IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, [DIVISION]

ALL OF US OR NONE, LEGAL SERVICES FOR PRISONERS WITH CHILDREN, LEAGUE OF WOMEN VOTERS OF CALIFORNIA, and ALISHA COLEMAN,

Petitioners,

vs.

DEBRA BOWEN, Secretary of State of the State of California; and JOHN ARNTZ, Director of the Department of Elections, County of San Francisco,

Respondents.

PETITION FOR WRIT OF MANDATE AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION

JORY STEELE (206944)
DIANA TATE VERMIERE (232264)
MARGARET C. CROSBY (568812)
NOVELLA COLEMAN (281632)
LINNEA NELSON (278960)
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF NORTHERN CALIFORNIA, INC.
39 Drumm Street
San Francisco, CA 94111
Telephone: 415-621-2493
Facsimile: 415-255-8437

PETER SHEEHAN (51555)
SOCIAL JUSTICE LAW PROJECT
449 15th Street, suite 301
Oakland, CA 94612
Telephone: 510-891-9794 ext. 628
Facsimile: 510-891-9727

Additional Counsel Listed on Next Page

Service on the California Attorney General required by Rule 8.29

OREN SELLSTROM (161074)
MEREDITH DESAUTELS (259725)
LAWYERS' COMMITTEE FOR CIVIL RIGHTS OF THE SAN FRANCISCO BAY AREA
131 Steuart Street, Suite 400
San Francisco, CA 94105
Telephone: (415) 543-9444
Facsimile: (415) 543-0296

JOSHUA KIM (257260)
CT TURNEY (279241)
A NEW WAY OF LIFE REENTRY PROJECT
PO Box 875288
Los Angeles, CA 90087
Telephone: (323) 563-3575
Facsimile: (323) 563-3445

CATHERINE MCKEE (267126)
LEGAL SERVICES FOR PRISONERS WITH CHILDREN
1540 Market St., Suite 490
San Francisco, CA 94102
Telephone: (415) 255-7036
Facsimile: (415) 552-3150

ROBERT RUBIN (85084)
LAW OFFICE OF ROBERT RUBIN
315 Montgomery St., 10th Fl.
San Francisco, CA 94104
Telephone.: (415) 434-5118

Attorneys for Petitioners

TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL, First APPELLATE DISTRICT, DIVISION	Court of Appeal Case Number:
ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):* Jory Steele, CA BAR 206944 American Civil Liberties Union Foundation of Northern California 39 Drumm Street San Francisco, CA 94111 TELEPHONE NO.: 415-621-2493 FAX NO. *(Optional):* 415-255-8437 E-MAIL ADDRESS *(Optional):* jsteele@aclunc.org ATTORNEY FOR *(Name):* Petitioner	Superior Court Case Number:
APPELLANT/PETITIONER: ALL OF US OR NONE, ET AL. RESPONDENT/REAL PARTY IN INTEREST: BOWEN, ET AL.	FOR COURT USE ONLY
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS *(Check one):* ☑ INITIAL CERTIFICATE ☐ SUPPLEMENTAL CERTIFICATE	

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

1. This form is being submitted on behalf of the following party *(name)*: All of Us or None, Legal Services for Prisoners with Children, League of Women Voters of California, and Alisha Coleman

2. a. ☑ There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. ☐ Interested entities or persons required to be listed under rule 8.208 are as follows:

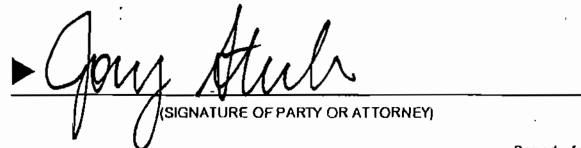
	Full name of interested entity or person	Nature of interest *(Explain):*
(1)		
(2)		
(3)		
(4)		
(5)		

☐ Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: March 5, 2012

Jory Steele
(TYPE OR PRINT NAME)


(SIGNATURE OF PARTY OR ATTORNEY)

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Petitioners,	)
vs.	)
DEBRA BOWEN, Secretary of State of the State of California; and JOHN ARNTZ, Director of the Department of Elections, County of San Francisco,	)
Respondents.	)

PETITION FOR WRIT OF MANDATE

To the Honorable Justices of the Court of Appeal, First Appellate District:

By this verified petition, petitioners allege:

INTRODUCTION

1. This original writ petition is brought to protect the fundamental voting rights of tens of thousands of California citizens. Petitioners ask this Court to clarify the impact of the Legislature's historic reform of the state's criminal justice system last year on the franchise. Under the 2011 Realignment Legislation (hereinafter "Realignment"), people who have committed non-serious, non-violent, non-sexual offenses may no longer be sentenced to state prison. Instead, they will remain in their local communities, under supervision or in county jail.

2. The Secretary of State has advised local registrars that these Californians may not vote. Petitioners contend that under article II, section 4 of the California Constitution, as this Court interpreted it in *League of Women Voters v. McPherson*, 145 Cal. App. 4th 1469 (2006), these citizens retain the right to vote. They are not in the custody of the California Department of Corrections and Rehabilitation. They are neither in prison nor on parole, the only circumstances resulting in temporary disenfranchisement of citizens with felony convictions under the California Constitution. Petitioners, many of whom brought the *McPherson* writ proceeding on behalf of felony probationers, have returned to this Court to

seek a writ to protect the voting rights of citizens convicted of low-level offenses who are residing in their communities and who wish to participate in the 2012 elections.

JURISDICTIONAL STATEMENT

3. Petitioners respectfully invoke the original jurisdiction of this Court pursuant to article VI, section 10 of the California Constitution and Rule 8.468 of the California Rules of Court. Petitioners submit that exercise of this discretionary jurisdiction is appropriate in this case because:

a. The issue presented is of substantial statewide importance, involving the voting rights of thousands of California citizens.

b. Prompt resolution of this action is necessary so that voters and election officials throughout California will know who is eligible to vote at the November 2012 election. The deadline for registration for that election is October 22, 2012. Definitive resolution of the issue by an appellate opinion will also provide necessary guidance for future elections.

c. The issue presented is purely one of law, suitable for resolution by this Court in the first instance. Proceedings in the trial court will not narrow the issues or produce a factual record.

PARTIES

Petitioners

4. Petitioner All of Us or None ("AOUON") is a project of petitioner Legal Services for Prisoners with Children ("LSPC"). AOUON

is dedicated to fighting discrimination against people who have been incarcerated. AOUON works to inform individuals with convictions of their voting rights and spearheads voter registration efforts. AOUON has standing to vindicate the public interest in ensuring that individuals with felony convictions have a voice in society, thereby countering discrimination, promoting reintegration, and lowering recidivism rates.

5. Petitioner Legal Services for Prisoners with Children ("LSPC") is a nonprofit organization that advocates for incarcerated parents, their family members, and people at risk for incarceration. LSPC works towards the reintegration of individuals with felony convictions into their communities and believes that voting is an important step towards this goal. LSPC has standing to vindicate the public interest in ensuring that individuals with felony convictions have a voice in society, thereby countering discrimination, promoting reintegration, and lowering recidivism rates.

6. Petitioner League of Women Voters of California ("LWVC") is a nonpartisan political organization with over 11,000 members. LWVC encourages the informed and active participation of citizens in government, works to increase understanding of major public policy issues, and influences public policy through education and advocacy. LWVC seeks to increase participation in elections, and signed the ballot argument in support of the initiative that is at the core of this proceeding.

7. Petitioner Alisha Coleman is a 30 year-old African American woman incarcerated in San Francisco County Jail No. 2. Ms. Coleman has lived in California for the last 12 years and has a daughter. She is serving a sentence of three years in county jail and one year of mandatory supervision for possession of drugs for sale and sale/transport of drugs. Ms. Coleman voted for the first time in the November 2011 local election. She wants to vote in the future so that her voice is heard on issues that are important to her.

Respondents

8. Respondent Debra Bowen is sued in her official capacity as Secretary of State of California. As the State's Chief Elections official, she is responsible for ensuring voter registration and voter participation in every election.

9. Respondent John Arntz is sued in his official capacity as Director of Elections for the City and County of San Francisco. Respondent is responsible for conducting all federal, state and local elections in San Francisco.

FACTS

10. In 1974, the Legislature proposed and the voters passed Proposition 10, which amended the California Constitution to expand the voting rights of citizens with convictions. The initiative changed California's disenfranchisement provision, from a blanket disfranchisement

of citizens with felony convictions to a limited exclusion, which granted voting rights to all except those "imprisoned or on parole for the conviction of a felony." The Legislature subsequently enacted Elections Code section 2101, which authorized registration by any mentally competent citizen residing in the state, at least 18 years old at election time, "not in prison or on parole for the conviction of a felony." True and correct copies of the following are attached to this Petition, and incorporated herein by reference: a timeline of the California Constitution's criminal disenfranchisement provision attached as Exhibit 7; Attorney General's Opinion, 88 Cal. Op. Att'y Gen. 207 (2005) attached as Exhibit 5; Memorandum from Judith A. Carlson, Staff Counsel, Sec'y of State, to All County Clerks/Registrars of Voters (Dec. 28, 2005) attached as Exhibit 6; and Memorandum from March Fong Eu, Sec'y of State, to County Clerks and Registrars of Voters (Apr. 30, 1976) attached as Exhibit 15.

11. The Legislature, which drafted Proposition 10, and the voters who passed the initiative, intended to expand the franchise. While drafting Proposition 10, the Legislature considered and rejected language that would have disenfranchised probationers, and instead resolved to limit disenfranchisement to only those individuals in state prison or on parole. The voters adopted the Legislature's proposal at the ballot. True and correct copies of the following are attached to this Petition, and incorporated herein by reference: the California Constitution Revision

Commission report attached as Exhibit 8; Proposition 8 ballot information attached as Exhibit 9; letters between the Senate Judiciary Committee and the Legislative Counsel attached as Exhibits 10-11; 1973 versions of Penal Code sections 2600 and 3054 attached as Exhibits 12-13; and the Proposition 10 ballot pamphlet attached as Exhibit 14.

12. In 2011, the Legislature enacted Realignment. This fundamental transformation of the state's criminal justice system created new categories of individuals:

(a) The first category consists of individuals who have committed non-serious, non-violent, non-sexual felonies and who, after October 1, 2011, may no longer be sentenced to state prison or placed on parole. These individuals will remain in their communities, subject to a variety of sentencing options. Realignment authorizes courts to sentence these individuals to serve their entire sentences in county jail or to serve a "split sentence," under which the individual will be on mandatory supervision for the concluding portion of the sentence.

(b) The second category consists of individuals convicted of low-level offenses who are released from state prison on or after October 1, 2011. They will not be placed on parole; instead, they will be returned to their communities under the supervision of local authorities, under a newly-created system called "postrelease community supervision" ("PRCS").

None of the individuals described in subsections (a) and (b) will be in the custody of the California Department of Corrections and Rehabilitation ("CDCR"). True and correct copies of the following are attached to this Petition, and incorporated herein by reference: Governor Brown's AB 109 signing message attached as Exhibit 3; and Garrick Byers Realignment Analysis, Appendix 1 attached as Exhibit 4.

13. On December 5, 2011, respondent Bowen issued Memorandum # 11134, directed to all County Clerks/Registrars of Voting, stating that none of the individuals convicted of low-level offenses and sentenced under Realignment described in paragraph 12 -- people confined in county jails for non-serious, non-violent, non-sexual felonies, people released onto mandatory supervision for the concluding portion of those low-level felony sentences, or people on PRCS – are eligible to vote. A true and correct copy of Memorandum # 11134 is attached to this Petition as Exhibit 1, and incorporated herein by reference.

CLAIMS

14. The refusal to allow individuals convicted of low-level offenses not in the custody of CDCR to register violates their fundamental right to vote, as secured by the Constitution and the Elections Code. The express language of article II, section 4, as amended by Proposition 10 and interpreted by this Court, preserves the right to vote for every adult citizen who is not in state prison or on parole for the conviction of a felony. A true

and correct copy of *League of Women Voters v. McPherson*, 145 Cal. App. 4th 1469 (2006), is attached to this Petition as Exhibit 2, and incorporated herein by reference.

ENTITLEMENT TO WRIT RELIEF

15. Petitioners are beneficially interested in the issuance of the writ. Petitioners AOUON, LSPC and LWVC bring this action to vindicate the public interest in ensuring that Californians qualified to vote do not face unlawful barriers to registration and those individuals with criminal convictions are not excluded from democratic participation crucial to rehabilitation. Petitioner Coleman will register to vote and vote if this Court grants relief directing respondents to accept valid affidavits of registration and permit qualified residents to vote.

16. Respondents have a mandatory duty to accept the registration affidavits of all qualified residents and to permit them to vote. Because of respondent Bowen's Memorandum, respondents have barred eligible voters from registering to vote and from voting at the November 2012 and future elections.

17. Petitioners have no plain, speedy or adequate remedy at law to compel respondents to perform their duty. Damages cannot provide adequate relief for denial of voting rights. Time is of the essence, because

the final day to register for the November 2012 election is October 22, 2012.

18. By exercising its original jurisdiction, this Court may clarify these important questions in time for voters to participate in upcoming state and local elections. In contrast, a case in Superior Court will lack statewide jurisdiction and take years to resolve, potentially depriving thousands of people of their right to vote in elections in 2012 and beyond.

PRAYER FOR RELIEF

Petitioners respectfully request that this Court:

19. Issue an alternative writ commanding respondents to accept affidavits of registration from qualified individuals in county jails, on mandatory supervision or PRCS who have been convicted of low-level felonies pursuant to Realignment, and perform all ministerial tasks necessary to ensure that these individuals are duly registered and able to vote at the November 2012 and future elections; or show cause why they should not do so.

20. On the return of the alternative writ and after hearing argument, issue a peremptory writ of mandate commanding respondent Bowen to notify all local elections officials of this Court's opinion on the voting rights of qualified individuals in county jails, or on mandatory supervision

or PRCS who have been convicted of low-level felonies and sentenced pursuant to Realignment.

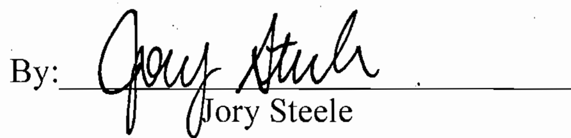
21. On the return of the alternative writ and after hearing argument, issue a peremptory writ of mandate commanding respondents forever to accept affidavits of registration from qualified individuals, who have been convicted of low-level felonies and sentenced pursuant to Realignment, and to perform all ministerial tasks necessary to ensure that these individuals are duly registered and able to vote at the November 2012 election and future elections.

22. Award petitioners their costs, including reasonable attorneys' fees.

23. Order such other and further relief as is equitable, just, and proper.

Dated: March 5, 2012 in San Francisco, California.

Respectfully submitted,

By: 
Jory Steele

Attorney for Petitioners

JORY STEELE (206944)
DIANA TATE VERMIERE (232264)
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NOVELLA COLEMAN (281632)
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AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA,

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39 Drumm Street
San Francisco, CA 94111
Telephone: 415-621-2493
Facsimile: 415-255-8437

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131 Steuart Street, Suite 400
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Facsimile: (415) 543-0296

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A NEW WAY OF LIFE REENTRY PROJECT
PO Box 875288
Los Angeles, CA 90087
Telephone: (323) 563-3575
Facsimile: (323) 563-344

CATHERINE MCKEE (267126)
LEGAL SERVICES FOR PRISONERS WITH
CHILDREN
1540 Market St., Suite 490
San Francisco, CA 94102
Telephone: (415) 255-7036
Facsimile: (415) 552-3150

ROBERT RUBIN (85084)
LAW OFFICE OF ROBERT RUBIN
315 Montgomery St., 10th Fl.
San Francisco, CA 94104
Telephone.: (415) 434-5118

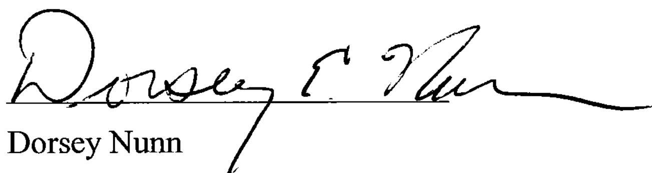
VERIFICATION

I, Dorsey Nunn, declare:

I am the Executive Director of Legal Services for Prisoners with Children, and am authorized to execute this verification on its behalf. I have read the Petition for Writ of Mandate filed with this Verification and know its contents. The matters stated in the Petition are true of my own knowledge, except as to those matters which are alleged on information and belief, and as to those matters, I believe them to be true.

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

Executed this 5 day of March, 2012, in San Francisco California



Dorsey Nunn

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

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INTRODUCTION

This original writ proceeding is brought to protect the fundamental voting rights of more than 85,000 Californians. The issue presented is the effect of California's historic 2011 reform of its criminal justice system, known as Realignment, on the franchise: may citizens receiving sentences pursuant to newly created Realignment categories of low-level offenses, living in their communities, participate in the 2012 and future elections?

In 1974, voters expanded the voting rights of people with criminal convictions by passing Proposition 10, which amended article II, section 3 (renumbered in 1976 to article II, section 4) of the California Constitution. While the initiative temporarily disenfranchised persons while they were "imprisoned or on parole for the conviction of a felony," it allowed all others who had been convicted of crimes and who were otherwise eligible to vote. Because voting is a fundamental right, the foundation of democratic participation, the temporary felony exception is construed narrowly. This Court has further narrowed the boundaries of disenfranchisement, limiting it to people who are in state prison or on parole, and has restrained election officials from barring individuals who remain in their communities after committing less serious offenses from voting. In *League of Women Voters v. McPherson*, 145 Cal. App. 4th 1469, 1475 (2006), this Court disapproved an Attorney General opinion concluding that article II, section 4 disenfranchised individuals in county

jail pursuant to Penal Code section 18 or as a condition of felony probation. This Court held that "article II, section 4 [of the California Constitution] disenfranchises only persons imprisoned in state prison or on parole for the conviction of a felony." *Id.* at 1486.

Now a new barrier to voting has arisen following the implementation of the 2011 Realignment Legislation (hereinafter "Realignment" or "Realignment Legislation").[1] After October 2011, people convicted of non-serious, non-violent, non-sexual felonies, such as drug possession or counterfeiting a driver's license,[2] may no longer be sent to state prison or placed on parole. Pen. Code § 1170(h).[3] They will either be incarcerated in county jail facilities, or serve a "split sentence" where they serve a portion of their sentence in county jail and then are released under the mandatory supervision of probation authorities. Pen. Code §

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[1] Assemb. Bill 109 2011-12 Reg. Sess. (Cal. 2011-12) (enacted Apr. 4, 2011); Assemb. Bill 117 2011-12 Reg. Sess. (Cal. 2011-12) (enacted June 30, 2011); Assemb. Bill X1 17 2011-12 Extraordinary Sess. (Cal. 2011-12) (enacted Sept. 20, 2011). Hereinafter the enactments are collectively referred to as "Realignment" or "Realignment Legislation."

[2] Cal. Health & Safety Code § 11357 (West 2012) (possession of concentrated cannabis); Cal. Penal Code § 470a (West 2012) (counterfeiting a driver's license).

[3] Hereinafter, unless otherwise noted, all references to the Constitution and statutes refer to California's Constitution and statutes. The Legislature has enacted two versions of section 1170(h), which is the subdivision relevant to realignment; one section is operative until January 1, 2014, and other section is operative on January 1, 2014. The sections discussed herein are identical in both versions.

1170(h)(5)(B). In addition, individuals released from state prison following convictions for certain low-level felonies will no longer be placed on parole, under the supervision of the California Department of Corrections and Rehabilitation (hereinafter "CDCR"). Instead, they will be placed on postrelease community supervision (hereinafter "PRCS"), under the supervision of county probation authorities.

On December 5, 2011, Secretary of State Debra Bowen issued a Memorandum directing registrars to prohibit individuals sentenced pursuant to Penal Code section 1170(h) and PRCS supervisees from voting until they have completely finished any detention or supervision. Memorandum # 11134 from Lowell Finley, Chief Counsel, Sec'y of State, to ALL County Clerks/Registrar of Voters (Dec. 5, 2011) (hereinafter "Memorandum"), Ex. 1. Petitioners, organizations committed to voting rights and the reintegration of individuals with convictions into society, who brought the *McPherson* case, as well as an individual petitioner, whose right to vote will be determined by the outcome of this writ proceeding, have returned to this Court. All of Us or None, Legal Services for Prisoners with Children, California League of Women Voters, and Alisha Coleman submit that the Memorandum's conclusion cannot be reconciled with this Court's definitive interpretation of the California Constitution in *McPherson*. They have come to this Court for statewide clarification of voting rights in time for the 2012 and future elections. Californians, who

are in the custody of CDCR, either because they are in state prison or because they are on parole, are disenfranchised pursuant to article II, section 4 of the California Constitution. All otherwise eligible individuals retain the right to vote, including everyone serving sentences pursuant to Penal Code section 1170(h) as well as individuals placed on PRCS.

This case presents a pure issue of law: what are the voting rights of people who have committed low-level felonies, who may no longer be sent to state prison or supervised by CDCR after release from prison? The Memorandum is premised on the theory that for individuals sentenced under Realignment, "only the place of imprisonment is changed, from state prison to county jail." Ex. 1 at 16. But that is simply not true. Realignment adopts a fundamentally new approach to crime and punishment in California. It reflects the state's acknowledgment that its heavy reliance on incarceration to rehabilitate individuals with felony convictions has been a failure, and grants new authority to judges to tailor sentencing options, such as home detention, that have a better chance of reintegrating individuals convicted of low-level felonies into their communities and society. Pen. Code § 17.5.

Following Realignment, California will be more like the state that the voters knew in 1974, when they passed Proposition 10 to limit disenfranchisement to individuals convicted of serious crimes, who were deemed to be dangerous and thus confined in state prison or under the

custody of what was then called the California Department of Corrections. At that time, California had 12 state prisons, housing fewer than 25,000 inmates. California now has 33 state prisons, 42 incarceration camps and 13 Community Correctional facilities, confining more than 142,000 inmates.[4] The percentage of residents in state custody has increased well past population growth; while California's population has increased by 78%, its population in custody has increased by 474%.[5] This huge expansion of the state prison population resulted from many factors, including mandatory sentencing, the war on drugs, and initiative measures,

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[4] Dean Misczynski, Pub. Policy Inst. of Cal., *Rethinking the State-Local Relationship: Corrections*, 8 (Aug. 2011).

[5] In 1974, the estimated California population was 21,173,865. (Population Distribution and Population Estimates Branches U.S. Bureau of the Census Intercensal Estimates of the Total Resident Population of States: 1970 to 1980 (1995) http://www.census.gov/popest/data/state/asrh/1980s/tables/st7080ts.txt). Today, the California state population as reported by the most recent Census data is 37,691,912 people. (U.S. Census Bureau, State and County QuickFacts (2012), http://quickfacts.census.gov/qfd/states/06000.html.) In 1974, the California Department of Corrections reported that the total institution population was 24,741 individuals (Health and Welfare Agency, California Department of Corrections, *California Prisoners 1974-1975*, 4 (1975) *available at* http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Annual/CalPris/CALPRISd1974_75.pdf) Today, the total population of individuals in state custody as of February 15, 2012 is 142,008. (Data Analysis Unit, CDCR, *Weekly Report of Population: February 15, 2012* (2012) *available at* http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/WeeklyWed/TPOP1A/TPOP1Ad120215.pdf)

all of which combined to substantially increase sentences for nonviolent offenses, such as narcotics.[6]

The voters who approved Proposition 10 understood that only people who had committed "*serious*" crimes – the term repeatedly used in the ballot arguments – who were sent away to state prison would temporarily lose the right to vote. Men and women who had committed non-violent, non-serious crimes, who were not dangerous and remained in their communities, would be eligible to vote. The ballot pamphlet specifically contemplated, for example, a woman with a conviction participating in school board elections that would affect her children. Sec'y of State, *California Voters Pamphlet: General Election November 5, 1974* (Nov. 1974) (full text, analysis by Legislative Counsel, ballot arguments), Ex. 14 at 314 (argument in favor of Proposition 10). Realignment now returns those California citizens to their communities. They have a constitutional right to vote. Petitioners ask this Court to protect that fundamental right in time for the 2012 elections.[7]

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[6] Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* 96-97 (The New Press 2010).

[7] Individuals who are sentenced to CDCR but housed in county jail pursuant to a contract remain disenfranchised, as *McPherson* recognized. In the converse situation, individuals who are sentenced to county jail but who are sent to CDCR pursuant to a contract retain the right to vote. The critical factor is whether the sentence is for state prison or for county jail, not the actual location of confinement.

REALIGNMENT

Realignment fundamentally transformed California's criminal justice system, moving away from incarceration and punishment toward rehabilitation and reintegration into society. This change, described as "vast and historic,"[8] reforms California's approach to its adult inmate population "more comprehensively than any time since statehood."[9]

The Realignment Legislation addressed a criminal justice system in crisis. As California enacted "tough on crime" laws from the 1980s on, more individuals were sentenced to state prison for longer periods of time.[10] This escalation culminated finally in a Supreme Court decision affirming a federal order to reduce the prison population to remedy unconstitutional conditions, including the state's failure to provide minimally adequate health care. *Brown v. Plata*, 131 S. Ct. 1910, 1923 (2011). In addition to being unconstitutional, the management of prisons confining so many people, including people who had committed non-violent narcotics offenses, was also hugely expensive. As the Legislative

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[8] Misczynsi, *supra* note 4, at 30 (quoting the California Department of Finance).

[9] *Id*. at 5.

[10] Cal. Dep't of Corr. & Rehab. Expert Panel on Adult Offender and Recidivism Reduction Programming, *Report to the California Legislature: A Roadmap for Effective Offender Programming in California* viii (June 29, 2007), http://ucicorrections.seweb.uci.edu/pdf/Expert_Panel_Report.pdf.

Analyst Office found, between 1976 and 2007, California spent only 5% of its rapidly growing corrections budget on rehabilitation programming but 45% on incarceration.[11] Despite the $10 billion annual corrections budget, "California's adult offender recidivism rate [was] one of the highest in the nation."[12]

Realignment, while reducing prison overcrowding and saving money, did far more. Another critical goal is to improve the results of the penal system by retaining people who have committed low-level felonies in their communities and providing them with services that would help them change their lives. The Legislature recognized that California's previous approach to criminal justice was an expensive failure. Despite "the dramatic increase in corrections spending over the past two decades, national reincarceration rates for people released from prison remain unchanged or have worsened. National data show that about 40 percent of released individuals are reincarcerated within three years. In California, the recidivism rate for persons who have served time in prison is even greater than the national average." Pen. Code §17.5(a)(2). The Governor also acknowledged, in signing the Realignment Legislation, that reform was

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[11] *Id*. at 6.

[12] *Id.* at 88.

overdue: “For too long, the State’s prison system has been a revolving door for lower-level offenders and parole violators.”[13]

The central goal of Realignment is to achieve better public safety options by tailoring a range of sanctions while also addressing the problems that lead people to commit crimes. As the Public Policy Institute of California observed, key to this goal is keeping people close to their friends, families and people who know them:

> In this case, counties have a far greater stake than the state does in trying to rehabilitate as many of these offenders as possible, because they have to live with them. Those going to county jail are from local communities and are known and have family and friends there. They will almost surely return to those communities after serving their sentences.
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> Counties also run a variety of programs that support the rehabilitative goal, such as drug and alcohol abuse treatment, mental health treatment, job training, housing and others. If they use these programs creatively to support rehabilitation, they might be more successful than the state.[14]

The people who will now be in their communities following implementation of Realignment are men and women whose offenses are neither violent nor serious. They include, for example, people who have forged a train ticket, possessed morphine, taken items from an empty building during an emergency, or received stolen metal from a junk dealer.

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[13] Governor Edmund G. Brown, Jr.’s AB 109 signing message (April 5, 2011).

[14] Misczynsi, *supra*, at 24 n. 4.

Garrick Byers, Fresno County Public Defenders Senior Defense Attorney, Realignment, Appendix 1 (Dec. 19, 2011), Ex. 4.[15] In Realignment, the Legislature recognized that these men and women may be punished safely in their home communities and that they will benefit from a variety of services and supervision. Pen. Code § 17.5. They may be rehabilitated and reintegrated into their communities. "Realigning low-level felony offenders who do not have prior convictions for serious, violent, or sex offenses to locally run community-based corrections programs, which are strengthened through community-based punishment, evidence-based practices, improved supervision strategies, and enhanced secured capacity, will improve public safety outcomes among adult felons and facilitate their reintegration back into society." Pen. Code § 17.5(a)(5).

Realignment creates new categories of people who will now be under the authority of the counties rather than the state. As these individuals come under the jurisdiction and supervision of county government, they will be treated very differently than they would have been treated by CDCR. The Legislature has directed counties to devise Realignment Implementation Plans "to maximize the effective investment of criminal justice resources in evidence-based correctional sanctions and

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[15] Pen. Code §§ 481 (forging a train ticket); 463 (taking items from an empty building during an emergency); 496a (receiving stolen metal from a junk dealer; Health & Safety Code § 11350 (possessing morphine).

programs, including, but not limited to, day reporting centers, drug courts, residential multiservice centers, mental health treatment programs, electronic and GPS monitoring programs, victim restitution programs, counseling programs, community service programs, educational programs, and work training programs." Pen. Code § 1230.1(a), (d). The California State Association of Counties has stated that "the only way realignment will be successful is if the planning effort results in a significant shift away from a predominantly incarceration model and movement to alternatives to incarceration."[16]

Realignment created two new categories of sentences for lesser criminal offenses. Individuals sentenced to the first category are those sentenced on or after October 1, 2011 who are convicted of a felony punishable pursuant to Penal Code section 1170(h) and whose current and prior felony convictions are non-serious, non-violent, and non-registrable as a sex offense. Pen. Code §§ 18(a), 1170(h)(3). In addition, individuals in this category have not received the aggravated white collar crime enhancement pursuant to Penal Code section 186.11. Pen. Code § 1170(h)(3)(D). The Legislature consistently refers to these individuals as

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[16] Letter from Paul McIntosh, Executive Dir., Cal. State Ass'n of Counties, to County Bd. of Supervisors and Admin. Officers 2 (Feb. 23, 2012), *available at* http://www.cpoc.org/php/realign/ab109home.php (follow "CSAC Memo Re: AB 117 and the Community Corrections Partnership").

"low-level" offenders, clearly separating them from the class of individuals traditionally disenfranchised due to a conviction for a more serious felony. Pen. Code §§ 17.5(a)(5)-(6). CDCR has estimated that by June 2013, the total number of individuals in this category who will have been sentenced to county supervision and custody is projected to be 30,541.[17]

The second category created by Realignment is PRCS supervisees. A PRCS supervisee is someone who will be released from state prison on or after October 1, 2011 for a non-serious offense.[18] When released from state prison, they will be supervised by the designated local supervising agency, typically the county probation department, rather than placed on parole under the supervision of CDCR. Pen. Code §§ 3000.08(a) – (c), 3451(a). PRCS differs from parole not merely by name. Different agencies supervise PRCS supervisees and parolees. Pen. Code §§ 3000.08(a), (c);

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[17] Cal. Dep't of Corr. & Rehab, *Fall 2011 Adult Population Projections 2012-2017* 11, http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Projections/F11pub.pdf.

[18] PRCS supervisees are those released from state prison after serving a sentence for *none* of the following offenses: a serious felony, a violent felony, a crime for which the offender was sentenced with a prior "strike," a crime where the person was classified as a high risk sex offender, and a crime for which the offender was sentenced as a "mentally disordered offender." Pen. Code §§ 3000.08(a), (c); 3451(b). In addition, a PRCS supervisee cannot be a sex-registerable offender who was on parole for a period of more than three years when he committed the current state prison felony neither can the person have been on life parole when the current state felony was committed. Pen. Code § 3000.08(c).

3056(a); 3454(a); 3456(a); 3457. CDCR estimates that by June 2013, 54,590 individuals will have been released into PRCS.[19]

What all of the individuals sentenced pursuant to these new categories have in common is that none of them are in state prison or on parole, nor are they in the custody of CDCR. Therefore, they fall outside the scope of article II, section 4, and retain the right to vote.

ARGUMENT

This writ proceeding is brought to protect the voting rights of two *newly created* classes of people convicted of non-serious offenses following Realignment: (1) individuals sentenced pursuant to Penal Code section 1170(h) to either (a) "split sentences," serving some portion in county jail and some portion on "mandatory supervision," or (b) county jail terms, and (2) individuals completing, pursuant to section 3451, a term of PRCS - instead of parole - upon their release from state prison. Petitioners submit that all of these Californians, living in their communities, are entitled to vote.

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[19] Cal. Dep't of Corr. & Rehab, *Fall 2011 Adult Population Projections 2012-2017* 17, http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Projections/F11pub.pdf (noting that lower projections for the active parole population are primarily due to the implementation of PRCS).

I.
THE CALIFORNIA CONSTITUTION GUARANTEES THE RIGHT TO VOTE

California courts and voters have expanded the opportunities for individuals with felony convictions to participate in the democratic process for almost four decades. The California Supreme Court struck down the state's lifetime disenfranchisement of individuals with felony convictions as a violation of equal protection in 1973. *Ramirez v. Brown*, 9 Cal. 3d 199 (1973), *rev'd sub nom. Richardson v. Ramirez*, 418 U.S. 24 (1974). In response, the Legislature proposed and voters adopted a narrow felony disenfranchisement provision in Proposition 10, amending the California Constitution to permit every adult citizen not "imprisoned or on parole for the conviction of a felony" to vote. Const. art. II, § 4.

A. *McPherson* Authoritatively Interpreted the California Constitution's Narrow Felony Disenfranchisement Provision.

In *McPherson*, this Court authoritatively interpreted article II, section 4, holding "that the only persons disqualified from voting by reason of article II, section 4 are those who have been imprisoned in state prison or who are on parole as a result of the conviction of a felony" and issued a peremptory writ of mandate "directing…the Secretary of State to issue a memorandum" so "informing the county clerks and elections officials." *McPherson*, 145 Cal. App. 4th at 1486.

McPherson traced the purpose and history of California's disenfranchisement laws, beginning with the first California Constitution, which "permanently disenfranchised all persons 'convicted of any infamous crime.'" *Id*. at 1475 (citing Cal. Const. of 1849, art. II, § 5, adopted in Cal. Const. of 1879 as art. II, § 1). That history shows that California has made steady progress in clarifying and expanding voting rights of individuals with felony convictions.

Proposition 10 ended an era of confusion, during which courts and the Legislature struggled to determine who was disenfranchised by the phrase "infamous crime." That initiative amended the California Constitution to eliminate the "infamous crime" exception, replacing it with a narrow and temporary exclusion from the franchise for only those "imprisoned or on parole for the conviction of a felony." *Id.* at 1479. Subsequent Elections Code provisions clarified the Legislature's intent to limit disenfranchisement to those "in prison or on parole for the conviction of a felony." *Id.* (citing Elec. Code §§ 2101, 2106 and 2300). This Court provided further clarification when it held that "imprisoned" in article II, section 4 encompasses only those individuals sentenced to state prison. *Id.* at 1483-84, 1486.

Another theme that *McPherson* described when analyzing the history of California's disenfranchisement laws is the slow but inexorable expansion of voting rights. In 1966, the Supreme Court limited the

"infamous crimes" exclusion that had been in place since 1849 by ruling that it covered only crimes that threatened the integrity of the electoral process, that is, involving moral corruption and dishonesty. *Otsuka v. Hite*, 64 Cal. 2d 596, 599 (1966). In 1973, the Supreme Court held that, even with this limitation, permanently disenfranchising persons convicted of "infamous crimes" violated the Equal Protection Clause of the Fourteenth Amendment, because denying the right of suffrage to all individuals with felony convictions did not provide the least restrictive method of protecting the purity of the ballot box against abuse by morally corrupt and dishonest voters. *Ramirez*, 9 Cal. 3d at 216-17. In response to *Ramirez*, the Legislature placed Proposition 10 (which later became article II, section 4) on the ballot. *McPherson*, 145 Cal. App. 4th at 1482-83. By "voting in favor of Proposition 10, the electorate sought to increase the class of persons entitled to vote, not to decrease it." *Id.* at 1483.

Relying on this history, as well as subsequent Elections Code provisions limiting the definition of "imprisoned" to those in prison, the *McPherson* court recognized the continuing expansion of the franchise, and ruled that as a matter of constitutional law in California, only people in state prison or on parole lose the right to vote. *Id.* at 1486.

McPherson remains good law. This Court's primary task is to apply the holding of *McPherson*, in the context of this history of the expansion of the franchise, to individuals sentenced pursuant to the new categories of

low-level offenses created by Realignment. Because no one sentenced pursuant to Penal Code section 1170(h) or released on PRCS is "imprisoned in state prison or…on parole as a result of the conviction of a felony," *id.*, these Californians have the right to vote.

B. The Secretary of State's Analysis Cannot Be Reconciled with *McPherson*.

The Secretary of State's Memorandum adopts an ahistoric and de-contextualized analysis to conclude that tens of thousands of people living in their communities following Realignment are disenfranchised. Ignoring case law, principles of constitutional and statutory interpretation, the goals of Realignment and article II, section 4 itself, as well as the central importance of the right to vote in our democracy, the Memorandum turns the history of article II, section 4 articulated by both the *Ramirez* and *McPherson* courts on its head.

The analysis in the Memorandum, surprisingly, virtually ignores *McPherson*, except to assert that this Court did not mean what it said when it ordered the Secretary of State to limit disenfranchisement to individuals "imprisoned in state prison or who are on parole as a result of the conviction of a felony." Ex. 1 at 8 (quoting *McPherson*, 145 Cal. App. 4th at 1486). While acknowledging that *McPherson* "remain[s] good law," the Memorandum states that Realignment changed the continued viability of the *McPherson* holding. Ex. 1 at 7-9. But *McPherson* is explicit in

limiting loss of the franchise to individuals in state prison and on parole based on, *inter alia*, the language of article 2, section 4, the ballot arguments and analysis, and the Legislature's interpretation. Because individuals sentenced under Realignment are neither sentenced to state prison nor placed on parole, they retain the right to vote.

The basic flaw in the Memorandum is its failure to recognize what this Court made clear in *McPherson*, echoing numerous Supreme Court opinions: Because voting is a fundamental constitutional right, the limited, temporary exception to that right, carved out in article II, section 4, must be very narrowly construed. It is not an elastic provision, allowing either the legislative or executive branch the right to bar people from voting who are not in state prison or on parole for the conviction of a felony. Failing to start from this indispensable premise, it is hardly surprising that the rest of the Memorandum's analysis is flawed:

1. The Memorandum speculates that any person who falls into any of the categories created by Realignment would have been disenfranchised prior to Realignment and therefore that these individuals "*remain* disqualified from voting." Ex. 1 at 1 (emphasis added). But it is impossible to know how individuals sentenced under Realignment would have been sentenced prior to its passage. It is not at all clear that individuals sentenced under Realignment would have been disenfranchised. Some may have been sentenced to state prison, and some may have

received probation, serving their probation entirely outside county jail, or serving some portion of their probation in county jail.

Furthermore, how individuals would have been sentenced prior to Realignment is entirely beside the point. It is a new day in California. The California Legislature has reshaped the criminal justice system to de-emphasize incarceration and to focus instead on rehabilitation. Pen. Code § 17.5. The purpose of Realignment is to move away from the prior, dysfunctional system into a new era. *Id.* It is wholly incompatible with these new goals to determine something as fundamental as whether individuals may vote based on the Secretary's speculation about what sentences individuals would have received prior to Realignment.

2. The Memorandum states that because the Legislature did not make explicit that individuals sentenced pursuant to Realignment are able to vote, principles of statutory construction require prohibiting them from voting until their sentences are complete. Ex. 1 at 13-14. It "is difficult to imagine that the Legislature would act to enfranchise thousands of previously ineligible convicted felons without indicating any intention to do so." Ex. 1 at 14.

This analysis has it exactly backwards. Voting "is one of the most important functions of good citizenship, [and] no other construction of an election law should be indulged that would disenfranchise any voter if the law is reasonably susceptible of any other meaning." *Otsuka,* 64 Cal. 3d at

604. The Legislature's *silence* cannot, in the context of voting, be construed as an explicit intent to disenfranchise. *McPherson* 145 Cal. App. 4th at 1482 ("The enacting body is deemed to be aware of existing laws and judicial constructions in effect at the time legislation is enacted")(citations omitted).

3. The Memorandum asserts that "'imprisoned' is a broader term than 'in prison' because it is not specific as to the place of confinement – it can mean 'imprisoned' in a state prison for a felony conviction or 'imprisoned' in a county jail for a felony conviction." Ex. 1 at 9. Here, the Memorandum relies heavily on the kind of literal argument this Court disapproved in *McPherson*: e.g. the dictionary definition of the word "imprisoned" in article II, section 4. Ex. 1 at 9-11; *McPherson,* 145 Cal. App. 4th at 1480. This Court criticized the 2005 Attorney General opinion for its broad definition of "imprisoned" as including locked up anywhere, and thus disenfranchising felony probationers serving a portion of their probation in county jail. *McPherson* definitively held that, in the voting rights context, "imprisoned" means "in state prison," so there is no longer any ambiguity about its meaning. *Id.* at 1486. The Memorandum's facile resort to the dictionary in the face of *McPherson* is puzzling.

4. Equally unpersuasive is the Memorandum's conclusion that because PRCS superficially resembles parole in the sense that it, too, is release following confinement, people on PRCS are ineligible to vote. The

term exists nowhere in article II, section 4. The voters did not contemplate PRCS in passing Proposition 10, and people falling into this newly created category may vote. Again: the California Constitution's limited exception to the franchise for all citizens is not an elastic term that may be stretched by saying that PRCS and parole are "functionally equivalent." Ex. 1 at 11-12.

Even if *McPherson* had not definitively decided these issues, the Memorandum ignores the tectonic shift that has occurred in the criminal justice system through Realignment. The Memorandum seems to contend that the passage of Realignment itself has somehow transformed the term "in prison" as used in the Elections Code to mean "imprisoned," claiming that "[t]he only significant difference [between those sentenced to prison and those sentenced pursuant to Realignment] is the facility in which the person is imprisoned." Ex. 1 at 17. In addition to being incorrect, this argument misses the obvious point that *McPherson,* which remains good law, has already defined "imprisonment" to mean "in state prison." *McPherson,* Cal. App. 4th at 1486. Additionally, however, the analysis ignores the larger point that Realignment reflects recognition by the state that our criminal justice system is broken, and that only by shifting our focus from incarceration to reintegration can we hope to fix it. Pen. Code § 17.5.

Both "imprisoned" and "PRCS" should be afforded non-disenfranchising meanings if they reasonably exist. *See Otsuka,* 64 Cal. 2d at 603-04. To "seek the meaning of a statute is not simply to look up dictionary definitions and then stitch together the results. Rather, it is to discern the sense of the statute, and therefore its words, in the legal and broader culture." *State v. Altus Finance*, 36 Cal. 4th 1284, 1295-1296 (2005) (internal citations omitted); *see also Coachella Valley Mosquito and Vector Control Dist. v. Cal. Pub. Employment Relations Bd.*, 35 Cal. 4th 1072, 1089 (2005) (statute should be taken in context and "with reference to the whole system of law of which it is a part"); *In re C.H.*, 53 Cal. 4th 94, 100 (2011) (same). The Memorandum fails to do this, and therefore reaches incorrect conclusions.

5. Perhaps the Memorandum's most egregious error is its assertion that if the Legislature had expressly provided that people who have committed low-level offenses retain their right to vote, that provision of the Realignment statute would violate article II, section 4. In fact, the reverse is true: if the Legislature, in passing Realignment, had explicitly disenfranchised Californians living in their communities or in county jails, *that* provision would be unconstitutional.

The Legislature has no power to disenfranchise individuals other than that given to it by the California Constitution. In *Flood v. Riggs*, 80 Cal. App. 3d 138, 154 (1978) the court found that "it is not within the

legislative power, either by its silence or by direct enactment, to modify, curtail or abridge [the right to vote]." *Id.* at 154. Therefore, the Legislature's silence on this point cannot serve to disenfranchise individuals sentenced pursuant to these newly created categories, which were not envisaged by article II, section 4.

The principle that the Legislature is unable to "modify, curtail, or abridge" the right to vote as provided by the California Constitution is well-settled. *See, e.g. Bergevin v. Curtz*, 127 Cal. 86, 88 (1899)(noting that the Legislature could not add requirements to the definition of an elector other than those in the constitution); *Garibaldi v. Zemansky*, 171 Cal. 134, 135 (1915)("it is beyond the power of the Legislature to make any change in the law thus declared by the constitution"); *Midway Orchards v. County of Butte*, 220 Cal. App. 3d 765, 778 (1990)("It is not within the legislative power, either by silence or direct enactment, to modify, curtail, or abridge a self-executing grant of constitutional power").

Realignment created new categories of low-level offenses, and transferred responsibility for people convicted of these offenses from the state to local counties. Because these new categories are neither mentioned in article II, section 4, nor could they even have been contemplated at the time it was enacted, the Legislature has no power to disenfranchise people sentenced pursuant to them. The Legislature may not, for example, pass a bill that reclassifies shoplifting as a misdemeanor but specify that

shoplifters cannot vote while sentenced to county jail. Similarly, the Legislature may not create entirely new categories of crimes that may not result in a sentence to state prison but deprive people convicted of those offenses of their right to vote. The California Constitution confers the franchise on *every* mentally competent adult California citizen, unless they are in state prison or on parole. *McPherson*, 145 Cal. App. 4th at 1486.

C. The Voters Amended the California Constitution to Expand the Franchise.

California voters passed Proposition 10 by a wide margin in 1974. Ballot arguments and an independent Legislative Analyst's opinion are part of the legislative history of article II, section 4.[20] These materials informed voters that Proposition 10 would limit disenfranchisement only to those individuals serving a sentence in prison or on parole.

The Legislative Analyst's opinion advised voters that Proposition 10 would impose disenfranchisement only for the duration of a prison and parole sentence:

> This proposition will require the Legislature to pass laws which deny the right to vote to persons when they are *in prison* or on parole for committing a felony. The right of convicted felons to vote would be restored, however, when

[20] California decisions have long recognized the propriety of resorting to such election brochure arguments as an aid in construing legislative measures and constitutional amendments adopted pursuant to a vote of the people." *White v. Davis*, 13 Cal. 3d 757, 775 n. 11 (1975).

> their *prison sentences*, including time *on parole*, have been completed.

Ex. 14 at 312 (analysis of Prop. 10 by the Legislative Analyst) (emphasis added); *see also* Ex. 14 at 314 (rebuttal to argument in favor of Prop 10) ("The real question here is whether the State of California should grant a blanket, automatic restoration of voting rights to each and every person convicted of a felony on the very day he is released from *prison*.") (emphasis added). Thus, the Legislative Analyst repeatedly used the terms "prison" and "prison sentence" and "on parole" in explaining to voters the purpose and effect of Proposition 10.

The proponents' ballot argument underscored that the goal of Proposition 10 was to expand the franchise and to eliminate unnecessary restrictions on the fundamental right to vote:

> The right to vote is the essence of a democratic society and any restrictions on that right strike at the heart of representative government. Historically, voting has long been considered "a fundamental right" diligently sought by those excluded from its exercise. Indeed, our Declaration of Independence repeatedly condemns oppression of the right to vote. Restricted exercise of "a fundamental right," when the need for restriction no longer exists, is unfair and abusive.

Ex. 14 at 314 (argument in favor of Proposition 10).

The argument then relied on *Ramirez* to show that it was no longer necessary to exclude individuals convicted of felony offenses from voting:

> Historically, exclusion of ex-felons from voting was based on a need to prevent election fraud and protect the integrity of the elective process. The need to use this voter exclusion no

> longer exists. As a unanimous California Supreme Court recently pointed out, in the *Ramirez* case, modern statutes regulate the voting process in detail. Voting machines and other safeguards, combined with a variety of criminal penalties, effectively prevent election fraud.

Id. Somewhat presciently, the proponents also argued that the "objective of reintegrating ex-felons into society is dramatically impeded by continued restriction of the right to vote." *Id.* Thus, in approving Proposition 10, the voters intended to expand the franchise, remove unnecessary restrictions on voting, and promote reintegration into individuals' communities.

Thus, neither the Legislature nor the voters intended to disenfranchise anyone other than those in prison or on parole when they adopted Proposition 10. As will be discussed more fully below, individuals sentenced pursuant to Penal Code section 1170(h) or released on PRCS are neither in prison, nor on parole, nor are they in the custody of CDCR. They therefore retain the right to vote.

II.
CALIFORNIA CITIZENS LIVING IN THEIR COMMUNITIES AFTER REALIGNMENT ARE ENTITLED TO VOTE

Realignment worked a fundamental change on California's criminal justice system, moving away from custodial punishment and towards rehabilitation and reintegration into society, particularly for those individuals convicted of less serious offenses. Pen. Code § 17.5. It *prohibited* courts from sentencing people who commit certain low-level crimes to state prison. It established that individuals sentenced to county

jail, to split sentences, or released onto PRCS are *not* under the jurisdiction of CDCR. Pen. Code §1170(h) (low-level offenders for designated felonies are not sentenced to state prison); Pen. Code § 3457. These Californians are entitled to vote.

A. People on Mandatory Supervision Have a Right to Vote.

Mandatory supervision is a new sentencing option. Before Realignment, a court sentencing an individual convicted of a felony offense could either sentence the defendant to state prison or grant probation. *People v. Lewis*, 7 Cal. App. 4th 1949, 1954 (1992) ("A trial court has only certain statutory alternatives to exercise when a convicted felon appears for sentence. 'It . . . must either sentence the defendant or grant probation…; it has no other discretion.'") (citations omitted).

Realignment changed trial courts' sentencing options for individuals sentenced pursuant to Penal Code section 1170(h). One critical difference is that individuals sentenced to low-level offenses pursuant to Penal Code section 1170(h) are statutorily prohibited from being sentenced to state prison but instead may be punished in county jail. Pen. Code § 1170 (h)(1)–(3). Moreover, individuals sentenced pursuant to Penal Code section 1170(h) may receive a full term in county jail, Pen. Code section 1170 (h)(5)(A), or a split sentence which includes a period of mandatory supervision. Pen. Code § 1170 (h)(5)(B). A split sentence results when the court "suspend[s] execution of a concluding portion of the term selected in

the court's discretion, during which time the defendant shall be supervised by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation, for the remaining unserved portion of the sentence imposed by the court." *Id*.

Mandatory supervisees, whose voting rights are disposed of in the Secretary of State's Memorandum in a footnote,[21] share many characteristics of traditional probationers, who are clearly entitled to vote under *McPherson*. *McPherson,* 145 Cal. App. 4th at 1486. Like probationers, mandatory supervisees are under the supervision of the county probation department rather than CDCR. Pen. Code §1170(h)(5)(B). Additionally, although Penal Code section 1170(h)(5)(B) is never explicit, it permits the inference that, like traditional probationers,[22] the court retains jurisdiction over mandatory supervisees, because it is the court who imposes the sentence and only the court can alter it. *Id.*; Pen. Code § 1203.1(j) (authorizing court to modify terms and conditions of probation). Further bolstering this point is the fact that mandatory supervisees are statutorily required to be treated like probationers. Pen. Code § 1170(h)(5)(B). Regardless, what *is* clear is that mandatory supervisees will not be sentenced to state prison or placed on parole, as

[21] Ex. 1 at 13, n. 6.

[22] *Lewis,* 7 Cal. App. 4th at 1954.

would be required for them to be disenfranchised, nor are they under the jurisdiction of CDCR. Pen. Code § 1170(h)(1)-(3).

Analogizing mandatory supervisees to probationers is also consistent with both the goals of Realignment and the purpose underlying article II, section 4. Probation is "qualitatively different from such traditional forms of punishment as fine or imprisonment" because it "is generally reserved for convicted criminals whose conditional release into society poses minimal risk to public safety and promotes rehabilitation." *People v. Minor*, 189 Cal. App. 4th 1, 9-10 (2010). Similarly, only those individuals convicted of low-level offenses may be sentenced to a period of mandatory supervision. Pen. Code § 17.5(a)(5) ("Realigning low-level felony offenders who do not have prior convictions for serious, violent, or sex offenses to locally run community-based corrections programs . . . will improve public safety outcomes among adult felons and facilitate their reintegration back into society."); *see also* § 1170(h)(5)(B). Because probationers retain the right to vote, it is likely that the Legislature intended for mandatory supervisees to vote as well.

There is no evidence that the Legislature intended to disenfranchise individuals placed on mandatory supervision, as they are neither incarcerated nor on parole. The intent to disenfranchise any group "must appear with great certainty and clearness," *People ex rel. Devine v. Elkus*, 59 Cal. App. 396, 404 (1922), and "every reasonable presumption and

interpretation" must be made in favor of the franchise, *Otsuka*, 64 Cal. 2d at 603; *McPherson*, 145 Cal. App. 4th at 1482 (same).

Moreover, even if the Legislature had intended to disenfranchise mandatory supervisees, it is outside their authority to do so. As noted in section I.B.5 above, "it is not within the legislative power, either by its silence or by direct enactment, to modify, curtail, or abridge [the right to vote]." *See, e.g., Flood*, 80 Cal. App. 3d at 154. Because mandatory supervisees are not "in state prison or . . . on parole as a result of the conviction of a felony", they retain the right to vote. *McPherson,* 145 Cal. App. 4th at 1486.

B. People in County Jail Under Penal Code Section 1170(h) Are Entitled to Vote

Individuals sentenced to county jail under Realignment are not "in state prison" or "on parole" as required by *McPherson*. Pen. Code § 1170(h); *McPherson,* 145 Cal. App. 4th at 1486. Additionally, these individuals are never "delivered to the Department of Corrections and Rehabilitation." *Id.* at 1481. Thus, as a textual matter, individuals sentenced to county jail under Realignment retain the franchise.

This analysis is further supported by the legislative history of article II, section 4 as well as the Legislature's interpretation of article II, section 4 as illustrated in various provisions of the Elections Code. Finally, ensuring that individuals sentenced to county jail pursuant to Penal Code section

1170(h) retain the franchise supports the goals for which Realignment was enacted.

1. *The Legislature is Presumed to Be Aware of the Meaning of the Terms "In Prison" and "On Parole"*

The Legislature and the voters who adopted article II, section 4 are presumed to be aware of the legal and judicial construction of the terms "in prison" or "on parole." *People v. Weidert*, 39 Cal. 3d 836, 844 (1985) (enacting body deemed aware of existing laws and judicial constructions in effect at time legislation enacted, including legislation enacted by initiative); *McPherson,* 145 Cal. App. 4th at 1482. Indeed, "[w]here the language of a statute uses terms that have been judicially construed, 'the presumption is almost irresistible' that the terms have been used 'in the precise and technical sense which had been placed upon them by the courts.'" *Weidert*, 39 Cal. 3d at 845-46 (quoting *In re Jeanice D.*, 28 Cal. 3d 210, 216 (1980)).

The phrase "imprisoned or on parole for the conviction of a felony" should be interpreted consistent with these legal and judicial constructions to retain the voting rights of individuals sentenced pursuant to Realignment.

2. *The Legislative History of Article II, Section 4 Supports Limiting the Right to Vote to only Those Individuals Who Are In Prison or On Parole*

That article II, section 4 preserves the right to vote for everyone except those in state prison or on parole is not only consistent with this

Court's decision in *McPherson* as well as principles of constitutional construction, but also with the legislative history of this provision. *McPherson,* 145 Cal. App. 4th at 1486; *see People v. Canty*, 32 Cal. 4th 1266, 1277 (2004)(court may examine history and background of provision in order to ascertain most reasonable interpretation)(citing *People v. Birkett*, 21 Cal. 4th 226, 231-32 (1999))(where examination of statutory language leaves doubt about meaning, court may consult other evidence of legislative intent, such as history and background of measure).

As discussed in section I.A above, Proposition 10 sought to expand the franchise by lifting the lifetime ban on voting by individuals with felony convictions. In the course of drafting Proposition 10's language to be put before the voters, the Legislature considered and rejected language that would have disenfranchised individuals who were not in state prison or on parole. *McPherson,* 145 Cal. App. 4th at 1483.

3. *The Legislature Has Consistently Interpreted Section 4 as Limited to Persons in Prison or on Parole*

Since the adoption of article II, section 4 in 1974, the Legislature has enacted multiple Elections Code provisions encouraging citizens to register to vote, describing who is entitled to vote, and explaining the "Voters Bill of Rights." In these provisions, the Legislature used the term "in prison," thus signifying its understanding that the use of the term "imprisonment" in article II, section 4 disenfranchises only those in state prison.

In 1982, the Legislature adopted what is now Elections Code section 2106, which requires that any printed literature or media announcements used in connection with programs to encourage voter registration must contain a statement that "a person entitled to register to vote must be a United States citizen . . . not in prison or on parole for the conviction of a felony…."[23] In other words, since 1982, the state has informed people in writing and in public education announcements targeted at potential voters that disenfranchisement pursuant to article II, section 4 is limited to individuals *in prison*.

In 1989, the Legislature adopted what is now Elections Code section 2101, which provides:

> A person entitled to register to vote shall be a United States citizen, a resident of California, not in prison or on parole for the conviction of a felony, and at least 18 years of age at the time of the next election.[24]

Elec. Code § 2101. Thus, by enacting Elections Code section 2101, the Legislature made clear once again that it understood article II, section 4 to limit the term "imprisoned" to mean "in prison."

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[23] Elections Code section 2106 was originally enacted in 1982 as Elections Code section 304.5. Elec. Code § 304.5 (repealed 1994; current version at Elec. Code § 2106).

[24] Elections Code section 2101 was originally enacted in 1989 as Election Code section 300.5 with identical language. Elec. Code § 300.5. Elections Code section 300.5 was renumbered in 1994 to the current section 2101 as part of the reorganization of the Elections Code that had "only technical and nonsubstantive effect." Stats. 1994, ch. 920, § 3.

Following this pattern, the Legislature adopted the Voters Bill of Rights in 2003, which states, a "valid registered voter means a United States citizen who is…not *in prison* or *on parole* for the conviction of a felony." Elec. Code § 2300(a)(1)(B)(emphasis added). The Voters Bill of Rights must be available to the public, printed in all statewide ballot propositions mailed to every voter in California, and conspicuously posted both inside and outside every polling place. Elec. Code §§ 2300 (d)(1), 14105 (q).

This Court, relying on sections 2106 and 2300, found that the Legislature has interpreted article II, section 4 as limiting the voting rights of only those individuals in state prison or on parole. *McPherson,* 145 Cal. App. 4th at 1484, 1486. Indeed, even the Secretary of State concedes this point in her Memorandum. Ex. 1 at 8.

In 2009, following *McPherson,* the Legislature amended Elections Code § 2106, again using the phrase "in prison." Stats. 2009, ch. 364, § 3. Given that the Legislature is "deemed to be aware of existing laws and judicial constructions in effect at the time legislation is enacted," *McPherson,* 145 Cal. App. 4th at 1482, and the fact that it did not change its language in response to *McPherson*, the 2009 amendment of Elections Code section 2106 indicates the Legislature's approval and adoption of the *McPherson* construction. *See In re Marriage of Skelley*, 18 Cal. 3d 365, 369 (1976).

Realignment did not explicitly disenfranchise anyone. The Legislature did not amend the Elections Code to clarify that it intended to disenfranchise people sentenced to county jail under Penal Code section 1170(h), thus offering further support that it intended to continue to limit disenfranchisement only to those individuals "in state prison or on parole." *See Otsuka,* 64 Cal. 2d at 604 (1966)("no construction of election law should be indulged that disenfranchises any voter if law is reasonably susceptible of any other meaning").

As the Legislature's interpretation of the initiative it had placed before the voters, the Elections Code provisions provide further support for reading the meaning of "imprisoned" narrowly for purposes of elector disqualification under article II, section 4. *See Methodist Hosp. of Sacramento v. Saylor*, 5 Cal. 3d 685, 692, 693 (1971)(settled principle of construction affords "strong presumption" in favor of Legislature's interpretation of a constitutional provision). The Legislature's use of the term "prison" in place of "imprisoned" to signify state prison as opposed to county jails both pre- and post-*McPherson* is a reasonable, non-disenfranchising construction of the law. The court should reaffirm this interpretation. *See Otsuka,* 64 Cal. 2d at 603; *Pac. Indem. Co. v. Indus. Accident Comm'n*, 215 Cal. 461, 464 (1932)(where more than one reasonable meaning exists, duty to accept that chosen by Legislature); *City and County of San Francisco v. Indus. Accident Comm'n*¸ 183 Cal. 273,

279 (1920)(court should not annul statute unless "positively and certainly" opposed to constitution, which cannot be said of statute which adopts one of two "reasonable and possible constructions" of constitution).

4. *Individuals in County Jail Pursuant to A Split Sentence Under Section 1170(h)(5)(B) are Entitled to Vote*

As noted in Section II.A above, Penal Code § 1170(h) allows the judge, in her discretion, to impose split sentences, where a portion of the sentence is served in county jail, followed by a term of mandatory supervision. Pen. Code § 1170(h)(5)(B). Individuals sentenced to a split sentence retain the right to vote while in county jail for the same reasons that individuals sentenced to serve their entire sentence in county jail do. Additionally, split-sentenced individuals in county jail retain the right to vote because they are not imprisoned as a result of the felony conviction as required by article II, section 4.

In *McPherson* the court held that all persons in county jail as a condition of felony probation retain the right to vote unless probation is "revoked or terminated." 145 Cal. App. 4th at 1481. "[A]rticle II, section 4 requires both a conviction of a felony *and* that the defendant be imprisoned or on parole as a result of the conviction." *Id.* at 1482. A person in county jail as a condition of probation remains "under the jurisdiction of the court, the defendant is not imprisoned as the result of a

felony conviction, and for that separate reason [] is entitled to vote." *Id.* at 1485.

An individual in county jail pursuant to Penal Code section 1170(h)(5)(B) while serving the beginning portion of his term is in the same position as a felony probationer in county jail as a condition of probation. Both jail terms result from the court's order suspending execution of the felony sentence. *Compare* Pen. Code § 1203 (a) *with* § 1170 (h)(5)(B). The jail terms are imposed "at the court's discretion." *Compare* Pen. Code § 1170(h)(5)(B) *with People v. Anderson*, 50 Cal. 4th 19, 26 (2010)(noting trial court's discretion to impose probation conditions under section 1203.1). A probationer in county jail as a condition of probation remains under the court's jurisdiction until probation is revoked. *McPherson*, 145 Cal. App. 4th at 1481. While Realignment does not expressly declare that a split-sentenced individual is under the court's jurisdiction, the Legislature likely intended this effect because when it created split sentences it added language that likened mandatory supervision to probation. *See* Pen. Code § 1170 (h)(5)(B).

Thus, an individual in county jail during the beginning portion of his term is not there as a result of a felony conviction, as required by article II, section 4, but is there instead as a result of the Penal Code section 1170(h)(5)(B) court order that is substantially similar to a probation order.

Accordingly, individuals in county jail pursuant to a split sentence under Penal Code section 1170(h)(5)(B) retain the right to vote.

C. People on Post Release Community Supervision Are Entitled to Vote.

The plain language of article II, section 4 disenfranchises only those who are "imprisoned or on parole for the conviction of a felony." Individuals released on PRCS are neither in prison, nor are they on parole, nor do they remain in the custody of CDCR once they are released from prison. Pen. Code § 3457.

Additionally, as noted in section I.B.5 above, the Legislature has no power to disenfranchise individuals not contemplated by the California Constitution. *See, e.g., Flood,* 80 Cal. App. 3d at 154. Thus, even if the Legislature had intended to disenfranchise individuals released on PRCS, (and a thorough search of the legislation revealed no legislative intent to disenfranchise individuals sentenced pursuant to any of the categories newly created by Realignment) they would not have the power to do so. *Communist Party of the United States of America v. Peek*, 20 Cal. 2d 536, 543 (1942).

1. The Plain Meaning of "Parole" Does Not Include Persons on Postrelease Community Supervision

The interpretation of "on parole for the conviction of a felony" as excluding PRCS supervisees is supported by the Legislature's interpretation of article II, section 4 as expressed in the Elections Code. "[I]t is well

settled that when the Legislature is charged with implementing an unclear constitutional provision, the Legislature's interpretation of the measure deserves great deference." *McPherson*, 145 Cal. App. 4th at 1484. In *McPherson*, the court noted that "[a] finding that article II, section 4 applies *only* to those in state prison or on parole from state prison also is consistent with the language of the Elections Code, which . . . provides that persons '"*in prison* or *on parole* for the conviction of a felony" are not entitled to register to vote.'" *Id.* at 1483-84 (citing Elec. Code §§ 2106, 2300) (second emphasis added). That the literal language of the Elections Code refers to those in prison but not to those in jail was evidence of the Legislature's intent to not subject the latter group to disenfranchisement. *Id.* Analogously, this Court should conclude that because the literal language of the Elections Code refers to those on parole but not to those on PRCS, this is evidence that PRCS supervisees are not disenfranchised.

2. *Postrelease Community Supervision is Not "Functionally Equivalent" to Parole*

The Secretary of State argues that a person released on PRCS pursuant to Realignment is disenfranchised because people on parole are disenfranchised and PRCS is "functionally equivalent" to parole. Ex. 1 at 11. This is incorrect.

In construing the language of Realignment, the court should look to "the entire scheme of law of which it is part so that the whole may be

harmonized and retain effectiveness." *People v. Skiles*, 51 Cal. 4th 1178, 1185 (2011). The conclusion that the Legislature did not intend for PRCS to be "functionally equivalent" to parole is not only supported by the two systems having different names, Pen. Code sections 3000.08(a), (b), but also by the fact that they govern different populations of released prisoners, *id.*; section 3000.08(c), place the two populations under the supervision of different agencies, one under the state and the other under the counties, sections 3000; 3451(c)(1), and provide the additional limitations governing where an individual may be released on parole in order to protect the public. § 3003 (f)-(h).

By creating a new phrase "postrelease community supervision" and using it instead of parole and by placing such persons under the authority of the county rather than CDCR, the Legislature placed PRCS supervisees outside the reach of article II, section 4. Moreover, had the Legislature intended to treat PRCS supervisees the same as parolees, it could have made this explicit, as it did when it stated that people under mandatory supervision are subject to the same conditions as probationers. § 1170(h)(5)(B).

The distinctions between those on PRCS and those on parole are further reflected by the funding formula for PRCS supervisees, which "[a]ssumes that local governments will handle this offender population in a different manner than CDCR by utilizing various lengths of incarceration

stints and utilizing alternative custody/diversion programs, which will lower the average length of stay for these offenders."[25] When PRCS is construed within the context of Realignment, it is clear that PRCS and parole are not "functionally equivalent." Accordingly, PRCS supervisees are not "on parole" within the meaning of article II, section 4, and thus retain the right to vote.

III.
THE COURT SHOULD ISSUE A WRIT OF MANDATE TO PROTECT FUNDAMENTAL VOTING RIGHTS

Petitioners respectfully request that this Court exercise its jurisdiction[26] to hear this original mandamus proceeding to clarify fundamental voting rights by a statewide ruling that will allow individuals sentenced under Realignment and living in their communities to register and to vote in this year's election.[27] As this Court has stated, "[t]his case

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[25] Diane M. Cummins, Special Advisor to the Governor, letter to Assemblymember Bob Blumenfield and Sen. Mark Leno, Feb. 25, 2011, http://www.dof.ca.gov/budget/historical/2011-12/documents/Restructure_and_Realignment_new.pdf (last visited on Mar. 4, 2012).

[26] This Court has jurisdiction over this original writ proceeding under article VI, section 10 of the California Constitution and Rule 8.468 of the California Rules of Court.

[27] Petitioners would welcome a decision by the Court in advance of the May 21, 2012 voter registration deadline for the June 2012 election. However, Petitioners acknowledge that careful consideration of this important issue may only permit a decision in due time for voter registration for the November 2012 election.

falls within the limited category where an appellate court properly exercises original jurisdiction." *McPherson*, 145 Cal. App. 4th at 1473. The "issues presented are of great public importance and must be resolved promptly." *County of Sacramento v. Hickman*, 66 Cal. 2d 841, 845 (1967). At stake is the ability of thousands of Californians to vote in a Presidential election year, in a ballot that will include major initiatives. This is precisely the sort of classic situation that warrants extraordinary relief through a writ action. *Ramirez*, 9 Cal. 3d 199 (original writ of mandate issued to compel election officials to register individuals with felony convictions who have completed sentences). As the Supreme Court has stated:

> Cases affecting the right to vote and the method of conducting elections are obviously of great public importance. Moreover, the necessity of adjudicating the controversy before the election renders it moot usually warrants our bypassing normal procedures of trial and appeal. Thus we have exercised our original jurisdiction where electors sought to qualify an initiative for the ballot (*Perry v. Jordan* (1949) 34 Cal. 2d 87, 90-91); *Farley v. Healey* (1967) 67 Cal. 2d 325, 326-327), where a proposed local election would have violated the city charter (*Miller v. Greiner* (1964) 60 Cal. 2d 827, 830) and where an individual sought certification by the city clerk as a candidate for office. (*Camera v. Mellon* (1971) 4 Cal. 3d 714.)

Jolicoeur v. Mihaly, 5 Cal. 3d 565, 570 n.1 (1971).

Tens of thousands of Californians will be disenfranchised because local registrars are, understandably, following an opinion issued by the Secretary of State, barring individuals sentenced under Realignment from registration. The Secretary's conclusion, which petitioners contest, raises a

pure issue of law that is appropriate for appellate resolution in the first instance. *See, e.g., Indus. Welfare Comm'n v. Superior Court*, 27 Cal. 3d 690, 699-700 (1980). By exercising its original jurisdiction, this Court may clarify these important questions in time for voters to participate in the 2012 elections. In contrast, a case in Superior Court will lack statewide jurisdiction and will take years to resolve.

This petition also satisfies the formal requisites for writ relief:

Petitioners are beneficially interested. This proceeding is brought by an individual serving a sentence for drug offenses in San Francisco jail. She has voted in San Francisco in the past and wishes to participate in the 2012 elections. She will directly benefit from a writ of mandate. *Cf. Jolicoeur*, 5 Cal. 3d at 569. The organizational petitioners are dedicated to supporting voting rights and the reintegration of individuals with felony convictions into society. *Cf. Ramirez*, 9 Cal. 3d at 202 n.1 (petitioners included "League of Women Voters and three nonprofit organizations that support the interests of ex-convicts"). Indeed, the League of Women Voters signed the ballot argument supporting Proposition 10, the initiative measure at the heart of this case. Where "the question is one of public right and the object of the mandamus is to procure enforcement of a public duty," a petitioner "need not show he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the

laws executed and the duty in question enforced." *Green v. Obledo*, 29 Cal. 3d 126, 144 (1981).[28]

Mandate may be issued to the respondent election officials. Respondents are California officials charged with conducting elections: the Secretary of State and the registrar of voters of San Francisco County. These were the *McPherson* respondents. "Voting registrars are public officers with the ministerial duty of permitting qualified voters to register. Mandamus is clearly the proper remedy for compelling an officer to conduct an election according to law." *Jolicoeur*, 5 Cal. 3d at 570 n.2; s*ee also Ramirez*, 9 Cal. 3d at 202-03.

Petitioners ask this Court to issue a writ of mandate commanding respondents Secretary of State, Debra Bowen, and San Francisco Director of Elections, John Arntz, to register all individuals, otherwise qualified to vote, who are detained in county jails or under county supervision following conviction of a low-level felony and sentencing under Realignment. Petitioners further request this Court to issue a writ of mandate to respondent Bowen directing her to take all ministerial actions necessary to ensure that these new voters receive voting materials and are able to vote, and to notify all local registrars of voters of this Court's

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[28] This Court has frequently applied this principle. *See e.g.*, *Cal. Homeless & Hous. Coalition v. Anderson*, 31 Cal. App. 4th 450, 457-459 (1995); *Timmons v. McMahon*, 235 Cal. App. 3d 512, 518 (1991); *Planned Parenthood v. Van de Kamp*, 181 Cal. App. 3d 245, 256–257 (1986).

opinion on the voting rights of individuals sentenced pursuant to the categories newly created by Realignment.

California's appellate courts have a proud tradition of exercising writ authority to protect constitutional voting rights statewide and swiftly when they are in jeopardy from incorrect administrative interpretations. In this case, the issue arises in a profoundly important context. Laws and court decisions impacting the right to vote have long had a particularly significant impact on racial minorities.

While racially neutral on their face, felony disenfranchisement laws are born of racial bigotry and have a racially disparate impact. As scholar Michelle Alexander has written in an important new book:

> During the Jim Crow era, African-Americans were denied the right to vote through poll taxes, literacy tests, grandfather clauses, and felon disenfranchisement laws, even though the Fifteenth Amendment to the U.S. Constitution specifically provides that, "the right of citizens of the United States to vote shall not be denied…on account of race, color, or previous condition of servitude." Formally, race-neutral devices were adopted to achieve the goal of an all-white electorate without violating the terms of the Fifteenth Amendment….Finally, because blacks were disproportionately charged with felonies – in fact some crimes were specifically defined as felonies with the goal of eliminating blacks from the electorate – felony disenfranchisement laws effectively suppressed the black vote as well. Following the collapse of Jim Crow, all of the race-neutral devices for excluding blacks from the electorate were eliminated through litigation or legislation, except felon disenfranchisement laws….Felon disenfranchisement laws have been more effective in eliminating black voters in the age of mass incarceration than they were during Jim Crow.

Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*187-88 (The New Press 2010).

Of the estimated 5.3 million citizens (or one in forty-one adults) denied the vote nationwide,[29] 1.4 million are African American men.[30] Nationwide, 13% of African American men are barred from voting; a rate seven times the national average.[31] Given the current rates of incarceration, it is estimated that three in ten of the next generation of African American men can expect to be disenfranchised at some point in their lifetime.[32] In states that disenfranchise people with criminal convictions, as many as 40% of black men may permanently lose their right to vote. [33]

California's numbers, if anything, reflect greater disparities than national statistics. According to CDCR, 68.3% of individuals in state prison are black and/or Hispanic.[34] Yet, although 29% of the state prison

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[29] The Sentencing Project, *Felony Disenfranchisement Laws in the United States* 1 (December 2011), *available at* http://www.sentencingproject.org/doc/publications/fd_bs_fdlawsinusDec11.pdf (last visited on Mar. 4, 2012).

[30] *Id.*

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] Cal. Dep't of Corr. & Rehab., Offender Info. Services Branch, Estimates & Statistical Analysis Section Data Analysis Unit, *California Prisoners and Parolees 2009* (2010), *available at*

population is black,[35] black people make up only 6.2% of California's total population.[36] Similarly, 63.7% of individuals on parole in California are black and/or Hispanic.[37]

The racially disparate effect of disenfranchisement extends beyond the individual whose right to vote is restricted; it also negatively impacts the political power of their communities.[38] Researchers have quantified the impact that incarceration has had on voting and found each individual "decision to vote affects the turnout of, on average, at least four people in what they refer to as a 'turnout cascade.'"[39] This "turnout cascade" has been documented, particularly in the context of felony disenfranchisement

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http://www/cdcr/ca/gov/reports_research/offender_information_services_branch/Annual/CalPris/CALPRISd2009.pdf [hereinafter CDCR Prisoners and Parolees Report 2009].

[35] *Id.*

[36] Sonya Rastogi et al., U.S. Census Bureau, *The Black Population: 2010*, 8 (Sept. 2011), *available at* http://www.census.gov/prod/cen2010/briefs/c2010br-06.pdf.

[37] CDCR Prisoners and Parolees Report 2009.

[38] *See* Aman McLeod, Ismail K. White and Amelia R. Gavin, *The Locked Ballot Box: The Impact of State Criminal Disenfranchisement Laws on African American Voting Behavior and Implications for Reform*¸11 Va. J. Soc. Pol'y & L. 66-88 (2003).

[39] James H. Flowler, *Turnout in a Small World*, in Social Logic of Politics at 19 (2005).

laws.[40] One study found that the probability that a non-disenfranchised African American would vote in a state with harsh disenfranchisement laws was a full 10% lower than in a state with less punitive disenfranchisement laws.[41] In light of the racial disparities of conviction rates, "racial disparity in voting participation…will only grow larger with time."[42]

The racially disproportionate impact of laws disenfranchising individuals with felony convictions underscores the urgency of ensuring that California citizens living in their communities under county supervision or in county facilities for low-level crimes have an opportunity to participate in the political process.

CONCLUSION

For the foregoing reasons, this court should issue a writ of mandate commanding respondents Secretary of State, Debra Bowen, and San Francisco Director of Elections, John Arntz, to register all individuals, otherwise qualified to vote, who are detained in county jails or under county supervision following conviction of a low-level felony and sentencing under Realignment.

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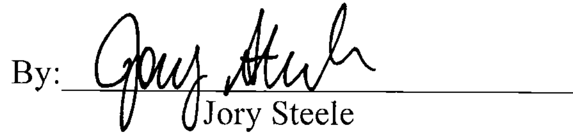
[40] McLeod et al., *supra* note 38 at 74-77.

[41] *Id.* at 79.

[42] *Id.* at 81.

Dated: March 5, 2012 in San Francisco, California.

Respectfully submitted,



By: Jory Steele

Attorney for Petitioners

JORY STEELE (206944)
DIANA TATE VERMIERE (232264)
MARGARET C. CROSBY (568812)
NOVELLA COLEMAN (281632)
LINNEA NELSON (278960)
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF NORTHERN CALIFORNIA, INC.
39 Drumm Street
San Francisco, CA 94111
Telephone: 415-621-2493
Facsimile: 415-255-8437

PETER SHEEHAN (51555)
SOCIAL JUSTICE LAW PROJECT
449 15th Street, suite 301
Oakland, CA 94612
Telephone: (510) 891-9794 ext. 628
Facsimile: (510) 891-9727

OREN SELLSTROM (161074)
MEREDITH DESAUTELS (259725)
LAWYERS' COMMITTEE FOR CIVIL RIGHTS OF THE SAN FRANCISCO BAY AREA
131 Steuart Street, Suite 400
San Francisco, CA 94105
Telephone: (415) 543-9444
Facsimile: (415) 543-0296

JOSHUA KIM (257260)
CT TURNEY (279241)
A NEW WAY OF LIFE REENTRY PROJECT
PO Box 875288

Los Angeles, CA 90087
Telephone: (323) 563-3575
Facsimile: (323) 563-344

CATHERINE MCKEE (267126)
LEGAL SERVICES FOR PRISONERS WITH CHILDREN
1540 Market St., Suite 490
San Francisco, CA 94102
Telephone: (415) 255-7036
Facsimile: (415) 552-3150

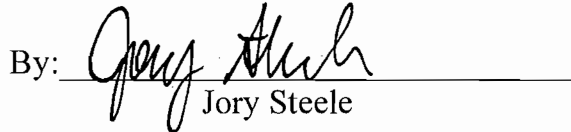
ROBERT RUBIN (85084)
LAW OFFICE OF ROBERT RUBIN
315 Montgomery St., 10th Fl.
San Francisco, CA 94104
Telephone.: (415) 434-5118

CERTIFICATE OF COMPLIANCE

I certify pursuant to CRC 8.204(c)(1) that the Petition for Writ of Mandate is proportionally spaced, has a typeface of 13 points or more, contains 13,115 words, excluding the cover, the tables, the signature block and this certificate, which is less than the total number of words permitted by the Rules of Court. Counsel relies on the word count of the Microsoft Word word-processing program used to prepare this brief.

Dated: March 5, 2012 in San Francisco, California.

Respectfully submitted,

By: 
Jory Steele

Attorney for Petitioners

JORY STEELE (206944)
DIANA TATE VERMIERE (232264)
MARGARET C. CROSBY (568812)
NOVELLA COLEMAN (281632)
LINNEA NELSON (278960)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA
39 Drumm Street
San Francisco, CA 94111
Telephone: 415-621-2493
Facsimile: 415-255-8437

PETER SHEEHAN (51555)
SOCIAL JUSTICE LAW PROJECT
449 15th Street, suite 301
Oakland, CA 94612
Telephone: (510) 891-9794 ext. 628
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OREN SELLSTROM (161074)
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LAWYERS' COMMITTEE FOR CIVIL RIGHTS
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CT TURNEY (279241)
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Telephone: (323) 563-3575
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San Francisco, CA 94102
Telephone: (415) 255-7036
Facsimile: (415) 552-3150

ROBERT RUBIN (85084)
LAW OFFICE OF ROBERT RUBIN
315 Montgomery St., 10th Fl.
San Francisco, CA 94104
Telephone.: (415) 434-5118

PROOF OF SERVICE

All Of Us Or None, et al. v. Bowen, et al.

Case No. _____________

I, Nishan Bhaumik, declare that I am employed in the City and County of San Francisco, over the age of 18 years, and not a party to the within action or cause. My business address is 39 Drumm Street, San Francisco, CA 94111.

On March 7, 2012, I served a copy of the foregoing:

- **PETITION FOR WRIT OF MANDATE; MEMORANDUM OF POINTS AND AUTHORITIES; AND EXHIBITS**

on each of the following by placing a true copy in a sealed envelope and directing that the same be hand-delivered to the following:

Debra Bowen, Secretary of State
California Secretary of State
1500 11th Street, 6th Floor
Sacramento, CA 95814
916-653-6814

Mayor Edwin Lee
Mayor's Office
City Hall, Room 200,
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
415-554-6141

Kamala Harris, Attorney General
Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814-2919
916-445-9555

John Arntz, Director
Department of Elections
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4635
415-554-4375

I have been advised that each of these envelopes has been hand-delivered as directed. I declare under penalty of perjury that the foregoing is true and correct. Executed on ________________, at San Francisco, California.

____
Nishan Bhaumik