

No. S290828

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

RAMIRO MUÑOZ,

Defendant and Appellant.

Second Appellate District, Division Seven, Case No. B336656,
Los Angeles County Superior Court, Case No. LA052535
The Honorable Martin Larry Herscovitz, Judge

**APPLICATION FOR PERMISSION TO FILE AND
BRIEF AMICUS CURIAE OF THE
CRIMINAL JUSTICE LEGAL FOUNDATION
IN SUPPORT OF AFFIRMANCE**

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**To the Honorable Chief Justice of the Supreme Court
of the State of California**

The Criminal Justice Legal Foundation (CJLF) respectfully applies for permission to file a brief amicus curiae in support of affirmance of the decision of the Court of Appeal.¹

Applicant's Interest

CJLF is a nonprofit California corporation organized to participate in litigation relating to the criminal justice system as it affects the public interest. CJLF seeks to bring the constitutional protections of the accused into balance with the rights of

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1. No party or counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amicus curiae CJLF made a monetary contribution to its preparation or submission.

victims and of society to rapid, efficient, and reliable determination of guilt and swift execution of punishment.

In this case, both the defendant and the Attorney General seek to widen a procedure for reopening criminal cases and reducing sentences in the absence of any error in the original proceedings. They ask this court to do so despite the contrary wording of the statute, breaking down a limitation on the scope of the statute that was well within the authority of the Legislature. Such a step would be contrary to the rights of victims of crime and society to effective punishment and finality under article I, section 28, subdivisions (a)(5), (a)(6), and (b)(9) of the California Constitution and contrary to the purposes for which CJLF was formed.

Need for Further Argument

CJLF has reviewed the parties' briefs in this matter and believes that further argument is necessary. There is presently no argument before the court supporting the decision of the Court of Appeal.

Date: June 10, 2026

Respectfully Submitted,

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INTRODUCTION

“In 2006 [Ramiro] Munoz, a member of a criminal street gang, killed Marcos Juarez by shooting him in the head and neck, for no apparent reason other than Munoz thought Juarez belonged to a (presumably, rival) gang. Juarez was not a member of a gang; he was just driving with his cousins to a family gathering.” (*People v. Munoz* (2025) 110 Cal.App.5th 499, 503.) Muñoz was 15 years old at the time of the crime. (*Id.* at p. 502.) He was convicted of first degree murder and shooting at an occupied motor vehicle, with gang and firearm allegations. (*Ibid.*) As modified on appeal, his sentence includes 25-to-life for first degree murder and an additional 25-to-life for personal use of a firearm causing death in the course of a listed felony under Penal Code section 12022.53, subdivision (d), for a total of 50-to-life.

Despite this sentence, Muñoz will actually be eligible for parole consideration much earlier under both the youth offender

and elderly parole statutes. (Pen. Code, §§ 3051, 3055.) Marcos Juarez will receive no second chance.

Even though he is eligible for two escape hatches from his well-deserved sentence, Muñoz claims that his constitutional right to equal protection of the law is violated by being excluded from a third escape hatch: the recall and resentencing procedure of Penal Code section 1170, subdivision (d)(1). (Opening Brief on the Merits 52 (OBM).) The Attorney General seeks the same result by urging an interpretation of the statute rejected as implausible in *People v. Heard* (2022) 83 Cal.App.5th 608, 625, 634, fn. 17 (Answer Brief on the Merits 31–35 (ABM)), the same case that the defendant relies on for its equal protection holding. (See also *Munoz*, 110 Cal.App.5th at pp. 511–512.) Both parties argue that the availability of youth offender parole makes no difference (OBM 67; ABM 35) and ignore elderly parole.

The trial court denied Muñoz’s petition for resentencing after finding that he would be eligible for youth offender parole in 2029, when he will be 39 years old. (*Munoz*, 110 Cal.App.5th at p. 503.) The Court of Appeal affirmed on the ground that “50 to life is not the functional equivalent of life without the possibility of parole” (*id.* at p. 510), “putting aside” section 3051. (*Id.* at p. 508.) Elderly parole and prison credits are not mentioned in the opinion.

ARGUMENT

I. The defendant in this case does not have a functional LWOP sentence for the purpose of equal protection analysis.

A. Functional LWOP, the Eighth Amendment, and Equal Protection.

Within the context of Eighth Amendment claims regarding sentencing of juveniles who commit major crimes, two propositions are well settled. First, an inmate who is eligible for youth offender parole under section 3051 of the Penal Code² “is not serving an LWOP sentence or its functional equivalent.” (*People v. Franklin* (2016) 63 Cal.4th 261, 280.) Second, for those not eligible for section 3051, a sentence with eligibility for parole within the defendant’s life expectancy but only by “a de minimis quantum of time” is equivalent to an LWOP sentence for the purpose of *Graham v. Florida* (2010) 560 U.S. 48. (*People v. Contreras* (2018) 4 Cal.5th 349, 368.)

Defendant asks this court to import the *Contreras* rule but not the *Franklin* rule from the Eighth Amendment context to the Equal Protection Clause³ context. (OBM 29, 46.) Defendant has it backwards. The broad contours of rational basis review under the Equal Protection Clause call for application of the *Franklin* rule but not the *Contreras* rule in determining whether the Legislature’s choice passes constitutional muster. Complaints should be

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2. Unless otherwise noted, all section references are to the Penal Code.
 3. U.S. Const., 14th Amend., § 1; Cal. Const., art. I, § 7, subd. (a). The two provisions are equivalent “for claims arising from allegedly unequal consequences associated with different types of criminal offenses.” (*People v. Chatman* (2018) 4 Cal.5th 277, 287; see also *People v. Hardin* (2024) 15 Cal.5th 834, 847, fn. 2.)

addressed to the Legislature. (See *People v. Munoz* (2025) 110 Cal.App.5th 499, 510.)

Successful equal protection challenges to criminal laws generally involve fundamental rights or suspect classifications. (See, e.g., *Skinner v. Oklahoma* (1942) 316 U.S. 535, 541 [sterilization]; *Yick Wo v. Hopkins* (1886) 118 U.S. 356, 374 [racial discrimination].) Where neither is involved, courts “find a denial of equal protection only if there is no *rational* relationship between a disparity in treatment and some legitimate government purpose.” (*People v. Chatman* (2018) 4 Cal.5th 277, 288–289.) “This core feature of equal protection sets a high bar before a law is deemed to lack even the minimal rationality necessary for it to survive constitutional scrutiny.” (*Id.* at p. 289.) Challenges such as this one come under the rational basis standard. (See, e.g., *People v. Hardin* (2024) 15 Cal.5th 834, 839.)⁴

Before *Hardin*, the first step of the analysis was to ask whether two groups that are similarly situated are treated in an unequal manner. (*Hardin, supra*, at p. 848.) *Hardin* dispensed with this step for cases where a statute on its face distinguishes identifiable groups. (*Id.* at pp. 849–850.) In such cases, “[t]he only pertinent inquiry is whether the challenged difference in treatment is adequately justified under the applicable standard of review.” (*Id.* at pp. 850–851.)

Putting youth and elderly parole aside for the moment, there are three identifiable groups to whom section 1170(d) could apply: (1) those who have received a life sentence that is explicitly without possibility of parole; (2) those who have received a life sentence with a minimum eligible parole date beyond their life expectancy; and (3) those who have received a life sentence with a

4. Defendant’s attempt to invoke strict scrutiny is discussed in Part II.A, *infra*, at pp. 17–18.

minimum eligible parole date within their life expectancy but in the late stage of their life. The statute, on its face, applies to group 1 and not to groups 2 or 3. (See *People v. Heard* (2022) 83 Cal.App.5th 608, 634, fn. 17 [constitutional avoidance interpretation not plausible].) But the pertinent inquiry for differential treatment of groups 1 and 2 is not the same as the inquiry for differential treatment of groups 1 and 3.

Under the terms of their original sentences, groups 1 and 2 have been sentenced to go to prison and die there, with no hope of release through the usual parole system. Before enactment of the youth and elderly parole laws, sections 3051 and 3055, the only hope was executive clemency. The defendant in the present case is in group 3, with “a realistic opportunity to obtain release from prison during his expected lifetime” at age 65. (*Munoz, supra*, 110 Cal.App.5th at p. 508.)⁵

The question in *Contreras* was whether that realistic opportunity of parole as a senior citizen was sufficient to take the case outside the Eighth Amendment rule of *Graham v. Florida* (2010) 560 U.S. 48. That was a close question on which reasonable people could and did differ, dividing this court by the narrowest possible margin. (See *Contreras, supra*, 4 Cal.5th at pp. 383–384 (dis. opn. of Cantil-Sakauye, C.J.).) The question in the present case is whether the same distinction under a statute, with no Eighth Amendment issue involved, is so unreasonable as to lack a

5. Advancing the minimum eligible parole dates of murderers via credits is forbidden by statutes (§§ 190, subd. (e), 2933.2, subd. (a), 3046, subd. (a)) but authorized by regulations. (Cal. Code Regs., tit. 15, § 3043(a), et seq.) The regulations were held invalid as applied to indeterminate terms to the extent that they conflict with statutes in *Criminal Justice Legal Foundation v. Department of Corrections & Rehabilitation* (2025) 113 Cal.App.5th 26, 42, review granted, Oct. 22, 2025, S292887.

rational basis. The reasons for the decision of *Contreras*'s slim majority do not apply. The concerns of *Graham* that nonhomicide juvenile felons have “a ‘chance for fulfillment outside prison walls’ ” (*id.* at p. 367 (maj. opn. of Liu, J.)) do not apply to a defendant convicted of murder because *Graham* itself is limited to nonhomicide cases. (See *id.* at p. 356.) For a juvenile convicted of murder, a life without parole sentence complies with the U.S. Supreme Court's Eighth Amendment precedents if “the sentence was not mandatory and the trial judge had discretion to impose a lesser punishment in light of [the defendant's] youth.” (*Jones v. Mississippi* (2021) 593 U.S. 98, 120.) No “chance for fulfillment outside prison walls” is constitutionally required, although states may provide such chances. (See *id.* at p. 121.)

The equal protection question in this case regarding the original sentence is whether a rational basis exists to treat an actual life without parole sentence differently from a “life with possibility of parole in retirement age” sentence. That is not a difficult question, and it is addressed in Part II.B, *infra*.

B. Functional Life Without Parole.

The concept of “functional life without parole” entered California law in *People v. Caballero* (2012) 55 Cal.4th 262. *Caballero* reviewed a court of appeal decision that held that the categorical ban of *Graham v. Florida, supra*, is limited to “an explicitly designated life without parole sentence.” (*Id.* at p. 267.) The court interpreted *Miller v. Alabama* (2012) 567 U.S. 460, decided just three months earlier, as clarifying that *Graham* also applied to a “sentence that amounts to the functional equivalent of a life without parole sentence.” (*Caballero* at pp. 267–268.) For brevity, we will call these two types of sentences “explicit LWOP” and “functional LWOP.”

Which of these types of sentence does the defendant in this case have? Neither. In addition to the reasons stated in Part I.A, *supra*, sections 3051 and 3055 preclude any sentence to which either section applies from being functional LWOP.

1. *Youth offender parole.*

Although supposedly enacted to address the constitutional problems of *Graham* and *Miller*, section 3051 goes much further than even the most expansive view of those decisions would require. In the cases to which they validly apply, subdivisions (b)(3) and (4) of section 3051 make an inmate eligible for parole on the first day of the 25th year of incarceration, i.e. after the end of the 24th year. Presentence jail time counts. (§ 3051, subd. (a)(2)(A).) That means that any eligible juvenile felon initially jailed for the crime before his 18th birthday will be eligible for parole before he is 42.⁶ Such an inmate has a real chance of spending half his adult years free, regardless of how many other people’s lives he has ended or shattered. (Cf. *Contreras*, 4 Cal.5th at p. 368 [“vast majority of adulthood”].)

On its face, section 3051 applies to all inmates who committed their crimes as juveniles except those convicted under the Three Strikes laws or the One Strike law, section 667.61, and those who commit additional “malice aforethought” crimes after turning 26. (§ 3051, subd. (h).) Whether the section can constitutionally override section 190, an initiative statute, is an open question. (See *People v. Board of Parole Hearings* (2022) 83 Cal.App.5th 432, 457; see also *People v. Bankston* (June 1, 2026, No. S044739) [typed opn. at pp. 130–132] [constitutional doubt of

6. Rare cases do exist of people being prosecuted decades later for crimes committed when they were juveniles. (See, e.g., *Skakel v. Commissioner of Correction* (Conn. 2018) 188 A.3d 1, 6–8.) Such anomalies can be dealt with when and if they arise.

interpretation of statute which would conflict with § 190].) In the present case, the portion of the sentence above 25 years comes from section 12022.53, which the Legislature can override.

In *Franklin*, this court described the effect of section 3051 as superseding the inmate’s sentence. (*Franklin*, 63 Cal.4th at p. 277.) Where a law has superseded the original sentence, it makes no sense to speak of that sentence as “functional LWOP.” The original sentence is hardly functional at all. Whatever residual function it may have, it certainly is not “without possibility of parole,” given that the superseding statute provides that possibility.

2. *Elderly parole.*

On top of section 3051, there is section 3055, misnamed “elderly parole.” As amended in 2020, this statute creates a right to parole consideration at age 50⁷ for inmates who have been incarcerated for at least 20 years. (§ 3055, subd. (a).) Nearly all inmates in prison for crimes committed before age 18 and not excluded by the statute’s terms will be eligible on their 50th birthday. The exclusions are Three Strikes, sentences of death or explicit LWOP, and first degree murder of a peace officer in performance of or retaliation for duty. (§ 3055, subds. (g), (h).)

The similarity with section 3051 leaves no doubt that the statute operates in a similar way, superseding the operation of the parole eligibility portion of the sentence. *People v. Contreras*, 4 Cal.5th at pages 374–378, declined to resolve whether the then-new statute mooted an Eighth Amendment claim. At the time,

7. The misdefinition of “elderly” as 50 and up marks this as one of the Legislature’s stranger statutes. Opinions vary as to what age constitutes “elderly,” but 50 is outside the range of reasonable disagreement. Even so, crimes against language do not rise to a constitutional defect.

the statute defined “elderly” as 60, and other issues unique to the *Graham-Miller* line of cases also clouded the picture. (See *id.* at p. 375 [“hallmark features of youth”].) These issues do not apply to the present case. Parole eligibility at 50 is a vastly lesser sentence than life without possibility of parole. By no stretch of the imagination is an inmate eligible for section 3055 imprisoned under a sentence of functional LWOP.

C. Amateur Actuary Efforts.

For the reasons stated in Part I.B, *supra*, the outcome in this case does not turn on whether a no-loop-hole sentence of 50-to-life would be the functional equivalent of life without parole. That is not, *functionally*, the sentence this defendant has. Even so, a note is in order about defendant’s thesis, accepted by the Court of Appeal dissent, that data on the average age of deaths in prison establishes the life expectancy that should be considered. (See *People v. Munoz, supra*, 110 Cal.App.5th at pp. 514–517 (dis. opn. of Feuer, J.).) This argument contains a howler of a methodology error that fairly jumps off the page to anyone with basic knowledge about how valid studies are done.

“Specifically, Munoz cites to inmate mortality reviews prepared by the California Correctional Health Care Services (CCHCS) that state the total number of deaths each year of inmates in California prisons and the ages of the inmates at death. In 2010 the average age at death of inmates in California was 54 years—more than 20 years shorter than the life expectancy of 76.9 years for a 15- or 16-year-old male in the United States according to the 2010 Life Tables referenced in *Contreras*. In 2011 and 2012 (when § 1170(d)(1) was enacted), the average age at death of inmates in California prisons was 55 years.” (*Id.* at pp. 514–515, footnotes omitted.)

In common parlance, the error is called “comparing apples and oranges.” In study methodology, it is called selection bias. The Centers for Disease Control tells us, “Selection biases may be

the most ubiquitous threat to the trustworthiness of health research.” (Soumerai, et al., How Do You Know Which Health Care Effectiveness Research You Can Trust? A Guide to Study Design for the Perplexed (2015) 12 Prev. Chronic Dis. E101, p. 2, <https://www.cdc.gov/pcd/issues/2015/pdf/15_0187.pdf> [as of June 4, 2026].) It is not limited to health research, though. The problem is rampant through all sciences that study people.

The “2010 Life Tables referenced in *Contreras*” used methods that take an entire birth cohort into account. Using “a set of age-specific death *rates*” includes data from those still living as well as those who have died. (See Arias, National Vital Statistics Reports, United States Life Tables, 2010 (Nov. 6, 2014) vol. 63, no. 7, p. 1, italics added, cited by *People v. Contreras* (2018) 4 Cal.5th 349, 360.) The living are counted in the denominator of the rate. Defendant’s data on average age of “male inmates who died in custody” excludes all the inmates who walked out of prison alive and considers only those who died in prison. The life expectancy of a cohort with many living members and the average age at death of only those members of a cohort who have died are two entirely different statistics, and comparing them as if they were the same is statistical gibberish.

The real statisticians at the U.S. Bureau of Justice Statistics constructed an apples-to-apples comparison by taking mortality rates for the general population and adjusting them to create a rate for a population that “resemble[s] the sex, race or ethnicity, and age distribution of the state prison population.” (U.S. Dept. of Justice, Bureau of Justice Statistics, Mortality in State and Federal Prisons, 2001–2019 – Statistical Tables (Dec. 2021) table 5, p. 12 <<https://bjs.ojp.gov/content/pub/pdf/msfp0119st.pdf>> [as of June 4, 2026].) Mortality for this adjusted general population was then compared to prison mortality rates. The result for 2019 was that mortality was substantially *lower* for prisoners than for the

general population. The rates of deaths per 100,000 were 308 for prisoners versus 435 for the adjusted general population.

Whether life expectancies for prisoners are longer, shorter, or about the same as the general population has not been established in this case. Nothing in the decision should turn on any such premise. While the court can take notice of official data, interpretation of the data to produce a usable result requires more expertise than any participant in this case to date has been shown to possess.

II. Rational reasons exist to limit § 1170(d) to explicit LWOP sentences.

A. Standard of Review.

For equal protection claims in cases such as this, rational basis review is so clearly the standard that it is often uncontested. (See, e.g., *Hardin*, 15 Cal.5th at p. 847.) In this case, the defendant seeks strict scrutiny review, dragging out once again the problematic language from *People v. Olivas* (1976) 17 Cal.3d 236, 250–251, that “personal liberty is a fundamental interest.” (OBM 53.) Of course it is, but that does not transform every criminal law issue into one warranting strict scrutiny. Such a transformation would paralyze the criminal law. This court and the courts of appeal have repeatedly rejected such attempts. (See *People v. Wilkinson* (2004) 33 Cal.4th 821, 837–838 [citing cases and rejecting a broad reading of *Olivas*]; *People v. Williams* (2024) 17 Cal.5th 99, 123 [rejecting strict scrutiny “for the same reasons we rejected a similar argument in *Wilkinson*”].) It would be best to deliver the *coup de grâce* and expressly disapprove *Olivas* to the extent that it suggests that the mere fact that a law involves incarceration calls for strict scrutiny. At the least, the argument should be rejected as in *Wilkinson* and *Williams*.

Defendant further calls for enhanced review merely by citing arrest statistics by ethnic group from a period spanning 43 to 29 years ago (OBM 54) when very violent, mostly minority, youth gangs committed a shocking number of violent crimes. Examples can be seen in this court’s cases, where young men murdered people merely because they were members of or associated with rival gangs, or believed to be. (See, e.g., *People v. Bankston* (June 1, 2026, No. S044739) [typed opn. at pp. 2–3]; *People v. Chhuon* (June 1, 2026, No. S105403) [typed opn. at pp. 34–35].) A third, more recent, example is the present case. (*Munoz*, 110 Cal.App.5th at p. 503.) Even in recent years, it is a regrettable but undeniable fact that rates of major violent crime commission by youths varies sharply among ethnic groups. In 2024, for example, black and hispanic youths together made up 87 percent of the juveniles arrested for homicide. (Cal. Dept. of Justice, Criminal Justice Statistics Center, Homicide in California 2024 (2025) table 30, p. 37.)

Defendant suggests a massive change in equal protection law, applying a heightened standard of review based merely on “impact” on particular ethnic groups without *any* consideration of whether the statistics result from disproportionate crime rates rather than differential treatment. (OBM 53–54.) A vastly greater showing would be needed for such a drastic change in the law. The suggestion ventures into the dangerous area of using different standards based on the race of the people involved, potentially committing rather than correcting an equal protection violation. (See *Students for Fair Admission v. Harvard* (2023) 600 U.S. 181, 206.) This case is governed by the rational basis standard.

B. Rational Reasons.

“Rational basis review ‘sets a high bar’ for litigants challenging legislative enactments.” (*Hardin*, 15 Cal.5th at p. 852.) Con-

versely, it does not take much to defeat such a claim. A rational basis need not have been expressed during the legislative process, and “‘courts may not second-guess its “‘wisdom, fairness, or logic.’”’” (*Ibid.*, quoting *Johnson v. Department of Justice* (2015) 60 Cal.4th 871, 881.) The analysis cannot be confined to a single purpose, as legislation often involves compromises among competing purposes. (*Id.* at pp. 853–854.)

1. *Resource allocation, alternate remedies, and different sentences.*

When the Legislature creates a judicial procedure, the resources required by that procedure provide a rational basis for limiting who can invoke it. (*People v. Chatman* (2018) 4 Cal.5th 277, 283.) The Legislature is not required to make an all-or-nothing choice. It may instead choose to proceed incrementally, addressing the cases it deems to be in greatest need of a remedy, even if the fit between means and ends is less than perfect. (*Williams*, 17 Cal.5th at pp. 124–125.) The financial analysis by the Assembly Appropriations Committee makes clear that the Legislature believed it was providing a remedy only for juveniles sentenced to life without parole for first degree murder with special circumstances. (Assem. Com. on Appropriations, Analysis of Sen. Bill No. 9 (2011–2012 Reg. Sess.) as amended Aug. 15, 2011, p. 3.) The load was estimated to be only 20 petitions a year, with about 5 hearings. (*Id.* at p. 2.) Those sentenced to life without parole for nonhomicide crimes already had a remedy under *Graham*. (*Id.* at p. 3.) It is entirely rational to decline to extend a remedy to people who have another remedy.

Juveniles sentenced to functional LWOP for murder without special circumstances via enhancements or consecutive sentences were left out of SB 9 of 2011, but the Legislature followed with the next increment in 2013, after the *Miller* and *Caballero* decisions. As initially enacted, section 3051 applied only to juve-

niles and excluded those sentenced to life without parole. (Former Pen. Code, § 3051, subds. (a)(1), (h) (2014).) In 2017, the Legislature passed two parole bills, both effective January 1, 2018. Senate Bill 394 extended youth offender parole to juveniles sentenced to explicit LWOP (Stats. 2017, ch. 684, § 1.5 [adding § 3051, subd. (b)(4) and amending subd. (h)]), while Assembly Bill 1448 created elderly parole, excluding those sentenced to explicit LWOP. (Stats. 2017, ch. 676, § 3; Pen. Code, § 3055, subd. (h).)

Thus, juveniles sentenced to functional LWOP have been eligible for a remedy denied to those sentenced to explicit LWOP at all times since the effective date of the original section 3051: youth offender parole from 2014 through 2017 and elderly parole from 2018 to the present. These alternate remedies do not disqualify the inmates with functional LWOP from section 1170(d)(1). (Cf. ABM 37.) The statute itself does that by its plain meaning. (See *supra* at p. 11.) The alternate remedy provides a rational basis and removes any equal protection problem that might otherwise exist.

Even without sections 3051 and 3055, the Legislature's authority to address problems incrementally is ample justification to distinguish between inmates with sentences having zero hope of parole and those with sentences having some hope of parole, even if late in life. For the reasons described in Part I.A, the defendant's original sentence did provide such a hope. As the Court of Appeal correctly held, this difference is easily sufficient to meet the minimal requirement of a rational basis.

2. *Constitutional doubt.*

Doubt as to whether a given interpretation of a statute is constitutional is considered by courts in the interpretation process, and that can include doubt as to whether a statute enacted by the Legislature violates the limit on amending initiatives. (See

Bankston, *supra*, No. S044739 [typed opn. at pp. 129–135].) Surely the Legislature may consider such doubts as well. In *Bankston*, the constitutionality of a statute would have been doubtful if it was interpreted to prohibit upon a retrial a sentence that was authorized by an initiative statute. (*Id.* at pp. 130–132.) Sections 3051 and 3055 operate by superseding sentences, but when those sentences are authorized by an initiative there is doubt whether the Legislature can do so, just as in *Bankston*. (See *supra* at pp. 13–14.)

That constitutional question need not and should not be answered in the present case, just as it was not in *Bankston*. It is enough that the doubt exists. The Legislature could rationally retain section 1170(d)(1) for explicit LWOP cases even after amending section 3051 to include them because for first degree murder with special circumstances (i.e., most or all of explicit LWOP cases) there is doubt whether the amendment is constitutional. There is no such doubt when functional LWOP results from the Legislature’s own statute, such as section 12022.53 in this case.

Other rational reasons might be suggested, and other *amici* may well do so, but these are sufficient. The notion that nonhomicide offenders must always be treated more favorably than homicide offenders was rejected in *Williams*, *supra*, 17 Cal.5th at pages 132 to 133, and rational reasons exist in this case. That is all that is required for rational basis review.

CONCLUSION

The decision of the Court of Appeal should be affirmed.

Date: June 10, 2026

Respectfully Submitted,

KENT S. SCHEIDEGGER

Attorney for Amicus Curiae

Criminal Justice Legal Foundation

CERTIFICATE OF COMPLIANCE
Pursuant to California Rules of Court,
Rule 8.520, subd. (c)(1)

I, Kent S. Scheidegger, hereby certify that the attached
**BRIEF AMICUS CURIAE OF THE CRIMINAL JUSTICE
LEGAL FOUNDATION IN SUPPORT OF AFFIRMANCE**
contains 4313 words, excluding the items listed in Rule
8.520(c)(3), as indicated by the computer program, WordPerfect,
used to prepare the brief.

Date: June 10, 2026

Respectfully Submitted,

A handwritten signature in black ink that reads "Kent S. Scheidegger". The signature is written in a cursive, flowing style.

KENT S. SCHEIDEGGER
Attorney for Amicus Curiae
Criminal Justice Legal Foundation

DECLARATION OF ELECTRONIC SERVICE

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 June 10, 2026, I served true copies of the following document described as:

**APPLICATION FOR PERMISSION TO FILE AND
BRIEF AMICUS CURIAE OF THE CRIMINAL JUSTICE
LEGAL FOUNDATION IN SUPPORT OF AFFIRMANCE**
on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY ELECTRONIC SERVICE: I electronically filed the document with the Clerk of the Court by using the TrueFiling system. Participants in the case who are registered TrueFiling users will be served by the TrueFiling system. Participants in the case who are not registered TrueFiling users will be served by electronic mail as listed in the service list.

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

Executed on June 10, 2026, Sacramento, California.

A handwritten signature in black ink, reading "Kent S. Scheidegger", written over a horizontal line.

Kent S. Scheidegger

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