfully reenacted. These funds would be better used to help keep homeless people off our streets instead of fleecing the taxpayers, which is totally unacceptable and illegal in this country.

(8). Petitioners adopt herein all their previously pled facts beginning in the Superior Court and their multiple United States Supreme Court (USSC) authorities along with numerous U.S. Constitutional

violations documenting indisputable factual evidence warranting relief, notwithstanding that none of the State Courts provided a decision on the merits in violation of their own and this Courts precedent (See: Cal. Const. Art. VI § 14.;Cf. Lucido v. Superior Ct. 51 Cal.3d 336, 366 [272 CR 767] (1990); accord Sanders v. U.S., 373 U.S. 1, 8, 15-17, [83 S.Ct. 1068] (1963). The CSC denied Petitioner's CSC Petition for Review with a single line summary denial (See: Appendix # 9). Because of the CSC denial Petitioners will explain the multiple errors of fact and law in the last reasoned opinion from the California Court of Appeal, Second Appellate District, Division one (hereinafter SADD), (See Appendix # 3 and Section V. Infra. Reasons to Grant Writ). Both the CSC and the SADD intentionally failed to address the jurisdictional issues raised by the Writ (Id.). Instead, the State Courts refused to follow the Rule of Law and continues to wrongly avoid, skip and evade Three (3) Indisputable facts which prove that uncertain and unconstitutional punishment for crime cannot exist under California law, they are:

A. On July 1, 1977 the State of California repealed it's ISL which has never been lawfully reenacted; and,

B. The July 1, 1977 repeal included the "Purpose, Policy, Ways, and Means" (PPWM), for which uncertain sentencing existed from 1917 through 1977. For example, based on the Leglislative declared Purpose and Policy in Pen. Code § 1170(a)(1), Stats 1977 Ch.165 § 15, and the laws in effect on that date the Parole Agency Board had no power or resources to act in any manner; and,

C. The July 1, 1977 repeal of the ISL also included specifically eliminating the Parole Agency's term fixing and term extending Article III Legislative & Judicial Powers including the necessary PPWM, without which uncertain and disproportionate sentencing cannot exist.

I. BASIS FOR FEDERAL JURISDICTION AND CHRONICLED BACKGROUND DOCUMENTING CALIFORNIA'S DISPROPORTINATE AND UNCONSTITUTIONAL SENTENCING

(9). Please take notice that after two state Supreme Court decisions on how the ISL was being implemented the Legislature conducted a through investigation of excessive recidivism issues in the state. (See: In Rodriguez, 14 Cal.3d 639, 650 [122 Cal.Rptr. 552] (1975); Cf. People v. Wingo, 14 Cal.3d 169, 181 [534 P.2d 1001] (1975). The result of their investigation formed the conclusion and belief by Attorney General Evelle J. Younger, Governor Brown and both houses of the California Legislature that the Indeterminate Sentencing Law (ISL), was a failed experiment with an 83% recidivism rate that had failed to sufficiently reduce and/or deter crime in California (See: Appendix # 1).

(10). Ten months before the decision was made to repeal the ISL legislator John V. Briggs, who, in a conspiracy with a small faction of other Legislators that were connected to the prison guards union and long term expansion of the prison industrial complex contacted Governor Brown and attempted to intimidate him using dishonest means by advancing the Red Herring of "the most violent crime wave California has ever experienced," and in what appears to be criminal misconduct, urged the Governor's Veto of the elimination and repeal of the ISL and repeal of the Parole Agency's term fixing and term extending powers. (See: Appendix # 2.; Cf. Cal. Const. Art. IV § 15.)

(11). Effective July 1, 1977, with the support of both parties, both houses, the Attorney General, and the Governor, the California Legislature repealed and replaced the ISL with the Determinate Sentencing Law (DSL) (See: Appendix # 3). In repealing the 59-year-old ISL, the Legislature found and newly declared that the purpose for imprisonment for crime was "punishment" and repealed the "PURPOSE, POLICY, WAYS, MEANS" (PPWM) necessary for the Parole Agency's operation and uncertain punishment for

crime to exist under the ISL (See: SB-42 amd AB-476, at Appendix # 3).

(12). In enacting the DSL, the Legislature stated as one of the reasons for repealing the uncertain MINIMUM to MAXIMUM" sentencing structure, that made up the foundation of the ISL, was that neither the prisoners or their family knew at sentencing when or if they were going to be released. Another constitutional reason for repealing the ISL's uncertain sentencing structure is because there was no uniformity or proportionality in the actual time each person served for the same offense being decided by the same branch charged with the persons prosecution (See: AB-476 Stats 1977 Ch. 165 § 15; Cf. Specht v. Patterson, 386 U.S. 605, 608-09 [87 S.Ct. 1209] (1967); accord Ring v. Arizona, 536 U.S. 584, 602 [122 S.Ct. 2428] (2002).

(13). According to all the facts and law that existed as of July 1. 1977, the date of the ISL's repeal, the purpose of imprisonment became "PUNISHMENT FOR THE CRIME ITSELF" and uncertain ISL sentencing had ceased to exist (See: Penal Code § 1170(a)(1) at Appendix # 6 and SB-42 Pgs. 1 thru 4 at Appendix # 3).

(14). Effective July 1, 1977, after the repeal of the ISL and under the newly enacted DSL, all punishments for crime were controlled in SB-42's Seven Category Sentencing Structure such as the punishment for category five and six terms, which was: Death, Straight Life, with or without the Possibility of Parole (as an example See: Pen. Code § 190, Stats 1976 Ch. 1139 § 133). The punishment for category four crimes is deemed to be the most serious crime that are punished for less than "life". (See: SB-42 Categories one thru four at Appendix # 3 at Pg.2). On November 7, 1978, after Legislator Briggs violated multiple State Constitutional statutes and abused his office related to advancing

Prop. 7. The voters then wrongly ratified Prop. 7 labeled the Murder Penalty Initiative statute (See: Appendix # 5, Prop. 7's Title prepared by the Attorney General). In Prop. 7's Title, Senator Briggs, its author and drafter, asked the voters to: 1. Change and expand provisions for the death penalty as described on pages 32 thru 35 and 42 thru 46; 2. Change the sentence for first degree murder from "Life" to "25 years to Life", 3. "Increase the punishment for second degree murder"; 4. Stated that parole was prohibited before service of 25 or 15 year terms, except subject to earned P.C. § 2931 Good-Time Credits, (See: Prop. 7's Title on Pg.32 of the 1978 Ballot at Appendix # 5; Cf. People v. Ramirez, 25 Cal.3d 260, 278 [599 P.2d 622] (1975): [Held: "When a state creates or recognizes (due process) rights and specifies the conditions of their forfeiture, it may not thereafter arbitrarily deny such (Cal. Pen. Code §§ 1170(a)(1) DSL terms & 2931 Good-Time Credit) rights. The state action must be guided by due process considerations (3 USSC citations)".]

III. STATEMENT OF FACIAL FACTS

(15). On March 26, 1975 the California Department of Justice Attorney General Evelle Younger states the ISL was a failed experiment and expressed his support for Senate Bill 42 (SB-42) Which repeals the Indeterminate Sentencing Law (ISL) in California and provides a "Seven Category Sentencing Structure" of Determinate and fixed prison terms aka. the Determinate Sentencing Law (DSL) (See: Appendix # 1. at Pg. 2).

(16). On September 1, 1976 California Legislator John V. Briggs issued a strongly worded "most violent crime wave California has ever experienced" letter to then Governor Jerry Brown in an attempt to unlawfully influence Governor Brown to veto SB-42 so as to keep the

ISL in place. The September 1, 1976 letter is direct evidence that Briggs' goal was to prevent the repeal of the ISL and it's uncertain and extended terms of punishment of inmates for crimes for personal and financial gain (See: Appendixes # 2 & # 7; Cf. Cal. Const. Art. IV § 15, see also Specht, supra, & Ring, Supra.)

(17). As previously stated, on July 1 1977 the California Legislature repealed and replaced the ISL with the DSL. In repealing the 59-year-old ISL, the Legislature found and declared that the purpose of imprisonment for crime was "Punishment" and repealed the "PURPOSE, POLICY, WAYS, and MEANS" (PPWM) necessary for uncertain ISL punishment for crime to exist (See Appendix # 3, which includes AB-476, the Urgency Statute and post SB-42 clean-up legislation).

(18). On July 1, 1977 the California Legislature passed AB-476, Stats, 1976 Ch. 1139 § 273, operative July 1, 1977. In that Bill the Legislature declared that the Purpose and Policy for imprisonment for all crimes committed after that date was punishment and that Legislative Declarative policy must prevail. In short, the Legislative Declaration in Pen. Code § 1170(a)(1) controls all other Pen. Code mandates including Pen. Code § 190, not the other way around. (See: People v. Saffell, 25 Cal.3d 223, 236 [157 CR 897] (1979); Cf. Am Jur 2d § 23 (1998); Cf. Twin City Pipe Line Co. v. Harding Glass Co., 283 U.S. 353, 357 [51 S.Ct.476] (1931); Cf. Thome v. Macken, 58 Cal.App.2d 76 [136 P.2d 116] (1943).) Moreover, fourteen months later by way of Prop. 7 the DSL along with mandatary P.C. § 2931 Good Time Credits were ratified, subsumed and incorporated into the Proposition Seven Initiative. This codification process was confirmed by controlling CSC authority that has been followed for nearly 75 years:

> It is a well established principle of statutory law that, where a statue adopts by specific reference the provisions of another statute, regulation, or ordinance, such provisions are incorporated in the form in which they exist at the time of the reference and not as subsequently modified, and that the repeal of the provisions referred to does not affect the adopting statute, in the absence of a clearly expressed intention to the contrary" (See: Palermo v. Stockton Theatres Inc., 32 Cal.2d 53, 58-59 [195 P.2d 1] (1948),

(19). When the Prop. 7 Initiative was passed by the voters on November 7, 1978, they adopted, by necessity, the DSL because the ISL no longer existed due to repeal. Therefore all prisoners were subject to the DSL, even those with ISL terms whose crime was committed before the repeal of the ISL prior to July 1, 1977 who were already sentenced and incarcerated. In order to meet constitutional standards ALL ISL sentences (pre and post Prop. 7) were, pursuant to Penal Code § 1170.2 to be provided DSL terms (See: Appendix # 3 at AB-476 at Pg.17:21-36).

(20). On October 7, 1978, the Briggs Initiative aka Prop. 7 confirmed that the voters intended that the increased 15 and 25 year sentences were to be reduced for good behavior subject to contractually earned Penal Code § 2931 Good Time Credits (See: Appendix # 3 at Prop. 7's title & Art. IV § 9; Cf. Wolff v. McDonnell, 94 S.Ct. 2963, 2974 (1974).) All Federal and State controlling authority addressing Pen. Code § 2931 confirms that these credits were mandatory Alegory Contract Credits and not discretionary. Pursuant to the Legislative Declarations in Penal Code § 1170(a)(1) and Prop. 7's title both the 15 and 25 year terms allowed for early release subject to Good Time Credits (See: Wolff, Supra, Appendix # 5 at Legislative Declaration). No where in Prop. 7's Title or it's text was ANY type of ministerial agency mentioned or vested with the PPWM nor power to hold so called suitability hearings for crimes that called for punishments for less than AB-42 Category Five or less than straight Life.

(See: SB-42 and it's Seven Category Sentencing structure in Appendix # 3 at Sentencing Classifications at Pg.2).

VI. FACTUALLY SUPPORTED SENTENCING DEFINITIONS CONFIRMING The Seven Category Sentencing Structure (codified by SB-42 & AB-476)

(21). FOR LIFE AND STRAIGHT LIFE are Category 5 Determinate sentencing terms that were punished with less than, Life Without the Possibility of Parole (LWOP) and less than the Death Penalty. SB-42 and CSC controlling authority confirms that the FOR LIFE sentence is a determinate Category Five crime (See Appendix # 3 Sentencing Classifications at Pg.2; Cf. In re Stanworth, 33 Cal.3d 176 181-186 [187 CR 783] (1982); Cf. In re McManus, 123 Cal.App. 395, 396 [266 P.2d 929] (1954).

(22). LIFE WITHOUT THE POSSIBILITY OF PAROLE (LWOP) is a Category 6 crime and has always been a determinate sentence (See: Appendix # 3.)

(23). DEATH PENALTY is and has always been a determinate sentence and is the most sever Category 7 punishment. (See: Appendix # 3).

(24). As shown by SB-42's Seven Category Sentencing Structure, on July 1, 1977, all crimes were determinate sentences as submitted, codified and approved by the Legislature and signed into law by Governor Brown, (See: Appendix # 3) and Prop. 7 voters, by way of Penal Code § 190 et seq., could not change Legislative policy from Determinate Sentences to ISL terms with parole "Subject to Good Time Credits" (See: Appendix # 5.) Briggs' attempt to transform the sentencing law by subterfuge into ISL sentences and eliminate Pen. Code § 2931 credits to reduce ones parole release date was blatantly illegal. NOWHERE in Prop. 7 was the subject of Parole Agency reinstatement or reenactment of the ISL ever proposed or discussed in the tiniest way (See: County of San Diego v. Commission on State Mandates, 6 Cal.5th 196, 208 (2018); Cf. Cal. Const.

Art. II § 8(d); Cf. Cal. Const. Art. IV § 9; accord Freedland v. Greco, 454 Cal.2d 462, 468 [289 P.2d 463] (1955).

V. REASONS TO GRANT CERTIORARI (Argument)

A. THE CALIFORNIA SUPREME COURT (CSC) PREJUDICIALLY ABUSED IT'S DISCRETION AND ACTED IN ABSENCE OF ALL JURISDICTION WHEN IT REFUSED TO ISSUE A DECISION ON THE MERITS

(25). When the CSC relized the compelling reasons that Petitioner's were documenting and supporting with the Rule of Law (both statutory, common law and constitutional law) that would affect thousands of other disproportinate unlawful ISL sentenced prisoners who were impacted by repeal of the ISL and continued fraudulent use of taxpayers funds for an unlawful purpose, the CSC with foreknowledge intentionally refused to act and follow it's own statutory law (See: Maine v. Thiboutot, 448 U.S. 1, 20-21 [100 S.Ct. 2502] (1980),) making this a federal matter. As shown herein, strong evidence confirmed that after its repeal, the ISL was never lawfully reenacted. Once shown, pled and confirmed the CSC intended to evade those compelling facts advanced and then intentionally did NOT issue a decision on the merits, but instead relied on the last reasoned opinion by the SADD (See: Appendix # 11,) to wrongly evade the merits. Petitioners object to the term reasoned opinion as the SADD blatantly fails to follow the Rule of Law and relies on facts and laws which cannot be applied to Petitioner's case, which continues to violate the state and federal constitutions and shows an ongoing attempt to avoid addressing the repeal of the ISL and the lack of PPWM allowing the Parole Agency to even operate in any manner against the class for which the DSL was created (See: SB-42 [1976] & AB-476 [1977] at Appendix # 3).

B. APPELLATE COURTS (SADD) RESPONSE TO PETITIONERS 1st COA

(26). The SADD court fails, avoids and skips the unrefutable fact

that NO COURT HAS EVER ADJUDICATED ON THE MERITS the fact that the "ISL was repealed and NEVER REENACTED" much less that the DSL was to be retroactively applied to those whose ISL crime was committed prior to the ISL's repeal. The SADD Affirmance opinion (wrongly and intentionally adopted by the CSC without litigating the merits) at the 1st COA at Pg.6 (See: Appendix # 11) merely assumes the Prop. 7 somehow reenacted the ISL without the subject submitted for voter approval or a Legislatively authorized PPWM (See: Cal. Const. Art. IV § 9; Cf. Appendix # 11 Pg.6, Para #3) claiming with no support, that "the punishment for Second Degree Murder was an indeterminate term of 15 years to life, (§ 190 Prop. 7, supra, §2)." This statement is a fraud upon the court as there is NOTHING in Prop. 7 nor Pen. Code § 190, as modified in Prop. 7, that suggests or implies that the subject that a SB-42 Category 4 crime was or could become an indeterminate sentence under the then repealed ISL, (See: County of San Diego, supra, at Pg.208). The fact that the ISL was never partially revived baits the question by what authority of law a Category Four SB-42 crime could become an indeterminate sentence without the subject being presented to the voters (See: Cal. Const. Art. II § 8 & Art. IV § 9). The CSC court itself via the distinguished Justice J. Richardson confirmed that:

> "There is nothing whatever in the text of the measure [Prop. 7] itself nor its accompanying analysis which suggestes that the ISL would be partially revived, or that new indeterminate life sentences therefore would be moderated. To the contrary, voters were told otherwise." (See: In re Jeanice D., 28 Cal.3d 210, 221 [169 Cal.Rptr. 455] (1980), (Dissent on a different Juvenile matter) [Emphasis added].

(27). The SADD and the CSC both knew and understood the facial fact that NO COURT HAS EVER ADJUDICATED or identified how, in conflect with the Legislative Declaration in Pen. Code § 1170(a)(1), the ISL could be transformed back into operation when the Legislature specifically repealed

the "PURPOSE, POLICY, WAYS, and MEANS (PPWM) neccessary for uncertain punishments to exist. This Petition shows that thousands of California Prisoners are not sentenced under the repealed ISL and the false statement by the SADD "Plaintiff's claim therefore fails as a matter of law" is and continues to be frivolous and meritless (See: Appendix # 11 at Pg.6 Para.# 3) and documents the SADD's specific intention to ignore the unrebutted fact the ISL was repealed and NEVER reenacted. Other SADD erroneous statements include "the Board determines when an indeterminate term of incarceration ends", this is also known as term fixing and was so before the ISL and the Agency's term fixing and extending power was repealed and retuned back to the courts, See: Pen. Code §§ 12 & 13, (See: SADD Affirmance at Appendix # 11 Pg.6 Para.#3,).

(28) The SADD also abused their authority by making pronouncements and claims without any controlling case authority, support or facts to backup their undocumented and unsupported claims. The Boards authority to Determine or Redetermine a sentence was repealed for abuse see P.C. § 671 and P.C. §§ 3020-3025 (See: Apendix # 6) and never reenacted. Additionally, without the legislative authorized (PPWM) the Board has no power to act in any matter as falsely claimed by the SADD. The fact the Board has no jurisdiction or term fixing or extending power to act and the SADD's motivation to avoid the compelling merits of Petitioner's documented facts shows that not only are those within the class being discriminated and denied equal protection of the DSL, but these sentences continue to be grossly disproportionate as compared to those sentenced before repeal of the ISL and those sentenced for greater crimes (See: Para. 29 Infra.). Moreover, the sentencing court acted in complete absence of any jurisdiction to sentence Petitioner under a

repealed sentencing law, (See: Arbaugh v. Y H Corp., 546 U.S. 500, 506 [126 S.Ct. 1235] (2006). It is well known precedent that an unconstitutional sentence or a sentence in absence of all jurisdiction can be challened at any time (Emphasis added).

(29). Regardless of the overwhelming evidence of a "Miscarriage of Justice" by the State Court by not allowing Petitioner's facts to be adjudicated on the merits, the conduct documented on this record shows a blatant 8th Amendment excessive term as well as a cruel and unusual sentence and a 14th Amendment violation of a lessor punishment then provided for the greater crime, (See: In re Stanworth, 33 Cal.3d 176, 181-183 [183 CR 783] (1982),) which demonstrates an outrageous disproportinate sentence suffered by those within the class discriminated against (See: also 1978 Prop. 7 at Pen. Code. § 190.4 where the Court fixes the DSL term at 25 years. [Emphasis added]. The point is, why should the taxpayers have to fund the costs of keeping a person imprisoned beyond his contractually earned Pen. Code § 2931 release date? This abuse continues to cause gross disproportionality and 8th and 14th Amendment violations. These violations are based on false facts and law that caused the excessive incarceration beyond the term fixed by earned credits based on facts that have never been found true by a jury, (See: Alleyne v. U.S., 133 S.Ct. 2151, 2155-65 [186 L.Ed.2d 315] (2013).

C. THE CALIFORNIA SUPREME COURT, THE ATTORNEY GENERAL AND THIS COURT ARE INFORMED THAT VICE PRESIDENT KAMALA HARRIS WAS AWARE THAT FAILING TO CORRECT A BLATANT SENTENCING ERROR WOULD ALLOW THOUSANDS OF BLACK AND HISPANIC PRISONER TO REMAIN WRONGLY INCARCERATED UNDER A REPEALED LAW

(30). Because the CSC and the Attorney General (Kamala Harris back in 2013) had direct notice and knowledge of the thousands of prisoners (mostly Blacks, Hispanics and recovering substance abusers) who would have to be released based on their contractually earned Good Time Credits and

the facts show how the taxpayers have been defrauded out of billions of dollars for an illegal purpose, this Court should act. (See: Appendix 5, Legislative Declaration on Good Time Credits). This shows that the Legislature supported and continues to promote an illegal kick-back scheme for personal gain involving illegal taxpayer contributions costing California Taxpayers Billions of dollars and was partly responsible for the conspiracy to cover up and conceal this very serious unconstitutional jurisdictional sentencing error. The investigation continues on whether AG Harris has taken substantial campaign contributions from the California Correctional Peace Officers Association (CCPOA) (See: Appendix # 7) which could compel criminal conspiracy charges (Quid Pro Quo Campaign contributions from CCPOA in exchange for silence and continued costly and illegal incarceration harming mostly Black, Hispanic and recovering substance abuse inmates).

(31). Both AG Harris and CSC justices were well aware that under California's Constitution (Article IV § 9) "Briggs" could not constitutionally adopt the repealed ISL's sentencing structure, so there is no question that reenactment of the repealed law and the PPW&M for its accomplishment were prohibited and is a separate subject that was never submitted to voters according to law, and that inter alia, made Prop. 7 Void. (See: Cal. Const. Art. II § 8(d); Cf. Art.IV § 9). There is also no question that as a State Legislator, Senator Briggs intentionally and unlawfully used the People's Initiative when he did not have the votes for a Referendum. This deceived Prop. 7 voters by failing to present the subject of reenactment of the ISL's repealed Minimum to Maximum Sentencing Structure, along with the statutes and PPWM necessary to carry uncertain

sentencing into effect. This blatant voter deception, all the while knowing that at the time of Prop. 7's enactment the Parole Agency had no jurisdiction over any category four crime and could not get jurisdiction by way of initiative (See: Cal. Const. Art. II § 8(d); Cf. Assoc. for Retarded Citizens v. Dept. of Developmental Services, 38 Cal.3d 384, 390-94 [211 CR 68] (1976); accord Scott A. v. Superior Court, 27 Cal.App.3d 292, 295 [133 CR 683] (1972); accord Wallace v. Zinman, 200 Cal. 585, 590-91 [254 P. 946] (1927); Cf. 16 Am Jur.2d Constitutional Law § 256, et seq.)

(32). There is no way to save Prop. 7's adopted sentencing structure because Briggs could not use the Initiative to defeat the Legislative Declaration including the "Purpose of imprisonment for crime" (See: supra, at Para. (18); Cf. P.C. § 1170(a)(1). Moreover, uncertain punishments for crime cannot exist under the DLS's purpose and policy. In short, the only means the voters were provided for fixing parole release dates as of Nov. 7 1978 was through the gateway of Pen. Code § 2931 (See: Prop. 7's Title & Pgs. 44 & 45 where the court imposes a flat DSL "term of 25 years" to a finality on a unproven Special Circumstance sentence; Cf. Penal Code §§ 2931 & 3000; Cf. Cal. Const. Art. II § 8(d) & Art. IV 9 & 16). Under any other set of circumstances, Prop. 7 and its uncertain sentencing structure is "void on its face" and the punishment for these offenses must be returned to what they were prior to Nov. 7, 1978 under SB-42's Seven Category Sentencing Structure, (See: Appendix 3 at Pgs. 2&3; Cf. In re Blaney, 30 Cal.2d 643, 655 [184 P.2d 892] (1947) [Re: Severability Clause].

(33). Moreover, as demonstrated throughout the legislative process from 1976 to 1977, when Senator Briggs failed in his financial conspiracy to convince Governor Edmund G. Brown Jr., to VETO the repeal of the ISL

and the enactment of the DSL into law (See: Appendix # 2). He then unlawfully used his constituency and the divine nobility of the governmental status of his Senate Office to qualify Prop. 7 as the People's Initiative (See: Prop. 7 1977 Ballot at Appendix # 5). Because Senator Briggs did not have the necessary votes for a referendum to defeat the repeal of the ISL through both houses of the legislature he then unlawfully used the "People's Initiative" under the guise of condifying the death penalty to illegally and deceptively attempted to reintroduce Minimum to Maximum ISL sentencing, even in light of the repealed ISL without submitting the specific subject of its reenactment for voter approval. (See: County of San Diego v. Commission of State Mandates, supra, at Pg. 208.) This documents that Senator Briggs did indirectly what the State Constitution prevented him from doing directly, which is why the State of California has unconstitutional and uncertain punishment for crime existing under the DSL today (See: Cal. Const. Art. II § 8(d); Art. IV §§ 9 & 16; Scott A. v. Superior Ct., Supra, at Pg. 292; Cf. Cal. Gov. Code § 9609); accord Fairbank v. United States, 181 U.S. 253, 294 [21 S.Ct. 698] (1901). The record reflects Senator Briggs was sanctioned in a closed Legislative session for circumventing the Legislative process and never again allowed to hold public office in California. The CSC and AG Harris have been successful at concealing and intentionally avoiding these facts for many years. Many Legislators have also been successful at concealing the Quid Pro Quo campaign contributions received from CCPOA, which came with the promise and understanding from the lawmakers to add more extended term sentencing and to continue support for more mass incarceration legislation thereby transforming a non-constitutional Statewide Ministerial Agency into the most powerful lobbying and

lawmaking group in California History, (See: Appendix 7).

C. THE PAROLE AGENCY ACTED WITHOUT JURISDICTION AND IN BLATANT DISREGARD TO THE STATE COURTS OWN PRECEDENT AS WELL AS THE NINTH CIRCUIT, THIS COURTS PRECEDENT AND CONTINUES TO ABUSE IT'S LACK OF ARTICLE III POWER TO ILLEGALLY FIX OR EXTEND PRISON TERMS AS AN ONGOING FORM OF PUNISHMENT FOR A CRIME THAT HAS NOT YET BEEN COMMITTED UNDER THE GUISE OF SUITABILITY, WHICH IS IN AND OF ITSELF A WORD THAT CANNOT BE DEFINED TO ANY DEGREE OF CERTAINTY

(34). As shown throughout this Petition and according to State Law every person whose crime was committed after repeal of the ISL, along with its purpose and policy (PPWM), and who are not sentenced to serve a "STRIGHT Life" punishment/sentence, which had no minimum term are having their sentence unconstitutionally decided in absence of all jurisdiction and their contractually earned parole release dates unlawfully taken from them after there earned credits have vested without due process in violation of equal protection of the Rule of Law. This is so, inter alia, because they are denied earned release dates the same as all others within this class by a non-consstitutional ministerial Parole Agency exceeding it's jurisdiction who in a conspiracy with John Briggs teamed up with legislators Burton and former Lieutenant Governor Ed Reinecke and Attorney General Lockyer, to make law by enlarging the Parole Agency's authority to hold so-called suitability hearings on less than SB-42 category five crimes in violation of the State and Federal Constitutions. As shown by statute, it was the Parole Agency who had its term fixing and extending powers repealed for abuse, but who has continued to usurp legislative and judicial powers to decide different punishment for different prisoners committing the same crime. This same Parole Agency continues to enlarge its powers in violation of Cal. Const. Art. III § 3 every time it unlawfully denies parole and extends one's prison term by deciding who is and who is not a danger to public safety. This act of illegally

extending one's sentence (of mostly Black, Hispanic and recovering substance abuse inmates) is an exclusive judicial function that cannot be preformed by a non-constitutional ministerial agency against a class of minority offender of which the Board has no jurisdiction over. Moreover, absent a trial on the matter of the person's alleged danger to public safety the Parole Agency has no jurisdiction to act and continues to violate both the State's Constitution and United States Supreme Court precedent (See: Cal. Const. Art. III § 3; accord U.S. Const. 5th, 6th, & 14th Amend.'s; Cf Ring v. Arizona, 536 U.S. 584, 602 [122 S.Ct. 2428] (2002); Cf. People v. Olivas, 17 Cal.3d 236, 243-44, 246-47 [131 CR 55] (1976); accord Apprendi v. New Jersy, 530 U.S. 466, 469-476 (2000) [Depravation of liberty without Due Process]; accord Alleyne v. United States, Supra, 113 S.Ct. 2151, 2155-65 (2013) [extended term facts must be found true by a jury].)

VI. CONCLUSION

(35). Lastly, Petitioners adopt herein all the original pleadings and state that what makes the Executive Branch Parole Agency's actions a matter of "Outrageous Governmental Conduct" is how prisoners are having the punishment for crime arbitrarily decided by the same branch of government charged with their prosecution. This is not only fundamentally unfair, but such a abusive process by a non-Constitutional Ministerial Agency, cannot be tolerated to exist under the American Justice System (Maybe in Iran, Russia or China, but not here). Furthermore, as shown through out this Petition, and to add insult to injury, State officials and their employee relatives after notice and service have taken it upon themselves, without authority of law to decide punishment for crime for personal and financial gain in such a way that every offender committing the same crime is serving a different punishment being administratively

decided by the same executive branch agency charged with there prosecution in violation of Cal. Const. Art. III § 3 and the 14th Amendment to the U.S. Constitution. In this case the amount of time a person serves beyond their contractually earned Good-Time and Participation Date is grossly disproportionate and unlawful even when compared to the terms served from 1917 to July 1, 1977 under the repealed ISL, (See: Pen. Code §§ 2931 and 3000 Stats 1977 Ch.165 §§ 38 & 42). Please take notice that based on all the above facts that Petitioner's adopt herein, we respectfully request that this Court consider and compare the case of Dennis Stanworth. Mr. Stanworth was sentenced to death following his plea of guilty to four charges of aggravated kidnapping, forcible rape, oral copulation, and robbery. Stanworth's sentence was modified to "Life" with the possibility of Parole. In 1979, the Parole Agency fixed Stanworth's term at twenty-three years, four months and nine days. That is 3.9 years for each of Stanworth's Six Life Sentences and other crimes. Also noteworthy, the court held that Stanworth was NOT sentenced to an indeterminate sentence, but to a determinate life sentence, See: In re Stanworth, 33 Cal.3d 176, 177-183 [187 CR 783] (1982). This is factual evidence and controlling authority that after Prop. 7 the CSC considered ALL sentences Determinate Term Sentences under P.C. § 1170(a)(1).

(36). It is "Outrageous Government Conduct" when a non-constitutional ministerial agency can make law to decide punishment for crime and deny parole for speculative unsuitability reasons which clearly is punishment for a crime that has not yet been committed (See: Strumsky v. San Diego County Employees Retirement Assc., 11 Cal.3d 28, 35 [520 P.2d 29] (1974); Cf. Bixby v. Pierno, 4 Cal.3d 130, 144-147 [93 Cal.Rptr. 234] (1971); accord People v. Olivas, Supra, 17 Cal.3d 236 243-44, 246-47 (1976); Cf.

Alleyne v. United States, Supra, 113 S.Ct. 2151, 2155-63, 2164-65 (2013). Moreover, this Petition shows, punishment for crime not yet committed is happening today at the voters and taxpayers expense, for personal and financial gain, and to further the mass incarceration industry. Petitioner posits that Administrative action after Nov. 7, 1978 has been taken by the incarcerator's for profit at taxpayers expense. These incarcerator's and their judicial conspirators continue to completely ignore the USSC "Rule of Law" and for the purpose of continuing an unconstitutional and illegal administrative sentencing process for personal gain using and exploiting the minority population (mostly Blacks, Hispanics and recovering substance abusers) as pawns and chattel. Please closely review Appendix # 4 and grant Certiorari so discovery can fully disclose the extent of the Quid Pro Quo campaign donations used to illegally increase sentences and mass incarceration at unnecessary Taxpayer expense.

VI. PRAYER FOR RELIEF

(37). Because the CSC has failed to follow the Rule of Law mandated by the States's Constitution (Cal. Const. Art. VI §§ 13 & 14) and USSC precedent. This Court should Grant Certiorari and decide the case on the merits as supported by the documentary evidence and facial facts presented.

(38). What chance does a reasonable person have to protect their federally guaranteed rights after those Constitutional Rights were denied because, like the case at Bar, the State's highest court refuses to follow its own decisions, obey the mandatory provisions set forth by the Legislative policy, and the State's Constitution, or acknowledge this Court's precedent and USSC controlling Rule of Law.

VIII. VERIFICATION

(39). As the Petitioners in the above entitled action, we all declare under penalty of perjury under the Laws of the United States of America, that the foregoing, is true and correct.

EXECUTED on Oct. (month 30 (day), 2023.

Respectfully Submitted

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