No. S292887

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

CRIMINAL JUSTICE LEGAL FOUNDATION *et al.*,

Plaintiffs and Appellants,

vs.

CALIFORNIA DEPARTMENT OF CORRECTIONS *et al.*,

Defendants and Appellants.

Third Appellate District, Case No. C100274,
Sacramento County Superior Court,
Case No. 34-2022-80003807-CU-WM-GDS
The Honorable Jennifer K. Rockwell, Judge

ANSWER BRIEF ON THE MERITS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

State Constitution

State Statutes and Initiatives

Rules of Court

Secondary Authorities

ISSUE PRESENTED

The court's order of October 22, 2025, granting review in this matter limits the issue to be briefed and argued to the issue raised in the petition for review. That issue is: "Does Proposition 57 authorize CDCR to award and apply earned credits to advance indeterminately sentenced persons' minimum eligible parole dates?" Fairly included in that issue is whether CDCR is authorized to override statutes which set the minimum eligible parole date without reduction by credits, and, if so, whether this vesting of legislative authority superior to the Legislature in an executive agency is a constitutional revision not validly enacted by initiative.

INTRODUCTION AND SUMMARY OF ARGUMENT

In early 2015, California met the population cap set by the special three-judge federal district court a year ahead of schedule. Even so, almost two years later the people were called upon to vote on an initiative, Proposition 57, which was presented as a public safety measure needed to prevent "indiscriminate releases" by the federal courts.

The main focus of the proponents' argument was to distinguish between inmates convicted of violent felonies and those convicted of nonviolent felonies. They assured the people that parole under the initiative would be limited to the nonviolent, and they promised that the initiative would "keep the most dangerous offenders locked up." (*In re Mohammad* (2022) 12 Cal.5th 518, 537–538.) With those assurances, the initiative passed by a wide margin.

Years later, victims of extremely violent crimes and families of victims were horrified to learn that the perpetrators of these crimes were up for parole far earlier than they had been promised at sentencing, with Proposition 57 being cited as the authority. This case is an effort to correct the betrayal and injustice committed by people who are supposed to be protecting victims and their rights. The case was brought on behalf of one direct victim of crime, the mother of a child victim, and the daughter of a murder victim. The Criminal Justice Legal Foundation is also a party, under public interest standing.[1]

Long-standing California law establishes the general rule that credits do not shorten the minimum time set by law that an indeterminately sentenced inmate must serve before being eligible for parole. Exceptions have been made by both the Legislature and the people, but the most common exceptions have been repealed, and the general rule stands for most cases. The general rule applies even where the authority for granting credits does not distinguish between determinate and indeterminate sentences. Nothing in the text of Proposition 57 alters this rule.

The general rule was explained to the voters by the Legislative Analyst in the Voter Guide. The California Department of Corrections and Rehabilitation and the Board of Parole Hearings (collectively "CDCR") can point to nothing in the ballot materials that directly states an intent to change the general rule. Nor can they find any clear implication. Their argument consists of weak inferences, which are forcefully contradicted by the proponents' emphatic assurance to the contrary. Further, the doctrine of constitutional doubt pulls strongly against this interpretation.

Regarding deference to agencies, CDCR identifies the correct precedent but cites the wrong part. When the question is whether

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1. These parties will be referred to collectively as "Plaintiffs" in this brief, as they are designated on this court's docket. Referring to them all as "CJLF," as CDCR does (OB 21), denigrates the important interests of the victims of crime.

the regulation is within the agency's authority, the standard is independent review, not deference.

If CDCR's interpretation of the constitutional provision were correct, it would do something that has never been done before in California constitutional history. It would assign the ultimate legislative authority on an area of law to an executive agency. That agency's authority would be superior to both the Legislature and initiative statutes, both preexisting and future. Such a combination of executive and legislative authority in the same hands, immune from any legislative power to overrule the regulations or retract the authority, would be a drastic restructuring of the balance of powers. It would be a revision, not an amendment, of the Constitution within the meaning of this court's cases on that subject, and such a revision cannot be adopted by initiative.[2]

BACKGROUND

CDCR's Opening Brief (OB) in this case has a lengthy discussion of the background at pages 10 to 21, but that background has some notable omissions and some statements that are potentially misleading. The background is tangential to the issues in this case, though, so a nutshell version will do.

The root cause of prison overcrowding was the massive increase in crime, especially violent crime, from the 1970s to the early 1990s. The number of violent crimes in 1993 was 3.5 times the number in 1970. (California Criminal Justice Statistics Center, Crime in California 2024, table 1, p. 12.) Increased crime directly causes increased prison population even if sentencing law and policy remains constant. In addition, increased crime results

2. CDCR's improper attempt to sneak a stay motion into a merits brief footnote (OB 24–25, fn. 10) should be ignored. (See Cal. Rules of Court, rule 8.116.)

in public demand for tougher sentences to reduce crime through incapacitation and deterrence.

While the state initially built a number of new prisons to meet the need, construction later stalled. (See Greenhut, How California Prisons Got So Bad (2011) <https://www.pacificresearch.org/how-california-prisons-got-so-bad/> [as of April 19, 2026].) The fact that the capacity was not keeping pace with the need was the direct source of the overcrowding.

Before Proposition 57, several important measures had already been adopted which would reduce the prison population. These included incentives to counties to send fewer probationers to state prison, the realignment bill, the Three Strikes Reform Act, and Proposition 47. (Lofstrom & Martin, How California Reduced Its Prison Population (Feb. 6, 2015) Public Policy Institute of California <https://www.ppic.org/blog/how-california-reduced-its-prison-population/> [as of April 17, 2026].) By February 2015, 20 months before the Proposition 57 vote, the state had already met the court-ordered cap. (*Ibid.*) As noted in the Answer to Petition for Review at pages 17–18, California is now well below the cap and projected to decline even further. The number of cases affected by the issue presented in this case is minor in the larger prison population picture.

ARGUMENT

I. Longstanding California law establishes the general rule that the minimum eligible parole date is not advanced by credits.

A. The General Rule on Credits and Indeterminate Sentences.

For nearly 80 years, the general rule in California has been that the minimum time that an indeterminately sentenced prisoner must be incarcerated before being released on parole is not reducible by credits for good behavior, etc. (See 2 Witkin, Cal. Crimes (1st ed. 1963) § 994, p. 947 [since 1947]; *People v. Sampsell* (1950) 34 Cal.2d 757, 764; *In re Thai* (2025) 117 Cal.App.5th 1, 10 & fn. 3.)[3] The first question in this case is whether Proposition 57's authorization for CDCR to "award credits," without more, empowers that agency to effectively abrogate statutes codifying that rule.

CDCR insists that credits awarded must necessarily be applied to an inmate's sentence, either by advancing the release date or by advancing the date on which the inmate may first be eligible for release on parole. (OB 30–31.) CDCR further insists that it is a "novel position" to assert that the effect, if any, of credits on an inmate's minimum eligible parole date is a different, though related, question from whether the inmate is eligible to earn credits. (OB 11.) Both assertions are quite wrong. The contrary propositions are well-established law, found in cases, statutes, and even parole board[4] regulations.

While state prison credits had been virtually abolished under the Indeterminate Sentencing Law (ISL), the enactment of Determinate Sentencing Law (DSL) in 1976 brought them back. (Stats. 1976, ch. 1139, § 276 [enacting new article 2.5, Pen. Code,

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3. Exceptions have been made by statutes, but the exceptions remaining at present affect relatively few inmates. (See OB 16, fn. 4.) The time incarcerated is not limited to state prison, however. Actual time in jail before sentencing applies toward the total. (See *In re Kapperman* (1974) 11 Cal.3d 542, 547.)

4. We use the generic term "parole board" to refer to the Board of Parole Hearings and its predecessors: the Adult Authority, the Community Release Board, and the Board of Prison Terms.

§§ 2930–2932][5].) The new credit system was for determinate terms only, however, for two reasons. First, the new credit statutes by their terms limited credit eligibility to inmates sentenced under section 1170, i.e., to determinate terms. (*In re Monigold* (1983) 139 Cal.App.3d 485, 490–491.)[6] Second, section 3046 remained from the ISL, setting the minimum eligible parole date (MEPD) with no allowance for credits. "A life-sentence prisoner must serve a minimum calendar term before becoming eligible for parole. Conduct credits do not *apply* to that minimum term." (*Id.* at p. 491, citing § 3046 and *People v. Sampsell*, *supra*, italics added.)

Far from being a novel notion, then, the distinct concepts of eligibility for credits and the application of credits to advance the MEPD were recognized as flowing from two different statutes 43 years ago. Similarly, *People v. Stofle* (1996) 45 Cal.App.4th 417, 421, recognized both the eligibility limitation of the credit statutes and the general rule (absent a statutory exception) of section 3046's minimum without regard to credits in the context of indeterminate Three Strikes sentences.

Monigold also noted a use of credits by the parole board in the exercise of its function, but again with a limitation as to how those credits could be applied. (*Id.* at p. 491.) From the effective date of the DSL through 2015, the parole board had two decisions to make. The first decision was whether to set a release date. If

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5. More precisely, article 2.5 of chapter 7 of title 1 of part 3 of the Penal Code, cited below as "article 2.5." All subsequent section references are to the Penal Code unless otherwise indicated.

6. The credit statutes were also construed to apply to determinate enhancements for indeterminately sentenced inmates under the doctrine of constitutional avoidance. (See *id.* at pp. 493–494 & fn. 10.)

so, the second decision was what date to set. (Former section 3041, subds. (a), (b) (2014); *In re Dannenberg* (2005) 34 Cal.4th 1061, 1078–1079.)

The governing regulation, since rescinded, was quoted in *Monigold*. The board could award its own behavior credits to advance the release date, subject to a hard limit. " 'In no case may postconviction credit advance a release date earlier than the minimum eligible parole date.' " (*Monigold*, 139 Cal.App.3d at p. 491, fn. 8, quoting Cal. Admin. Code [now Cal. Code Regs.], tit. 15, former § 2290.) The board-issued credits could be applied to reduce the board-set base term, but they could not be applied to advance the MEPD. Once an inmate had earned enough credits to reduce the term set by the board to equal the MEPD, any further credits he might earn would have no effect.

CDCR and BPH now claim that it is an unheard-of absurdity that a body could have the authority to award credits but not to apply them to advance the MEPD so as to effect an advancement in the earliest date that it could release an inmate. (OB 11, 30–31.) The regulations of BPH's predecessor once provided exactly that.

In most cases involving postsentence credits, the ineligibility of indeterminately sentenced prisoners for credit and the inapplicability of credits to reduce the MEPD point to the same result, so there is no need to distinguish them or to discuss more than one. *Stofle*, *supra*, cited both rules, but *In re Cervera* (2001) 24 Cal.4th 1073, 1079–1080, came to the same conclusion based on the fact that article 2.5 only authorized credits for determinate terms, without mentioning section 3046 or needing to. For presentence conduct credits, however, the difference matters, and the law is clear.

B. Presentence Credits.

In 1976, the Legislature repealed the existing section 4019 and enacted a new version, providing conduct credits for presentence jail time, i.e., credits beyond actual "time served" for obeying the rules and working. Unlike the postsentence credit statutes, section 4019 does not distinguish between determinate and indeterminate sentences for eligibility. (*People v. Duff* (2010) 50 Cal.4th 787, 793; *People v. Brewer* (2011) 192 Cal.App.4th 457, 464.)

The cases decided prior to the statutory change regarding setting release dates uniformly held that indeterminately sentenced prisoners are eligible to receive these credits but can only use them to advance their release dates, not their minimum eligible parole dates. *People v. Carpenter* (1979) 99 Cal.App.3d 527, 535, involved a first-degree murder governed by the 1977 version of section 190, which had no stated minimum and no provision for credits. The seven-year minimum of section 3046 was a hard minimum. "Thus, the good time/work time credits cannot be used to reduce the minimum eligible parole date (MEPD)." (*Ibid.*) The credits could be used only to advance the release date set by the parole board, like the postsentence credits awarded by the parole board itself. "The matter is, therefore, remanded for a determination of the good time/work time credits that here can be *applied* only after the MEPD." (*Id*. at p. 536, italics added.)

People v. Philpot (2004) 122 Cal.App.4th 893, followed *Carpenter* in the context of a third-striker. "[P]resentence conduct credits are available to a defendant sentenced to an indeterminate life term under the three strikes law." (*Id*. at p. 908.) The trial judge erred in not including them in the judgment. (*Id*. at pp. 908–909.) "Presentence conduct credits may not be *used*, however, to reduce either a minimum term of 25 years or a maximum term of life. (*Ibid.*, citing *Carpenter* and § 3046, italics added.) "*[A]fter defendant has served the minimum term*, the Board of Prison Terms may use defendant's section 4019 credits in determining defendant's release date." (*Id*. at p. 909, italics added.) *Brewer*, *supra*, followed *Philpot*. (*Brewer*, 192 Cal.App.4th at p. 464.)

The distinction between eligibility and application in *Philpot* could not be more clear. The prisoner was entitled to the credits, and the judgment was modified to award them. (*Philpot*, *supra*, at p. 909.) Yet the credits could not be used to advance the minimum eligible parole date. CDCR's argument that the award of credits necessarily includes application to MEPD cannot be reconciled with this established law.

C. Additional Statutory Recognition.

Beginning in 1978, a number of statutes were enacted providing for minimum eligible parole dates longer than the seven-year rule of section 3046 but also reducible by credits. (See, e.g., *Monigold supra*, 139 Cal.App.3d at pp. 493–494 [describing Briggs Initiative provisions for noncapital murder]; § 667.7, subd. (a)(1) [habitual violent criminal, 20-to-life, enacted 1981].) In 1988, the Legislature amended section 3046 to expressly address how these provisions operated with that section's default seven-year rule. (Stats. 1988, ch. 214, § 1.) The amendment added to the first sentence, after "at least seven calendar years," this new language: "or has served a term as established pursuant to any other section of law that establishes a minimum period of confinement under a life sentence before eligibility for parole, *whichever is greater*." (*Ibid.*, italics added.) The amended sentence is substantially the same as present subdivision (a). (See Stats. 2000, ch. 287, § 19 [non-substantive clean up].)

The fact that the Legislature took pains to specify that the greater time would prevail is telling as to the present question. All of the statutes creating offense-specific minimums for indeterminate sentences had minimums greater than seven years. The seven-year minimum could be the greater of the two only if it were not reducible by credits. That the Legislature specified that the irreducible seven was still in force and still applied to limit a longer but reducible time indicates its awareness of the general rule and an intent to keep it in force, even when the inmate was eligible for credits under the statute setting the higher minimum.

The Legislature further recognized the distinct, though related, nature of eligibility and application to MEPD when it enacted section 2933.1 in 1994. The main provision, subdivision (a), capped credits at 15 percent for those prisoners convicted of any of the violent felonies listed in subdivision (c) of section 667.5. Subdivision (b), in its first sentence, specified that the limit applied to both determinate and indeterminate sentences. The next sentence precluded unintended side-effects: "However, nothing in subdivision (a) shall affect the requirement of any statute that the defendant serve a specified period of time prior to minimum parole eligibility, nor shall any offender otherwise statutorily ineligible for credit be eligible for credit pursuant to this section."

The two clauses of the second sentence separately address application rules and eligibility rules. The first clause protects the general rule that MEPD is not reduced by credits unless the statute defining the minimum allows such reduction. It would have no independent purpose if eligibility and application to MEPD were the same thing, as the second clause protects ineligibility statutes. Statutes are presumed not to contain superfluous language. (*People v. Valencia* (2017) 3 Cal.5th 347, 381.) Both clauses have a purpose because eligibility and application are not the same.

In *People v. Burkhalter* (2001) 26 Cal.4th 20, 31–32, this court summarized the restrictions that section 2933.1, subdivisions (a) to (c), place on persons convicted of a "violent felony." One is that such a person "cannot *apply* prison worktime credits against any minimum eligible parole date for an indeterminate sentence." (*Ibid.*, italics added.)[7] This limit can only refer to the first clause of the second sentence of subdivision (b), as nothing else in the section is directed specifically to parole eligibility. *Burkhalter* thus read the general rule preserved by this clause the same way that the Court of Appeal did in the present case, even using the same word to express the distinction.

Most recently, the Legislature has taken care to preserve section 3046's hard minimum as it has amended various statutes to change other aspects of parole. In 2015, the Legislature amended section 3041 to remove the function of setting parole dates from the parole board. (Stats. 2015, ch. 470, § 1.) The new release provision, section 3041, subdivision (a)(4), provided instead that "[u]pon a grant of parole, the inmate shall be released subject to all applicable review periods." However, as that language on its face might result in a release earlier than the MEPD, the Legislature added a proviso that "an inmate shall not be released before reaching his or her minimum eligible parole date as set pursuant to Section 3046." The only exception at that time was for the then-new youth offender parole.

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7. This was something of an overstatement, as there were still then and are still today some statutes that allow such application. (See fn. 3, *supra*.) But the point is valid for most indeterminately sentenced inmates.

In the 2017 act that created elderly parole, enacted after Proposition 57, the Legislature simply added elderly parole to the youth parole exception. It did not alter the language forbidding release before the MEPD "as set pursuant to Section 3046." (Stats. 2017, ch. 676, § 1.) In section 3046 itself, the Legislature has provided in subdivision (c) that the youth parole and elderly parole statutes may override the MEPD established under subdivisions (a) and (b) but otherwise left those subdivisions intact. Finally, in section 3051, subdivision (j), the Legislature authorized CDCR to advance youth parole eligible dates with Proposition 57 credits but did not see fit to authorize such credits to advance MEPD generally.

Over the course of many years, the Legislature has consistently maintained the general rule of section 3046 intact. It has made occasional targeted exceptions, but it has always preserved the general rule.

D. Lack of Authority for CDCR's Position.

CDCR repeatedly and vigorously insists that its credit-granting authority must necessarily enable it to shorten the sentences of all inmates. (OB 11–12, 30–35.) But vigor and repetition are not authority, and the authority CDCR cites is vanishingly thin. The text and history of Proposition 57 are discussed in Parts II.A and II.B, *infra*. This part will discuss the cases and statutes that CDCR's claims support its thesis. They do not.

The first assertion noted above has no authority stated, but it is in introductory material. On page 30, in the body of the argument, CDCR makes the bold assertion that "as a matter of law and practice" awarding and applying credits "are two sides of the same coin," and that "credits ... earned and awarded ... will *necessarily* be applied to an incarcerated person's sentence." (Italics added.) One would expect this sweeping claim to be supported with citations to laws that expressly or necessarily require this allegedly necessary application, along with evidence of practice that shows that earned credits are invariably applied. Instead we hear crickets. The only citation is to a marginally relevant regulation about forfeiting credits. (OB 31, fn. 13.) Nor is the claim supported by anything in the paragraphs that follow.

As demonstrated in subparts A, B, and C, *supra*, long-standing law and practice are contrary. Section 3046 has long been understood as generally requiring a minimum time not reduced by credits. The present version acknowledges that credits may indirectly enter into the computation of the MEPD if the "other law" that sets the minimum permits the reduction. (See § 3046, subd. (a)(2).) As explained *supra*, at page 17, the seven years remains a hard minimum even if an inmate sentenced under a statute authorizing MEPD-advancing credit earns so many credits as to reduce offense-specific minimum below seven.

As described *supra*, at page 14, the prior practice of the parole board itself demonstrates that an inmate could be eligible to receive board-issued credits but not have them applied to shorten his sentence below the statutory MEPD. The traditional practice with pretrial credits has been similar. (See *supra*, at pp. 15–16.)

With no authority directly supporting its position, CDCR attempts to make hay out of word choices in cases addressing entirely different issues. The fact that this court in *People v. Burkhalter*, 26 Cal.4th at page 30, referred to "term-shortening credits" has no bearing on any issue in this case. Of course credits have the purpose of shortening terms (cf. OB 31), but it does not follow that they shorten all terms under all circumstances. *Burkhalter*'s statement about not applying credits to advance MEPD (see *supra*, at p. 18) is far more probative than its choice of a shorthand term for the credits at issue. Similarly, the fact that credits are awarded in time-based increments may establish that credits generally have the purpose of reducing sentences (OB 31–32), but it does not follow that they always have that effect on every sentence.

CDCR next claims that "this Court has frequently described credits as operating automatically against an incarcerated person's sentence," citing three cases that do not say anything about automatic application and did not decide issues relating to automatic application. CDCR's parenthetical quotes for all three cases refer to credits being earned against a sentence (OB 31), which says nothing about how they are actually applied.

Further, it is blackletter law that "[a]n appellate decision is authority only for the points actually involved and decided." (*People v. Concepcion* (2008) 45 Cal.4th 77, 82, fn. 7.) None of the cases CDCR relies on involved or decided any point in this case. *People v. Lara* (2012) 54 Cal.4th 896, 905, was about pleading and proof requirements for facts that disqualified an inmate from presentence credit. *In re Reeves* (2005) 35 Cal.4th 765, 770, was about the application of the violent-felony limit on credits to an inmate who had both violent and nonviolent convictions. *Dix v. Superior Court* (1991) 53 Cal.3d 442, 463, was about the circumstances in which a court could recall a sentence and resentence to a lighter one. In none of these cases was the court focused on the nature of credits or whether there may be circumstances where an inmate is eligible to receive credits but cannot use them to make an actual reduction in his sentence.

This is a prime example of the time-honored maxim "that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used." (*Cohens v. Virginia* (1821) 19 U.S. 264, 399.) In that case, Chief Justice Marshall declined to follow his own dicta from *Marbury v. Madison* (1803) 5 U.S. 137. "The question actually before the Court is investigated with care, and considered in its full extent. Other principles which may serve to illustrate it, are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated." (*Cohens*, at pp. 399–400.) Even if the isolated phrases that CDCR cites had any relevance to the present controversy, nothing like the present issue was before the court, and the court's choice of words has no bearing on this issue.

Long-standing law and practice in California establish the general rule that conduct credits do not have the effect of reducing the minimum time that an indeterminately sentenced inmate must serve before becoming eligible for parole, with the only exceptions being statutes that set a minimum above the default seven years but allow it to be reduced by credits. The key question is whether anything in Proposition 57 clearly expresses or necessarily implies an intent to overthrow this long-established principle, sufficiently to overcome the contrary presumption. (See *People v. Superior Court* (*Zamudio*) (2000) 23 Cal.4th 183, 199.) To that question we now turn.

II. Proposition 57 does not authorize CDCR to redefine MEPDs.

"Don't be misled by false attacks. Prop. 57: ... Does NOT authorize parole for violent offenders." (Voter Information Guide, Gen. Elec. (Nov. 8, 2016) rebuttal to argument against Proposition 57, p. 59.) That is what the proponents of Proposition 57, including then-Governor Brown, promised the people of California. Beyond genuine question, if CDCR's interpretation is correct, then Proposition 57 authorizes parole for violent offenders earlier than they would otherwise be eligible, flatly contrary to the proponents' express promise. Neither the text, the purpose, nor the ballot materials require such a result, and fundamental principles of interpretation point against it.

A. The Text.

On its face, subdivision (a)(2) of section 32 of article I of the California Constitution ("section 32") simply says that CDCR "shall have authority to award credits earned for good behavior" etc. Putting aside for the moment the constitutional question of whether Proposition 57 validly could grant CDCR the super-legislative power to overrule the people and the Legislature, addressed in Part III, *infra*, the threshold question is whether these few words authorize CDCR to advance MEPDs at all. The superior court held that they do not (3 AA 752), and the Court of Appeal agreed. (Opn. 14.)

For the reasons described in Part I, *supra*, these holdings are correct. Section 3046 has long been understood to forbid shortening the time specified in subdivision (a) with conduct credits, except in the cases of sentencing statutes that prescribe a minimum longer than seven years but allow that minimum to be shortened. This is true even when the authority for awarding the credits applies to both determinate and indeterminate sentences. (See Part I.B *supra*, at pp. 15–16.)

CDCR's emphasis on its "broad authority to award credits" and the lack of a distinction in the text between determinate and indeterminate sentences (OB 26–27) is thus beside the point. That authority is not, plainly or otherwise, an authority to release a prisoner whom a statute, on its face or as long interpreted, says cannot yet be released regardless of credits. No one would seriously contend that CDCR's authority to award credits empowers it to release an inmate sentenced to life without parole or death. CDCR does not presently award such inmates credits (see OB 20–21), but even if it did they are ineligible for release in their lifetimes. The difference with indeterminately sentenced inmates is only one of time. By law they are not eligible for release until the minimum time set in section 3046 has been met.

For murderers, section 3046, subdivision (a)(2) incorporates the minimum time provisions of section 190. Subdivision (e) of that section prohibits shortening the MEPD with credits. While the first sentence of that subdivision refers to the statutory credit system, the second sentence unambiguously forbids any shortening.

CDCR gets the "elephants in mouseholes" point backwards. (Cf. OB 28.) The case cited, *Mendoza v. Fonseca McElroy Grinding Co., Inc*. (2021) 11 Cal.5th 1118, 1121, 1134–1135, declined to make an "expansive interpretation" of a statute by reading a modification of the types of workers covered by the prevailing wage law to also expand the law in a different dimension to cover additional types of work. In this case, CDCR is trying to take an enactment about awarding credits and transform it into a change in established law regarding what effect credits have. If Proposition 57 were intended to make such a change it would have been simple enough to say so, but the proposition does not say that. Repealing Proposition 222 of 1998, in which the people approved section 190, subdivision (e), would be an elephant, and it would not be hidden in the mousehole of "authority to award credits."

CDCR's other textual argument relies on the header language of section 32, subdivision (a) of article I of the California Constitution: "The following provisions are hereby enacted [for several purposes] notwithstanding anything in this article or any other provision of law." The specific mention of article I gives an indication of the conflict the drafters had in mind, the likely reason this clause was included, and what it was not intended to include. Article I, section 28, subdivision (f)(5) provides that sentences "shall not be substantially diminished by early release policies intended to alleviate overcrowding in custodial facilities." Section 32, subdivision (a)(1), the nonviolent parole program, does exactly that. But if the "notwithstanding" extends beyond the enactment of the new constitutional section and gives supremacy to the regulations that CDCR promulgates under it, then CDCR has the authority to override the Constitution itself, specifically including the Declaration of Rights. Was the intent to allow CDCR to override the state constitutional protections against ex post facto laws and the requirements of due process of law, equal protection, and freedom of religion? That seems highly unlikely, and the "notwithstanding" clause only covers subdivision (a) of section 32, not subdivision (b) authorizing regulations.

"The statutory phrase 'notwithstanding any other provision of law' has been called a 'term of art' that declares the legislative intent to override all *contrary* law." (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 983, citations and internal quotation marks omitted, italics added by *Arias*.) This override applies to "only those provisions of law that conflict with the act's provisions." (*Ibid*.)

There is no conflict between an authority to award credits and the general rule that minimum eligible parole dates are not reducible by credits. This is illustrated by the jail credit cases discussed *supra*, at pages 15–16. Those cases did not find a conflict between the general rule of section 3046 and the statutes that awarded presentence conduct credits to defendants later sentenced to indeterminate terms as well as determinate ones. (See *People v. Carpenter* (1979) 99 Cal.App.3d 527, 535; *People v. Philpot* (2004) 122 Cal.App.4th 893, 908–909; *People v. Brewer* (2011) 192 Cal.App.4th 457, 464.) They simply noted the limit on the use of credits awarded and moved on.

A "notwithstanding" clause is an indicator of how to deal with conflicting laws, but it does not create a conflict where none exists otherwise. Such a clause "subordinates or repeals existing law only to the extent that the two laws are irreconcilable." (*Sacramento Newspaper Guild, etc. v. Sacramento County Board of Supervisors* (1968) 263 Cal.App.2d 41, 55.) The general rule of section 3046 and specific rules against reduction of MEPDs via credits, such as section 190, subdivision (e), second sentence, can peacefully coexist with a broad authority to award credits.

The text of Proposition 57 does not require, or even imply, that CDCR has the authority to abrogate long-standing laws on minimum eligible parole dates. The ballot materials contain nothing compelling to the contrary, and the presumption against overthrowing longstanding principles and the doctrine of constitutional doubt both point against such an interpretation, as we will show below.

B. Ballot Materials.

If the text of an initiative measure does not resolve the question, a court may look to the ballot materials as the equivalent of legislative history. (See, e.g., *In re Lance W.* (1985) 37 Cal.3d 873, 887–888 & fn. 8.) The Court of Appeal correctly found that "nothing in the ballot materials brought to the voters' attention the department's authority to advance indeterminately-sentenced inmates' minimum eligible parole dates with credits." (Opn. 15; see also 3 AA 753 [superior court ruling, same].) CDCR's merits brief in this court (OB 36–41) adds little of substance beyond what the two previous courts have already correctly rejected.

1. Title, Summary, and Analysis.

The first section is the title and summary. The title includes "Parole," but the only mention of parole in the summary is the provision for "persons convicted of nonviolent felonies." (Voter Information Guide, Gen. Elec. (Nov. 8, 2016) official title and summary, p. 54 (Voter Guide).)

The Legislative Analyst's analysis begins with background, describing the preexisting system. The analysis first describes the difference between determinate and indeterminate sentencing. (Voter Guide, analysis by Legislative Analyst, p. 54.) This is followed by an explanation of parole consideration hearings, noting that the hearing is conducted after the minimum time has been served. "For example, BPH would conduct such a hearing for an individual sentenced to 25-years-to-life after the individual served 25 years in prison."[8] (*Ibid.*)

With no reference to credits or eligibility for credits, the Legislative Analyst informed the voters that an X-years-to-life sentence presently meant that the inmate had to serve an actual X years before release on parole. This correctly describes the general rule at the time for most indeterminate sentences, as described in Part I, *supra*. Nothing in this discussion indicates that any ineligibility for credits is the reason for the general rule of completion of the minimum term. Nowhere in the materials that follow does anything directly say that a change in this rule is proposed: not in the analysis and not in the arguments. (Cf. *In re Friend* (2021) 11 Cal.5th 720, 741.)

The next section notes that credits can reduce time that must be served, but this section is separate from the parole discussion and makes no mention of parole. (*Id.* at p. 55.) The analysis notes that "[o]ver two-thirds of inmates are eligible to receive credits." (*Ibid.*) CDCR tries to make this statistical note support its thesis "that voters were aware that Proposition 57 would permit CDCR to award credits to incarcerated persons with indeterminate sentences and that such credits would advance their minimum

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8. Actually, the initial *hearing* is conducted one year earlier, with the *release* no earlier than the MEPD (§ 3041, subds. (a)(2), (a)(4)), but this minor error by the Legislative Analyst is not material to the present discussion.

eligible parole dates." (OB 37.) The first part of this claim assumes that voters were aware of the statistics on the proportion of inmates with different types of sentences. That is an even greater stretch of presumed voter awareness than the one this court rejected as "beyond the breaking point" in *In re Gadlin* (2020) 10 Cal.5th 915, 942. CDCR provides no support at all for the further inference that the voters were told that Proposition 57 would accelerate MEPDs.

In the Analyst's discussion of the proposal, the first section discusses the new parole for nonviolent offenders. This section is not relevant to the present case, and CDCR does not claim that it is. (See OB 19–20, 38.)

The second section discusses credits with no mention of parole or indeterminate sentences. There is a general statement about awarding credits "to those currently ineligible" (*ibid.*), but nothing that ties this to the minimum time for eligibility under the existing parole law. CDCR claims that this reference must refer to "those serving indeterminate sentences" because "only that group was foreclosed by statute from earning any type of credit in any amount." (OB 38.) This is both factually incorrect and insufficient to support an inference of advancing MEPDs.

First, it is not true that all indeterminately sentenced inmates are foreclosed by statute from all credits. Indeterminately sentenced inmates are generally authorized to earn credits and use them to shorten the determinate enhancements added to their sentences (see *In re Monigold*, *supra*, 139 Cal.App.3d at p. 494), although murderers are not so eligible since Proposition 222 of 1998. (See § 2933.2, subds. (a), (b); *In re Maes* (2010) 185 Cal.App.4th 1094, 1110.) Second, a broad spectrum of inmates, both determinately and indeterminately sentenced, are ineligible for program credits. (See § 2933.05, subd. (e).) The authority to grant enhancement-reducing credits to murderers and program credits to violent felons, second- and third-strikers, and registration-required sex offenders is easily sufficient to give meaning to the reference to "those currently ineligible." CDCR's insistence that this could only refer to inmates foreclosed from all credits has no basis. If that were true, it would refer only to murderers and indeterminately sentenced inmates with no determinate enhancements, which would be quite odd. The Court of Appeal correctly rejected this argument. (Opn. 14.)

2. Arguments.

CDCR's argument regarding the ballot argument is based entirely on the opponents' arguments. (OB 39.) The proponents' argument is discussed only in an attempt to explain away the emphatic statement quoted at the beginning of this part. (See *supra*, at p. 22.) A look at how opponents' arguments are considered is in order before getting to the arguments themselves.

Robert L. v. Superior Court (2003) 30 Cal.4th 894, 906, holds that both proponent's and opponents' arguments need to be considered, but that does not mean that both have equal weight. *Robert L.* cites *Legislature v. Eu* (1991) 54 Cal.3d 492, 504–505, for the consideration of opponents' arguments, and *Eu* contains sage advice that bears remembering.

The issue in this portion of *Eu* was whether the term limits in an initiative were only limits on consecutive terms versus a lifetime ban on a "termed out" office-holder ever holding that office again. The opponents' arguments "forcefully and repeatedly" stated that it was a lifetime ban, and that was the "*primary thrust*" of their argument. (*Eu*, 54 Cal.3d at p. 505.)

Before relying on this argument, the *Eu* court noted a general problem with opponents' arguments. "We are mindful of the fact that ballot measure opponents frequently overstate the adverse effects of the challenged measure, and that their 'fears and doubts' are not highly authoritative in construing the measure." (*Ibid.*, quoting *Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Constr. Trades Council* (1988) 485 U.S. 568, 585.) That passage of *DeBartolo* quotes earlier cases for the proposition that sponsors' statements are more authoritative. With that caveat, *Eu* gave weight to the opponents' characterization of the ban because the proponents did not contradict it and because some of their statements tended to confirm it. (*Eu*, *supra*, at p. 505.)

Eu is therefore not authority that both sides' arguments invariably deserve equal weight. It is authority that opponents' arguments must be approached with caution, but they can have probative value when the circumstances indicate that voters likely accepted the characterization as true but voted for the measure anyway. The tendency toward overstatement that the *Eu* and *DeBartolo* courts noted would produce a tendency toward the extremes if opponents' "fears and doubts" were routinely accepted as authoritative. That is the last thing that California initiative law needs.

In *Robert L.*, the court rejected an argument based on a claimed contradiction by the proponents. However, it did not do so because it thought a contradicted opponents' argument was probative but rather because it did not view the arguments as necessarily contradictory. (See *Robert L.*, *supra*, 30 Cal.4th at p. 907, fn. 16.) The probative value of the opponents' argument is at its peak when the "proponents fail[] to respond directly to the opponents' clear assertion" of the meaning of initiative language (*In re Gadlin*, 10 Cal.5th at p. 940), particularly where this is the main argument, as in *Eu*. The further the state of the argument gets from that situation, the less value opponents' arguments have.

The opponents' argument in this case is a long way from that peak. First, it is far from clear that the argument CDCR relies on refers to advancement of MEPD at all. The opponents said "57 authorizes state government bureaucrats to reduce many sentences for 'good behavior,' even for inmates convicted of murder, rape, child molestation and human trafficking." (Voter Guide, argument against Proposition 57, p. 59, italics omitted.) Three of the four crimes listed are punished by determinate terms, at least in their base form. (§§ 264, subd. (a), 288, subd. (a), 236.1, subd. (a).) That leaves the inclusion of murder in the list as the slender reed on which CDCR's argument rests. (OB 39.)

CDCR notes that "[m]urder is punishable only by an indeterminate term." (OB 39.) That does not mean that "inmates convicted of murder" are punished only by indeterminate terms. Murderers can have consecutive determinate terms for enhancements and for other crimes committed in connection with the murder. Use of a firearm, for example, can add up to 10 years. (§ 12022.5, subd. (a).) The prevalence of gun use in homicide is widely known, and in fact about 70% of California homicides are by firearm. (California Department of Justice, Criminal Justice Statistics Center, Homicide in California 2024, table 18, p. 27.) Early releases of murderers from reduction of their consecutive determinate terms were enough of a problem to motivate the Legislature to enact section 2933.2 in addition to submitting an amendment to section 190 to the people. (See *supra*, at p. 28.) If Proposition 57 authorizes CDCR to override section 2933.2 and award credits that reduce determinate terms,[9] then inmates

9. Proposition 57 does so authorize as interpreted by the Court of Appeal, and this interpretation is not within the issue on which this court granted review. However, it would not be proper to set a Supreme Court precedent on this point, precluding other courts of appeal from disagreeing, without briefing and argument on the point.

convicted of murder can be released early without advancing their MEPD.

The first question is whether the opponents' ballot argument would be sufficient, if not contradicted, to inform the voters that by approving Proposition 57 they would be changing the minimum time in prison before parole as described in the Legislative Counsel's summary of existing law. It is not. It does not say that on its face, and even if we attribute to the voters the knowledge of sentencing law required by CDCR's argument, the conclusion does not follow that the early release necessarily must flow from advancing the MEPD.

But there is more. Even if the opponents' argument could be construed to claim that murderers would be paroled early from their murder sentence, the proponents of Proposition 57 flatly denied any such claim. "Opponents of Prop. 57 are wrong.... Don't be misled by false attacks. Prop. 57: ... Does NOT authorize parole for violent offenders." (Voter Guide, rebuttal to argument against Prop. 57, p. 59.) Murder is the ultimate violent offense. CDCR's regulations authorize BPH to grant parole to murderers who would not yet be eligible under prior law. If upheld, they would therefore authorize parole for violent offenders, squarely contrary to the proponents' arguments.

CDCR tries to minimize the importance of the proponents' rebuttal by claiming that it "is best understood as a response to opponents' arguments about a different provision of Proposition 57—the new nonviolent parole consideration process—not the credit-earning provision." (OB 40.) In other words, they ask the court to interpret the proponents' rebuttal to unequivocally promise the people that *one* provision of Proposition 57 will not authorize parole for violent criminals, even though the promise is not so limited on its face, while *another* provision will do exactly that, even though they did not mention the latter.

Even if the proponents were guilty of such dishonesty, what matters is what the people understood, not some hidden meaning of the advocates. Inference of voter intent from ballot materials must be made with a realistic view of what the voters would understand from those materials. (See *People v. Valencia* (2017) 3 Cal.5th 347, 373; *In re Gadlin* (2020) 10 Cal.5th 915, 942.) The proponents promised the people that Proposition 57 would not authorize parole for violent offenders. Under the regulations at issue, the Board of Parole Hearings has been regularly granting parole to murderers and other extremely violent offenders who are not yet eligible for it under the pre-existing law, citing Proposition 57 as the authority. That is a flat contradiction of the proponents' facially unequivocal promise, and no amount of legalistic loophole detection can make it anything else. The Court of Appeal correctly held that the ballot materials do not supply what is missing from the text, i.e., any intent to change the existing law on minimum eligible parole dates. (Opn. 15–16; PFR 45–46.)

C. Extraneous Materials.

Attempting to shore up the weak argument on ballot materials, CDCR proffers other statements outside those materials, a think tank paper and a radio news story. (OB 40–41.) Conspicuously absent from this proffer is any authority that such material is properly considered in interpreting initiatives. Actually, this court and the courts of appeal have regularly rejected such efforts.

Time and again, when California courts have needed to look beyond the text of an initiative they turn to the ballot materials, the closest available equivalent of legislative history. (See, e.g., *Strauss v. Horton* (2009) 46 Cal.4th 364, 400, 409–410; *In re Gadlin* (2020) 10 Cal.5th 915, 936; see also *Board of Supervisors v. Lonergan* (1980) 27 Cal.3d 855, 866 ["may constitute the only legislative history'].)

In *People v. Valencia*, this court declined to fill in a notable gap in the ballot materials with predictions by advocacy groups that Proposition 47 might have the effect at issue. "[T]here is no evidence that the electorate as a whole, or indeed any significant part of it, was aware of such statements." (*Valencia*, *supra*, 3 Cal.5th at p. 364, fn 5.) *Valencia* cited *Farmers Ins. Exchange v. Superior Court* (2006) 137 Cal.App.4th 842, 857, which had refused to give any weight to an article by the proposition author published in a legal periodical before the election.[10]

There appears to be only one case where material outside the voter guide was considered as the equivalent of legislative history for an initiative. *Independent Energy Producers Ass'n v. McPherson* (2006) 38 Cal.4th 1020, 1039–1043, considered a governor's inaugural address, a far different matter from a think tank paper or a radio reporter's opinion. And it was not just any inaugural address. It was the address of Governor Hiram Johnson following the progressive movement's electoral sweep of 1910 (see *id*. at pp.1038–1039), among the most important events in the history of California government. In these unique circumstances, it is a fair inference that it was at least as well known to the people as today's voter information guide.

With that rare exception, which is unlikely to occur again, the voter guide has been the only grist for the interpretive mill outside the text. Neither of the extraneous sources CDCR relies on would be particularly probative even if they could be considered. The first addresses only eligibility to earn credits, and the second is only one reporter's interpretation. More broadly though, and more importantly for future cases, it would be best for this

10. It should go without saying, but apparently needs to be said, that statements made after the election mean nothing in this regard. (See *Farmers Ins. Exchange*, 137 Cal.App.4th at pp. 857–858; *Valencia*, 3 Cal.5th at pp. 368–369, fn. 9.)

court to reaffirm that such statements are not cognizable as the initiative equivalent of legislative history. (See *Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 905 [disregarding "legislative antecedents" "not directly presented to the voters"]; *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 31–39 [detailing materials cognizable as legislative history and those not].)

D. Deference.

CDCR further relies on "principles of agency deference" to support its position that it has the power to override statutory definitions of minimum eligible parole dates. The parties agree that *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1 (*Yamaha*) is the leading case, as recently noted by *Center for Biological Diversity, Inc. v. Public Utilities Com*. (2025) 18 Cal.5th 293, 305, and that it applies to this constitutional case. (OB 46 & fn. 18.) But CDCR then goes astray applying *Yamaha*.

Most challenges to regulations are subject to a deferential standard. "*If* satisfied that the rule in question lay within the lawmaking authority delegated by the Legislature, and that it is reasonably necessary to implement the purpose of the statute, judicial review is at an end." (*Yamaha*, *supra*, 19 Cal.4th at pp. 10–11, italics added.) But that is a big "if," and there is no deference on the question of whether that prerequisite has been met. "A court does not ... defer to an agency's view when deciding whether a regulation lies within the scope of the authority delegated by the Legislature." (*Id*. at p. 11, fn. 4.) "In other words, we review independently whether an agency has lawmaking authority, even if it may be appropriate to defer to an agency's reasonable exercise of any such authority." (*Center for Biological Diversity, Inc. v. Public Utilities Com*., *supra*, 18 Cal.5th at p. 306.)

CDCR lists various matters on which it has expertise (OB 47–48), none of which has much relevance to the straight interpretative question of this case, i.e., whether the "authority to award credits" (Cal. Const., art. I, § 32, subd. (a)(2)) includes the authority to override the statutory definition of minimum eligible parole date. The question here is not the wisdom of shortening the sentences of the perpetrators of the most atrocious crimes, as doubtfully wise as that may be. The question is whether Proposition 57 actually did remove the final authority on that question from the Legislature and vest it instead in an executive agency. This is a question of law, involving interpretation of the Constitution and considerations of separation of powers. The relevant expertise and the interpretive advantage lie with the courts, not the agency. (Cf. *Yamaha, supra*, 19 Cal.4th at p. 12.)

When the legislative authority — the Legislature or the people directly — sets a minimum eligible parole date for life sentences generally or for a specific crime, that decision is not based solely or even primarily on factors within CDCR's expertise in prison management. That minimum is based to a large extent on a social judgment as to how much punishment is the minimum that anyone who commits a given crime should receive. In 1978, the people decided that seven years was not enough for premeditated murder and that the minimum should be raised to twenty-five with up to one-third off. (See *supra*, at p. 16.) Twenty years later, they decided that the one-third off was unjustified and eliminated it. (See *supra*, at p. 28.) These were legislative decisions, and an agency's opinion that it should have the final word no matter what the Legislature and the people think is not entitled to deference. Administrators generally are not prone to take modest views of their own "turf," and independent judicial review is particularly necessary for such decisions.

The challenge in this case is "whether [the] agency has [the] lawmaking authority" it claims, and independent review is the standard. (*Center for Biological Diversity, Inc. v. Public Utilities Com.*, *supra*, 18 Cal.5th at p. 306.)

E. Initiative Purpose.

The purpose of an initiative is a factor in its interpretation, but there are two limitations to keep in mind here. First, it is incorrect to assume that legislation " 'pursues its purposes at all costs.' " (*In re Friend* (2021) 11 Cal.5th 720, 740, quoting *Rodriguez v. United States* (1987) 480 U.S. 522, 525–526.) There is some point at which the impact on other competing values becomes excessive, and a simplistic assumption that an enactment is intended to be carried to an extreme to the sacrifice of those other values is likely incorrect. (See *ibid*.)

A second, related consideration, particularly important here, is that legislation may have more than one purpose, and even the legislation's own purposes may sometimes pull in different directions. CDCR acknowledges the multiple purposes of Proposition 57 in the introductory paragraph of its purpose discussion (OB 41–42) and then proceeds to ignore all but one for the body of that discussion. (OB 42–46.)

A proper discussion of purposes considers them all. Proposition 57, in its text, stated five purposes:

> "1. Protect and enhance public safety.
>
> "2. Save money by reducing wasteful spending on prisons.
>
> "3. Prevent federal courts from indiscriminately releasing prisoners.
>
> "4. Stop the revolving door of crime by emphasizing rehabilitation, especially for juveniles.

> "5. Require a judge, not a prosecutor, to decide whether juveniles should be tried in adult court." (Voter Guide, text of Prop. 57, § 2, p. 141.)

The first purpose is public safety, and this is the one hammered home in the proponents' arguments as they promised to keep dangerous offenders locked up and focused on the distinction between violent and nonviolent felonies. (See *In re Mohammad*, 12 Cal.5th at pp. 537–538.) A decision by BPH to grant parole is no guarantee that the criminal is no longer dangerous. The present parole law has a heavy tilt in favor of parole, "normally" requiring a grant at the first hearing unless the BPH makes an affirmative finding that public safety requires longer incarceration. (§ 3041, subds.(a)(2), (b)(1).) This fuzzy standard does not require a conclusive determination that there is no risk that the inmate will not commit further crimes after release.

Grants of parole to murderers can and do result in injuries and deaths of innocent people. For example, Darryl Collins was convicted of two robbery-murders in 1995 and granted parole in 2020. Within a year, he bound, gagged, and suffocated Fatima Johnson, 53, a mother of six and grandmother of eight, stole her jewelry and car, pawned the necklaces, and sold the car. (Los Angeles District Attorney, Press Release, Man Sentenced to Life Without Parole After Killing Girlfriend Less Than a Year After Release for Two Other Murders (March 20, 2026) <https://lacounty.gov/2026/03/20/man-sentenced-to-life-without-parole-after-killing-girlfriend-less-than-a-year-after-release-for-two-other-murders/> [as of April 15, 2026].) BPH is far from infallible, and errors in favor of parole can have tragic consequences.

Emphasizing the public safety purpose, the proponents assured the people that "Prop. 57 ... keeps dangerous criminals behind bars" and "WILL focus resources" on doing so. (Voter Guide, rebuttal to argument against Prop. 57, p. 59.) The unmistakable implication is that the early releases for some inmates are for the purpose of ensuring that there is enough room to "[k]eep[] the most dangerous offenders locked up." Keeping intact the minimum time for parole of murderers and aggravated rapists that the people previously approved in Propositions 222 and 83, and limiting early release to people who committed lesser offenses, is not an "absurd result" by any stretch of the imagination. (Cf. OB 33.) It is fully consistent with the first purpose of Proposition 57 as represented by its proponents.

Purpose three is directed at preventing "indiscriminate releases." Although it is directed at federal court orders for such releases, any suggestion that preventing a given type of release by federal court order by means of granting the same kind of release via state agency regulation would truly be absurd. Preventing indiscriminate releases requires being discriminate, i.e., recognizing genuine differences among criminals and not treating them as if they were all the same. This is confirmed by the proponents' argument regarding keeping the dangerous criminals locked up. Maintaining the prior law on minimum eligible parole dates for those criminals who have committed the exceptional crimes that call for indeterminate sentences is consistent with this purpose.

In the Answer to the Petition for Review at page 17, Plaintiffs noted that the number of indeterminately sentenced inmates blocked from release by the writ in the present case "is a small drop in a large bucket [with] no significant effect on the state's compliance with the *Plata* cap." Although this argument was addressed to a different point,[11] it is also relevant to the purpose question here. The portion of indeterminately sentenced inmates who become suitable for parole in the interval between the reduced minimum under CDCR's regulations and the hard minimum in section 3046 was a drop in the bucket in 2016, just as it is today. CDCR now tells us that the number has reached 219 two years after the writ was issued. (OB 44.) These cases are not insignificant to the victims and families of victims of the crimes at issue, and being required to serve the full minimum is not insignificant to the perpetrators. But this number *is* minor in the big picture of the prison population and the measures to reduce it, notwithstanding CDCR's protest. (Cf. *ibid*.) It is now, and it was then. The most reasonable explanation for the absence of *any* mention of advancing MEPDs in the text of Proposition 57, the Legislative Analyst's analysis, or the proponents' arguments is that it was not needed or important to achieve any purpose of the initiative.

Purpose two is to save money, but only by reducing *wasteful* spending on prisons. In their ballot arguments, the proponents unmistakably told the voters that the parole of violent felons was not their target, implying that such spending is not wasteful but necessary. They specifically said that Prop. 57 "• Saves taxpayer dollars by reducing wasteful spending on prisons. • Keeps the most dangerous offenders locked up." (Voter Guide, argument in favor of Proposition 57, p. 58.) Clearly, the "wasteful spending" that Proposition 57 was intended to reduce did not include the spending needed to keep the most violent felons in prison. Saving money need not and should not be pursued to the maximum. (See

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11. The discussion of present day consequences related to whether this case was important enough to warrant a grant of review in the absence of a split of authority. (See Cal. Rules of Court, rule 8.500(b)(1).)

In re Canady (2020) 57 Cal.App.5th 1022, 1036 [need not maximize monetary savings].)

Purpose four, rehabilitation, is related to the extent that applying credits to advance MEPD might encourage some indeterminately sentenced prisoners to participate in programs who otherwise would not and to the extent (if any) that those programs actually have some rehabilitative effect. (But see Cal. State Auditor, Transmittal Letter for Report 2018-113 (Jan. 31, 2019) <https://www.auditor.ca.gov/reports/2018-113/index.html> ["This report concludes that inmates who completed in-prison cognitive behavioral therapy (CBT) programs recidivated at about the same rate as inmates who did not complete the programs"].)

However, California courts have noted repeatedly over many years that indeterminately sentenced prisoners have an incentive to participate in rehabilitation programs to make a stronger case for parole when they do become eligible. (See, e.g., *In re Cervera* (2001) 24 Cal.4th 1073, 1082; *In re Monigold* (1983) 139 Cal.App.3d 485, 491.) CDCR scoffs at this as a "limited" incentive (OB 45) but offers no argument or evidence that it is insufficient or that the courts have been wrong all these years. The fact that the parole board does not meet with the inmate until six years before the MEPD does not stop CDCR from offering counseling upon intake or at any time thereafter. (Cf. OB 45.)

Purpose five is unrelated. It refers to parts of the initiative not at issue here.

Along with public safety, another competing value that pulls the other direction is justice. The people of California have the right to see persons who commit heinous crimes "sufficiently punished" for "punitive and deterrent effect." (Cal. Const., art. I,

§ 28, subds. (a)(4), (a)(5).)[12] The people have voted twice to extend the minimum eligible parole date for murder (see *supra*, at pp. 16, 28) because it is fundamentally wrong for a murderer to walk free in a handful of years when the victim will never walk or breathe again. In 2006, both the Legislature and the people voted to make the minimum in the "one strike" law a hard minimum (see *People v. Adams* (2018) 28 Cal.App.5th 170, 181–183; Proposition 83 of 2006, § 12, Stats. 2006, p. A-310) because it is wrong for a person who has committed the profoundly evil acts that qualify for that law to get off with less than the minimum. The purposes of Proposition 57 do not require that it be stretched so far as to override these important values.

In summary, the purposes of Proposition 57 are a mixed bag as far as the issue presented in this case is concerned. Overall, the purposes do not pull enough in either direction to significantly affect the analysis.

F. Constitutional Doubt.

"If a statute is susceptible of two constructions, one of which will … raise serious and doubtful constitutional questions, the court will adopt the construction which, without doing violence to the reasonable meaning of the language used, will render it … free from doubt as to its constitutionality." (*People v. Superior Court (Guevara)* (2025) 18 Cal.5th 838, 862, quoting *Conservatorship of Wendland* (2001) 26 Cal.4th 519, 548, internal quotation marks omitted.) "[A] statute must be construed, if reasonably possible, in a manner that avoids a serious constitutional question." (*Ibid.*, quoting *People v. Miracle* (2018) 6 Cal.5th 318, 339, internal quotation marks omitted.)

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12. Even if the Legislature has said something different (cf. OB 46), the Constitution prevails.

In the Court of Appeal, Plaintiffs argued that the serious doubt regarding whether CDCR's interpretation of section 32 would render it an invalidly adopted revision was a factor in favor of affirming the superior court's contrary interpretation regarding indeterminate sentences. (Respondents' Answer Brief and Cross-Appellants' Opening Brief 35.) CDCR did not dispute that serious doubts exist or that the principle developed for statutes applies to the revision issue for constitutional amendments. Their only response was that the alternate interpretation is not plausible. (Appellants' Combined Reply Brief and Cross-Respondents' Brief 50, fn. 17.) As to the indeterminate sentence issue, the fact that all four of the judges to consider this case to date have decided that the alternate interpretation is not only plausible but correct should be sufficient to dispose of that argument. (See Opn. 4, 13.)

CDCR's theory throughout this litigation is that the "notwithstanding" clause of article I, section 32 of the California Constitution makes its regulations superior to statutes. (See OB 29.) Although only pre-existing statutes are presently in conflict with CDCR's regulations, CDCR has offered no interpretation that would distinguish between pre-existing statutes and those that the Legislature or the people by initiative statute may enact in the future. CDCR's interpretation, therefore, means that the ultimate legislative authority for this area of law has been removed from the Legislature and the people and been vested instead in the same executive agency that implements the law.

The reasons why this would indeed be a revision are explained in the next part. For now, it is sufficient to note that a similar transfer of legislative power on a single subject to a judicial agency, i.e., this court, was a "fundamental and far-reaching change" raising a substantial revision issue, even though the case was decided on other grounds. (*Senate of the State of Cal. v. Jones* (1999) 21 Cal.4th 1142, 1167.) In addition, if an amendment that would have prevented the Legislature from delegating quasi-legislative authority on a particular issue is a revision (see *Legislature v. Weber* (2024) 16 Cal.5th 237, 270), then an initiative that delegates authority and blocks the Legislature from retracting it or overruling particular exercises of it surely raises a serious revision issue.

Added to the reasons discussed in the previous part, constitutional doubt provides a strong reason to affirm the Court of Appeal's interpretation regarding the indeterminate sentences.

III. If Proposition 57 is interpreted to vest plenary legislative authority in an executive agency, it is a revision not properly adopted by initiative.

If this court interprets Proposition 57 to authorize CDCR to substitute its own policies for those enacted into law by the people and the Legislature, "irrespective of statutory barriers" (OB 29), then it must confront the question of whether the vesting of unchecked legislative authority in an executive agency is a revision, as opposed to an amendment, of the Constitution, not validly enacted by initiative. If so, the portion which is a revision must be severed and declared invalid. (See *Raven v. Deukmejian* (1990) 52 Cal.3d 336, 341 (*Raven*).)[13]

The Court of Appeal did not address the revision issue as it relates to indeterminate sentences, the issue on which this court granted review. The court's interpretation of section 32 made that unnecessary. However, this issue is common to both the determinate and indeterminate sentences, and the court did address the

13. The juvenile justice reforms and the parole for nonviolent offenders are not at issue in this case. The superior court's assumption that the revision argument challenges the entirety of Proposition 57 (3 AA 744), is not correct.

issue as to the determinate sentences. That analysis was flawed, as discussed *infra*.

The separation of powers has long been regarded as among the most important elements of American constitutions, both state and federal. "The accumulation of all powers, legislative, executive, and judiciary, in the same hands ... may justly be pronounced the very definition of tyranny." (Madison, Federalist No. 47 (1788).) As we will show below, it has become the central focus of the distinction between revisions and amendments.

The history of the revision/amendment distinction was extensively reviewed in *Strauss v. Horton* (2009) 46 Cal.4th 364, 414–440 (*Strauss*). *Strauss* itself added a chapter to that history, as did the more recent decision in *Legislature v. Weber* (2024) 16 Cal.5th 237 (*Weber*). From this series of cases a clear pattern emerges. Qualitative revision challenges are assessed on whether they "alter the basic governmental framework" (*Brosnahan v. Brown* (1982) 32 Cal.3d 236, 261), and "framework" involves separation of powers concerns. Amendments can work major changes in government as a practical matter and not be revisions. An initiative rolled back this court's authority to adopt a rule of evidence it deemed necessary to protect a constitutional right, but it was not a revision. (See *infra*, at p. 47.) When initiatives remove basic powers from one branch of government and assign them to another branch or level, though, these provisions do not survive. Some have been found to be revisions. In one case, a substantial revision issue was presented but not decided because the case was resolved on other grounds. No changes of this type have been found not to be revisions.

The distinction between amendments and revisions has been in the California Constitution from the beginning, imported from the constitutions of other states which had begun making such distinctions in the 1830s. (*Strauss*, 46 Cal.4th at p.

415–416.) However, in the first century and a quarter of statehood, only two proposed amendments were challenged on this basis. A proposal to move the state capital to San Jose was obviously not a revision. (*Livermore v. Waite* (1894) 102 Cal. 113, 119–120.) The notorious "ham and eggs" initiative—21,000 words long and ranging from pensions to gambling to margarine to medical practice—obviously was. (*Strauss*, *supra*, at p. 422, discussing *McFadden v. Jordan* (1948) 32 Cal.2d 330.)

Revision challenges became more frequent beginning with the Proposition 13 tax revolt in 1978. *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208 (*Amador*) established the structure for analyzing revision challenges which remains to this day. *Amador* held that a proposed change can be a revision based on either the quantity of its changes, exemplified by *McFadden*, or the quality of the change, making "far reaching changes in the nature of our governmental plan." (*Id*. at p. 223.) The quantitative branch of the analysis has largely been displaced by the adoption of the single-subject rule (see *Legislature v. Weber*, 16 Cal.5th at p. 259), and it is not at issue in this case. The remainder of this discussion will focus on the qualitative analysis.

Amador's exemplar of a qualitative revision via a relatively simple provision was a hypothetical change in the separation of powers: "an enactment which purported to vest all judicial power in the Legislature." (*Amador*, 22 Cal.3d at p. 223.) The qualitative analysis of *Amador* focused on whether the new provision had the drastic effect on the allocation of government powers that the opponents claimed. The court rejected the claim that the initiative moved control of local government finance from the localities to the Legislature. Existing constitutional provisions on home rule were not impaired. (*Id*. at p. 225.) Local governments could still impose special taxes, albeit with voter approval. (*Id*. at p.

226.) The initiative did not empower the Legislature to control local budgetary decisions. (*Ibid*.) The popular vote requirement for new taxes was in line with long-standing requirements of popular vote in financial matters. (*Id*. at p. 228.)

Following *Amador*, revision challenges were rejected in a series of cases involving initiatives on criminal law. The common theme in these cases was that even though they made large and important changes, they did not contain substantial shifts in the separation of powers or assign one branch's power to another. *People v. Frierson* (1979) 25 Cal.3d 142, 185–187, rejected a claim that the 1972 initiative that reinstated capital punishment after its judicial abolition was a revision. The initiative did not remove from the judicial branch the authority to review death sentences. Although *Frierson* was a plurality, it was effectively endorsed by a majority the following year, and the provision in question has not been questioned on this ground in the hundreds of capital cases decided by this court since. (See *Strauss*, 46 Cal.4th at p. 430, fn. 21.)

In *Brosnahan v. Brown* (1982) 32 Cal.3d 236, this court rejected a revision challenge to a broad criminal justice reform measure, Proposition 8 of 1982. The court rejected the argument that the initiative authorized the Legislature to amend the Constitution by amending statutes referred to in the constitutional amendments, noting contrary precedents. (*Id*. at p. 261.) The court also rejected arguments based on perceived practical effects rather than shifts in the separation of powers. (*Ibid*.) The focus on separation of powers issues continued with *In re Lance W.* (1985) 37 Cal.3d 873. That case rejected a revision challenge to the abolition of the state exclusionary rule, saying it was not "a sweeping change either in the distribution of powers made in the organic document or in the powers which it vests in the judicial branch." (*Id*. at p. 892.)

In 1990, a second broad criminal justice reform initiative was approved by the people. This time, however, the drafters did run afoul of the revision barrier. It included a provision that a number of constitutional criminal procedure provisions had to be construed by the courts consistently with the parallel provisions of the Constitution of the United States. (*Raven*, 52 Cal.3d at p. 350.) Unlike the provisions previously upheld that had altered the provisions being interpreted by the courts, this one changed the power to interpret itself, effectively vesting the power to interpret the California Constitution in the United States Supreme Court. (*Id*. at p. 355.) By altering the federal-state separation of judicial powers, it was "a fundamental change in our preexisting governmental plan." (*Ibid*.)

The following year, this court considered another initiative making major changes in government, imposing term limits on the Legislature, restricting retirement benefits, and limiting expenditures. The court once again rejected a revision challenge based on perceived practical effects of the changes. (*Legislature v. Eu* (1991) 54 Cal.3d 492.) The initiative was missing the key element found in *Raven* and presented in *Amador*'s hypothetical—an alteration in "the foundational powers of [the government's] branches." (*Id*. at p. 509.) Here lies a key distinction which the Court of Appeal in this case failed to grasp.

> "By contrast, Proposition 140 on its face does not affect either the structure or the foundational powers of the Legislature, which remains free to enact whatever laws it deems appropriate. The challenged measure alters neither the content of those laws nor the process by which they are adopted. No legislative power is diminished or delegated to other persons or agencies. The relationships between the three governmental branches, and their respective powers, remain untouched." (*Ibid*.)

If Proposition 57 is interpreted as CDCR does, then it is the opposite of Proposition 140 in every sentence of this paragraph. The Legislature is *not* free to enact whatever laws it deems appropriate to set a hard minimum for indeterminate sentences. BPH would be able to grant them parole anyway, and CDCR would then release them anyway, "irrespective of statutory barriers," existing now or enacted in the future. (OB 29.)[14] The measure alters the process by which minimum time limits are adopted by empowering CDCR to override statutory limits, reducing them to pointless statements rather than the binding law of the land. Legislative power to have the last word on this issue is removed from the Legislature and the people and delegated to an executive agency. The relationship between the legislative and executive branches is not merely "touched," it is inverted. An unelected agency official is boss; the people's elected representatives and even the people themselves (by initiative statute) are subordinate.

Another case worth noting here raised a revision challenge, although it was not resolved as such. In *Senate of the State of Cal. v. Jones* (1999) 21 Cal.4th 1142, this court considered an initiative which, among other changes, would have removed reapportionment from the Legislature and vested this legislative power in the court itself. (*Id*. at pp. 1148–1149.) This raised a substantial revision question, and indeed the challengers made this their first point. (*Id*. at pp. 1150–1151.) The court decided the case on the single-subject rule rather than revision (*id*. at pp. 1152–1153), but the court's decision on that point is revealing. The court

14. In the many briefings in this litigation, CDCR has never proffered any interpretation by which preexisting statutes could be overridden by CDCR but future statutes could not, and at one point they effectively conceded that the Legislature's authority is curtailed under their interpretation. (3 AA 700.)

characterized the transfer of legislative power on one precise issue, reapportionment, from the legislative to the judicial branch as "fundamental" and took care to state a second time that it was not deciding whether it was a revision. (*Id*. at pp. 1167–1168.)

Reappointment reformers got the message. To deal with the Legislature's conflict of interest on this unique issue, they later moved this piece of legislative authority to a single-purpose body with no executive or judicial functions. (See Cal. Const., art. XXI, § 2.) This avoids the concentration of legislative authority in the same hands with executive or judicial, and it avoids the problem Madison warned of, *supra*, at p. 45. There do not appear to have been any revision challenges to this provision.

The separation-of-powers theme continued in *Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016. That case involved a constitutional amendment that authorized agencies to contract out engineering services, thereby eliminating a restriction that the judiciary had read into the civil service article. (*Id*. at p. 1025.) The civil service engineers claimed that the measure was an invalid revision because it removed the Legislature's power to regulate contracting out policies and vested it instead in executive agencies. That would have been a valid challenge if it had been a correct interpretation of the amendment, but it was not. The people exercised their own legislative authority to enact a constitutional amendment and implicitly repeal statutes. (*Id*. at p. 1047.) The Legislature had not been stripped of any legislative authority (*ibid*.), though it must, of course exercise it compatibly with substantive law in the Constitution. No legislative authority was vested in executive agencies.

Strauss itself was actually a straightforward case on the revision question. The length of the opinion is likely due to the extremely controversial nature of the provision in question, which was repealed in 2024. (See Voter Information Guide, Gen. Elec. (Nov. 8, 2024) text of Proposition 3, p. 75.) Proposition 8 of 2008 was not a revision because it made no structural change to California's plan of government. (*Strauss*, 46 Cal.4th at p. 442.) In this way, it was like *Legislature v. Eu, supra,* and unlike *Raven, supra*. (*Id*. at pp. 443–444 & fn. 22.) The present case is the reverse.

This brings us, finally, to *Weber*, the last in this series of cases. Consistently with the theme described above, the focus was on whether the initiative (called the "TPA" by the court) was a substantial change in the constitutional framework of how powers are distributed. (*Weber*, 16 Cal.5th at p. 277.) Several points were considered, the most pertinent of which was how "the TPA shifts power between the executive branch and the legislative branch." (*Id*. at p. 266.) The ability of executive agencies to exercise quasi-legislative power to charge fees would be impacted in three ways, most directly by a prohibition on imposing an "exempt charge" (i.e., a fee rather than a tax) by regulation rather than statute. (*Id*. at pp. 266–267.) The court noted the importance of the Legislature's ability to delegate " '*quasi*-legislative and *quasi*-judicial functions ... to departments, boards, commissions, and agents.' " (*Id*. at p. 268, quoting *Gaylord v. City of Pasadena* (1917) 175 Cal. 433, 436, italics in original.)

Under current law, the Legislature can and does choose between setting fees itself and delegating quasi-legislative authority to do so. That ability to choose is structurally important.

> "But the fact that the Legislature has chosen to set or limit certain fees does not answer Petitioners' central point that the Legislature today is authorized to decide whether to set certain fees itself or to delegate the task to various agencies. Under the TPA, the Legislature would be stripped of that authority and would instead be tasked with considering and

> voting on a multitude of fees currently set by agencies." (*Weber*, 16 Cal.5th at p. 270.)

The present case is a magnified mirror image of the provision in *Weber*, and *Weber* is not consistent with a central claim made by CDCR and accepted by the Court of Appeal. That is, in essence, that the complete transfer of legislative authority on this subject to the agency is no big deal because, on its face, it looks like earlier delegations of quasi-legislative authority made by the Legislature and upheld by the courts. After comparing Proposition 57 with such delegations, the Court of Appeal brushed off the revision issue in a single paragraph, claiming that a delegation that would be valid if the Legislature made it cannot be a revision. (Opn. 12–13.)

This is a *non sequitur*. The delegation cases cited by the Court of Appeal (Opn. 7) do not involve the same restructuring of the separated powers of legislative and executive entities. *In re Marriage of McKim* (1972) 6 Cal.3d 673, arose from the landmark 1969 Family Law Act, a major rewrite of that area of law. The Legislature recognized that the changes it was making and the different kind of procedure it was creating might well make the standard rules in the Code of Civil Procedure inappropriate, so it authorized the Judicial Council to create a new set of rules. (See *id*. at pp. 678–679.) Former Civil Code section 4001 provided, "Notwithstanding any other provision of law, the Judicial Council may provide by rule for the practice and procedure in proceedings under this part [the Family Law Act]." (*McKim*, at p. 678, fn. 4.) This authorization did not result in the kind of transfer of power at issue in this case because the Legislature retained the power to withdraw the authorization altogether or override particular rules.

Under *Weber*, the Legislature's power to decide whether to delegate, not delegate, or withdraw a delegation is the critical issue. If it is "beyond the scope of an initiative amendment to entirely withdraw from the Legislature its power to delegate" a quasi-legislative regulatory authority (*Weber*, 16 Cal.5th at p. 270), the equal and opposite must also be true. It is beyond the scope of an initiative amendment to entirely withdraw from the Legislature its power to retract or overrule such an authority.

Indeterminate sentences with substantial minimums are reserved for exceptionally heinous crimes, and the power to specify a minimum time of actual incarceration is a fundamental legislative power. As noted *supra*, at pages 28, 42, both the Legislature and the people decided to make the minimums for murder and for the aggravated sex crimes punishable under the "one strike" law hard minimums, not reducible by credits. CDCR has decided to the contrary, and if their interpretation is correct both the Legislature and the people by initiative statute are powerless to do anything about it. (Cf. *Newsom v. Superior Court* (2021) 63 Cal.App.5th 1099, 1116–1117 [termination power as safeguard].)

It is no answer to say that if the people are unhappy with this situation they can just pass a constitutional amendment. Qualifying an initiative is extremely expensive in California. In 2024, the five initiative statutes that qualified cost an average of 8.5 million dollars. (See Ballotpedia, California Ballot Initiative Petition Signature Costs <https://ballotpedia.org/California_ballot_initiative_petition_signature_costs> [as of April 16, 2026].) Constitutional amendments cost 60 percent more. (Cal. Const., art. II, § 8, subd. (b).)

Weber does not conclusively answer whether the TPA's shift in the legislative-executive balance amounts to a revision by itself. We now have the concept of the cumulative qualitative revision. (See *Weber*, 16 Cal.5th at p. 276.) But it does resolve that shifting that balance on a single area of law raises a substantial issue of a revision, as the court implied in *Senate v. Jones,* *supra.* Further, the change here strikes deeper at the fundamental constitutional plan than the one in *Weber*. Transferring plenary legislative power to the executive is a more fundamental change than limiting the Legislature's ability to transfer a more limited quasi-legislative power.

The power that CDCR claims would be a revision if Proposition 57 really vested them with that power. The preferred course would be to interpret the initiative to delegate only normal quasi-legislative power to fill in the gaps while respecting statutory limits, as explained in Part II. If the court should chose not to go that route, however, then the provision making that transfer is an illegally adopted revision of the Constitution and is void.

CONCLUSION

The decision of the Court of Appeal should be affirmed to the extent that it holds that article I, section 32, subdivision (a)(2) of the California Constitution does not authorize CDCR to redefine minimum eligible parole dates in contradiction of statutes. If it does, then that subdivision should be declared void as an invalidly adopted revision.

Date: April 22, 2026

Respectfully submitted,

KENT S. SCHEIDEGGER
Attorney for Plaintiffs and Appellants

CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court,
Rule 8.204, subd. (c)(1)

I, Kent S. Scheidegger, hereby certify that the attached **ANSWER BRIEF ON THE MERITS** uses a 13-point Century Schoolbook font and contains 13,914 words, as indicated by the computer program, WordPerfect, used to prepare the brief.

Date: April 22, 2026

Respectfully submitted,

KENT S. SCHEIDEGGER
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DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL

The undersigned declares under penalty of perjury that the following is true and correct: I am over eighteen years of age, not a party to the within cause, and employed by the Criminal Justice Legal Foundation, with offices at 2131 L Street, Sacramento, California 95816.

On the date below, I electronically filed the attached document, **ANSWER BRIEF ON THE MERITS**, by transmitting a true copy using the TrueFiling system. All participants in the case are registered TrueFiling users and will be served by the TrueFiling system.

In addition, I served on each person named below by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail addressed as follows and by electronically emailing a digital copy to the email addresses indicated:

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Executed on April 22, 2026, Sacramento, California.

Kent S. Scheidegger
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