S259011

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

O.G., Petitioner, v. THE SUPERIOR COURT OF VENTURA CO., Respondent; THE PEOPLE OF THE STATE OF CALIFORNIA Real Party in Interest.	Supreme Court No. S259011 Court of Appeal No. B295555 Ventura County Superior Court No. 2018017144

The Honorable Kevin J. McGee, Judge Presiding

PETITIONER'S BRIEF ON THE MERITS

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PROPOSITION

LEGISLATIVE MATERIAL

ISSUE PRESENTED FOR REVIEW

Did Senate Bill No. 1391 (Stats. 2018, ch. 1012), which eliminated the possibility of transfer to adult criminal court for crimes committed when a minor was 14 or 15 years old, unconstitutionally amend Proposition 57?

ANSWER

No. S.B. 1391 is a constitutional amendment to Proposition 57 because it satisfies Proposition 57's amendment clause, which specifically authorized legislative amendments to the juvenile transfer process so long as "such amendments are consistent with and further the intent" of Proposition 57. Because it is a reasonable construction that S.B. 1391 satisfies Proposition 57's amendment clause, the legislation is constitutional.

STATEMENT OF CASE AND FACTS

On September 30, 2018, Governor Brown signed Senate Bill (S.B.) No. 1391. (Sen. Bill. No. 1391 (2017-2018 Reg. Sess.) § 1-3.) S.B. 1391 passed the Legislature by a majority vote and took effect on January 1, 2019. It eliminated a prosecutor's power to move to transfer a minor to adult court who was 14 or 15 years old at the time of the offense, except in the limited situation that the minor was not apprehended prior to the end of juvenile court jurisdiction. (Stats. 2018, ch. 1012, § 1 [enacting S.B. 1391]; see Cal. Const., art. IV, § 8; Gov. Code, § 9600, subd. (a), Exhibit C[1], pp. 80-82.)

On January 20, 2019, a second amended Welfare and Institutions Code section 602 petition was filed in juvenile court alleging that 15-year-old petitioner murdered and robbed Adrian Ornelas on May 20, 2018. (Pen. Code, §§ 187, subd. (a), 211, counts I & II.) Count III alleged that petitioner murdered Jose Lopez on April 22, 2018, and included gang and firearm allegations. (Pen. Code, §§ 187, subd. (a), 186.22 subd. (b)(1),

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[1] All citations to exhibits are to those exhibits filed in support of the petition for writ of mandate in the Court of Appeal.

12022.53 subds. (b),(d),(e)(1), 12022.5 subd. (a).) (Exhibit A, pp. 5-6.) The prosecutor moved to transfer petitioner to adult court. (Exhibit C, pp. 16-84.)

On January 31, 2019, the juvenile court held that S.B. 1391 was an unconstitutional amendment to Proposition 57. (Exhibit F, p. 128, Exhibit G, pp. 132-135.) The court granted the prosecutor's motion to refer the case to the probation department to prepare a transfer report but the trial court then delayed the preparation of the report pending further proceedings. (Exhibit F, pg. 125, 128.)

Thereafter, petitioner filed a writ of mandate and briefing was ordered in the Court of Appeal. Division Six of the Second District Court of Appeal issued a published opinion on September 30, 2019, agreeing with the juvenile court that S.B. 1391 is unconstitutional. (*O.G. v. Superior Court* (2019) 40 Cal.App.5th 626 (*O.G.*))

On November 26, 2019, this Court granted petitioner's petition for review, as well as the petitions filed in *People v. Superior Court (G.G.)* (S259048), *People v. Superior Court (I.R.)* (S257773), *People v. Superior Court (S.L.)* (S258432), and *People*

v. Superior Court (T.D.) (S257980).[2] This Court designated petitioner's case as the lead case and deferred further action as to the others pending consideration and disposition of this case. (Cal. Rules of Court, rule 8.512(d)(2).)

No recitation of the facts is contained herein because there has been no trial or adjudication in petitioner's case. No probation report has been prepared. (Exhibit F, p. 128.) What is relevant is that petitioner was 15 years old at the time of the alleged crimes, as his date of birth is December 21, 2002, and he

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[2] To date, in published cases, Courts of Appeal in all six districts have answered this Court's question posed here and found that S.B. 1391 is a constitutional legislative amendment to Proposition 57. (*People v. Superior Court* (*Alexander C.*) (2019) 34 Cal.App.5th 994 (*Alexander C.*) [First Dist., Div. 4]; *People v. Superior Court (K.L.)* (2019) 36 Cal.App.5th 529 (*K.L.*) [Third Dist.]; *People v. Superior Court (T.D.)* (2019) 38 Cal.App.5th 360 (*T.D.*) [Fifth Dist.], review granted November 26, 2019, S257980; *People v. Superior Court (I.R.)* (2019) 38 Cal.App.5th 383 [Fifth Dist.], review granted November 26, 2019, S257773; *People v. Superior Court (S.L.)* (2019) 40 Cal.App.5th 114 (*S.L.*) [Sixth Dist.], review granted November 26, 2019, S258432; *B.M. v. Superior Court* (2019) 40 Cal.App.5th 742 (*B.M.*) [Fourth Dist., Div. 2], review granted January 2, 2020, S259030; *Narith S. v. Superior Court* (2019) 42 Cal.App.5th 1131 (*Narith S.*) [Second Dist., Div 3], review granted February 19, 2020, S260090.) The underlying case is the only published outlier.

was apprehended prior to the expiration of juvenile court jurisdiction. (Exhibit A, p. 5.)

OVERVIEW OF PROPOSITION 57 & S.B. 1391

Effective November 9, 2016, California voters passed Proposition 57, "The Public Safety and Rehabilitation Act of 2016." As described by the Attorney General in the ballot materials, the proposition covered changes to criminal sentences, parole and juvenile proceedings and sentencing. (Ballot Pamp., General Elec. (November 8, 2016) [hereafter Prop. 57 Pamp.] official title and summary, p. 54; Exhibit C, p. 63.) As relevant here, Proposition 57 amended the juvenile transfer process, codified in Welfare and Institutions Code sections 707 and 602. The voters eliminated direct filing by prosecutors. Prosecutors could still seek to transfer certain categories of minors to adult court– 16- and 17-year-olds who violated any felony criminal statute, and 14- and 15- year-olds who committed enumerated serious offenses– but no minor could be transferred to adult court until a juvenile court judge "conduct[ed] a transfer hearing to consider various factors such as the minor's maturity, degree of criminal sophistication, prior delinquent history, and whether the minor can be rehabilitated. [Citation.]" (*People v. Lara* (2018) 4 Cal.5th 299, 305–306, fn. omitted (*Lara*); see Welf. & Inst. Code, §

707, former subds. (a), (b).) The Act also eliminated the presumption that a minor alleged to have committed certain specified serious offenses was not a fit and proper subject to be dealt with under the juvenile court law. (See Welf. & Inst. Code, § 707, former subd. (c).)[3]

According to uncodified legislative text, in enacting Proposition 57, the people of California had the purpose and intent to:

1. Protect and enhance public safety.
2. Save money by reducing wasteful spending on prisons.
3. Prevent federal courts from indiscriminately releasing prisoners.
4. Stop the revolving door of crime by emphasizing rehabilitation, especially for juveniles.
5. Require a judge, not a prosecutor, to decide whether juveniles should be tried in adult court.

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[3] Under the law prior to Proposition 57, the juvenile court was bound by a rebuttable presumption that the minor was not fit for the juvenile court system, whereas under current law there is no such presumption. (Welf. & Inst. Code, § 707, subd. (a).) In addition, under the prior law, the court at a fitness hearing could not retain jurisdiction unless it found a minor fit for juvenile court under all five criteria. (Welf. & Inst. Code, former § 707, subd. (c).) "In a transfer hearing post-Proposition 57, the court must consider all five factors, but has broad discretion in how to weigh them. (Welf. & Inst. Code, § 707, subd. (a)(2).)" (*People v. Garcia* (2018) 30 Cal.App.5th 316, 324–325.)

(Prop. 57 Pamp., text of proposed laws, § 2, p. 141; Exhibit C, p. 69.)

Voters did not cast the juvenile transfer provisions of Proposition 57 in stone. An attached amendment clause, focused solely on those sections, allowed the Legislature to change the provisions of Sections 4.1 and 4.2 without voter approval. According to uncodified section five of Proposition 57, the Legislature can amend Sections 4.1 and 4.2 of the act, the "Judicial Transfer Process" section, are allowed, so long as "such amendments are consistent with and further the intent of this act by a statute that is passed by a majority vote of the members of each house of the Legislature and signed by the Governor." (Prop. 57 Pamp., text of proposed laws, § 5, p. 145; Exhibit C, p. 73.) In uncodified section nine, Proposition 57 specifically states that "[t]his act shall be liberally construed to effectuate its purposes." (Prop. 57 Pamp., text of proposed laws, § 9, p. 146; Exhibit C, p. 74.) As a unique feature, Proposition 57's amendment clause contains a *second* mandate that "This act shall be broadly construed to accomplish its purposes." (Prop. 57 Pamp., text of proposed laws, § 5, p. 145; Exhibit C, p. 73.)

Two years after Proposition 57 passed, the Legislature accepted the voters' invitation to amend Proposition 57 and changed the juvenile transfer process in California with S.B. 1391. Passing both houses of the Legislature by a majority vote, S.B. 1391 was signed into law on September 30, 2018 by Governor Brown. Effective on January 1, 2019, S.B. 1391 amended Welfare and Institutions Code section 707, subdivision (a)(1), to eliminate a district attorney's ability to seek transfer of 14 and 15 year olds from juvenile court to criminal court, save for a narrow exception if the minor is "not apprehended prior to the end of juvenile court jurisdiction." (Welf. & Inst. Code, § 707, subd. (a)(2); Exhibit C, pp. 80-82.) The Legislature declared that S.B. 1391 amended Proposition 57 and "is consistent with and furthers the intent of Proposition 57." (S.B. 1391, § 3; Exhibit C, pp. 80-82.)

In addition to the recognition of the United States Supreme Court's cases referencing adolescent brain science (Exhibit H, p. 141), as part of its evaluation of the need for S.B. 1391, the Legislature considered evidence and research about racial, ethnic and geographic disparities between minors referred to adult court instead of juvenile court. It also considered evidence that youth

tried as adults are more likely to commit new crimes in the future than their peers treated in the juvenile system and that most youth will eventually be released from prison, thus "we need to ensure they get the treatment and tools they need to succeed with they return to society." (Exhibit H, pg. 140-143.)

ARGUMENT

S.B. 1391 IS CONSTITUTIONAL

A. Introduction

In 2016, California voters endorsed Proposition 57's proposal which enacted provisions promising to result in "fewer youths tried in adult court." (Prop. 57 Pamp., analysis by the Legislative Analyst, p. 56; Exhibit C, p. 65.) This was accomplished by repealing the prosecutor's power to directly file charges against minors in adult court and by changing the presumptions at transfer hearings to allow more minors to stay in juvenile court, with rehabilitation as the goal. Proposition 57 was a direct repeal of the expansion of power granted to prosecutors by the Legislature and the voters in the mid-1990s and early 2000s.

The voters, however, did not intend to freeze the juvenile transfer procedure in time. The voters gave the Legislature the authority to amend the juvenile transfer provisions, by majority vote, provided any amendment was consistent with and furthered the intent of Proposition 57. In 2018, the Legislature made an amendment to Proposition 57 by passing S.B. 1391, which further

narrowed the power of prosecutors to transfer minors, eliminating 14- and 15-year-olds all together, furthering Proposition 57's purpose of reducing the number of youths tried in adult court.

It would thwart the will of the voters who authorized amendments to the juvenile transfer provisions of Proposition 57 not to allow Proposition 57 to be amended with S.B. 1391. Reasonably construed, S.B. 1391 furthers the provisions of the amendment clause of Proposition 57 and should be upheld as constitutional. (*Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243, 1251(*Amwest*).)

B. The Standard of Review for Matters Related to Legislation and Initiatives Containing Amendment Clauses

When interpreting an initiative, courts apply the same principles governing statutory construction. (*People v. Superior Court* (*Pearson*) (2010) 48 Cal.4th 564, 571 (*Pearson.*) Matters of statutory interpretation are questions of law subject to *de novo* review. (*Elsner v. Uveges* (2004) 34 Cal.4th 915, 927.)

For the past twenty-five years, when evaluating whether a statute furthers an initiative's amendment clause, reviewing courts have looked to the *Amwest* case for the framework to evaluate whether new legislation comports with an amendment clause. At the time *Amwest* was decided, determining the interplay between a legislative act and an earlier initiative's amendment clause was an issue of first impression. (*Amwest, supra,* 11 Cal.4th. at p. 1251.) In *Amwest*, this Court held that a reviewing court must start with the presumption that the Legislature acted within its authority and uphold the amendment if, *by any reasonable construction*, it can be said that the statute furthers the purposes of the initiative. (*Amwest, supra,* 11 Cal. 4th at p. 1256, emphasis added.) As recently as 2017, this Court affirmed the use of the "reasonable construction" test as a grounding premise when evaluating legislative amendments to voter initiatives. (*People v. DeLeon* (2017) 3 Cal.5th 640, 651 (*DeLeon*).)

Reviewing courts must also bear in mind the well-established separation of powers principle that "[c]ourts should exercise judicial restraint in passing upon the acts of

coordinate branches of government; the presumption is in favor of constitutionality, and the invalidity of the legislation must be clear before it can be declared unconstitutional." (*Dittus v. Cranston* (1959) 53 Cal.2d 284, 286.) Legislative findings are entitled to "great weight" and "will be upheld unless they are found to be unreasonable and arbitrary." (*Amwest, supra,* 11 Cal.4th at p. 1252.) This is especially true where the Legislature has directly considered the constitutional issue and found the amendment consistent with the voter initiative, as it has here. (*B.M., supra,* 40 Cal.App.5th at p. 749, *Narith S., supra,* 42 Cal.App.5th at pp. 1131, 1143.) "Although the ultimate constitutional interpretation must rest, of course, with the judiciary (see *Marbury v. Madison* (1803) 5 U.S. (1 Cranch) 137, 176–180 [2 L.Ed. 60]), a focused legislative judgment on the question enjoys significant weight and deference by the courts." (*Property Reserve, Inc. v. Superior Court* (2016) 1 Cal.5th 151, 193.)

C. S.B. 1391 Is A Constitutional Amendment to Proposition 57

Under article II, section 10 of the California Constitution, a statute enacted by voter initiative may be amended or repealed

by the Legislature only with the approval of the electorate, unless the initiative provides otherwise. (Cal. Const., art. II, § 10, subd. (c).) The purpose of this limitation is to "protect the people's initiative powers by precluding the Legislature from undoing what the people have done, without the electorate's consent." (*People v. Kelly* (2010) 47 Cal.4th 1008, 1025.)

When new legislation concerns an area of law previously enacted by the voters, a reviewing court must first consider whether the new law is an amendment and thereafter evaluate the new law through the lens of the initiative's amendment clause, if there is one. As this Court observed in *Pearson*, to evaluate whether post-initiative legislation is an amendment one must ask, "whether [the new law] prohibits what the initiative authorizes, or authorizes what the initiative prohibits."[4]

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[4] In the underlying case, the *O.G.* Court applied the *Pearson* test and abruptly concluded that, under *Pearson*, if a new law does not allow something that an initiative previously authorized, then the new law is *per se* unconstitutional because it contravenes the will of the voters. (*O.G., supra*, 40 Cal.App.5th at pp. 629-630.) Contrary to the *O.G.* Court's analysis, the *Pearson* test does not control the outcome here. The question presented is not whether S.B. 1391 amends Proposition 57, but whether it comports with Proposition 57's voter-approved amendment clause. In *Pearson,* this Court found that the legislation in question was not an amendment and thus this Court's analysis

(*Pearson, supra*, 48 Cal.4th at p. 571.) Once legislation is deemed an amendment, the constitutionality of the amendment is determined by whether the amendment satisfies the initiative's amendment clause. (*Amwest, supra*, 11 Cal.4th at p. 1251.)

Here, S.B. 1391 amends Welfare and Institutions Code section 707 to effectively eliminate a prosecutor's power to seek to transfer a 14- or 15-year old's case for prosecution in adult court, regardless of the crimes alleged.[5] Since a prosecutor could seek to transfer some 14- and 15-year-olds under Proposition 57, the constitutional validity of S.B. 1391 turns on whether S.B. 1391 satisfies Proposition 57's amendment clause. Since there is a reasonable construction that it does, as explained below, the amendment is constitutional.

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did not focus on the amendment clause. (*Pearson, supra,* 48 Cal.4th at p. 567.)

[5] There is an exception when if the minor is not apprehended prior to the expiration of juvenile jurisdiction. (Welf. & Inst. Code, § 707, subd. (a)(2).)

D. Determining the Intent of Proposition 57 Requires Consideration of the Text of the Act, the Historical Context, As Well As Ballot Materials

S.B. 1391 clearly satisfies required elements of the amendment clause in that is only amends part of the juvenile transfer process and that it was passed by a majority of both houses of the legislature before being signed by the Governor. (Prop. 57 Pamp., text of proposed laws, § 5, p. 145; Exhibit C, p. 73.) All that remains is evaluating whether S.B. 1391 is "consistent with and furthers the intent" of Proposition 57. *Amwest* teaches that the way to properly discern the purpose of an initiative, and therefore its intent, is to consider the initiative "as a whole." (*Amwest, supra*, 11 Cal.4th at p. 1257.) To determine the intent of Proposition 57, this Court may consider various sources and is not limited to the enumerated purposes of the initiative. (*Ibid.*) "'Where, as here, a constitutional amendment is subject to varying interpretations, evidence of its purpose may be drawn from many sources, including the historical context of the amendment, and the ballot arguments favoring the measure. [Citations.]' (*California Housing Finance Agency v. Patitucci* (1978) 22 Cal. 3d 171, 177.)" (*Amwest, supra*,

11 Cal. 4th at p. 1256.) Additionally, this Court must give effect to the initiative's specific language, as well as its major and fundamental purposes. (*Amwest, supra*, 11 Cal.4th at pp. 1259, 1260 [identifying initiative's "major purposes"; argument that initiative had "a narrower scope than would follow from its broad language" rejected "in view of the particular language" used]; *Foundation for Taxpayer & Consumer Rights v. Garamendi* (2005) 132 Cal.App.4th 1354, 1370 [citing initiative's "fundamental purpose"; amendment must not violate a "primary mandate" of the initiative].) (*Gardner v. Schwarzenegger* (2009) 178 Cal.App.4th 1366, 1374.)

The voters did not pass Proposition 57 in a vacuum. (*B.M., supra*, 40 Cal.App.5th at p. 749.) To discern its purpose and intent, it is helpful to place the initiative in historical context. (See *Amwest, supra*, 11 Cal.4th at p. 1257 [reviewing history of insurance rate regulation "[i]n order to determine the purposes of Proposition 103"].)

1. Historical Expansion of Prosecutorial Power Leading to Passage of Proposition 57, Which Retracted Prosecutorial Power

In California, the juvenile court generally exercises

delinquency jurisdiction over a minor who has violated the law when under the age of 18. (See Welf. & Inst. Code, §§ 602, 603.) Significant differences exist between juvenile and adult offender laws, and "[t]he former seeks to rehabilitate, while the latter seeks to punish." (*In re Julian R.* (2009) 47 Cal.4th 487, 496.) While a person convicted of serious crimes in adult court can be punished by a long prison sentence, juveniles are generally treated quite differently, with rehabilitation as the goal. (*Lara, supra,* 4 Cal.5th at 306; Welf. & Inst., § 202, subd. (b).)

The juvenile court system is a statutory creation. (See *In re Ramon M.* (2009) 178 Cal.App.4th 665, 672.) The Legislature formalized juvenile proceedings in 1961 with the Arnold-Kennick Juvenile Court Act. (See Act of July 14, 1961, 1961 Stat., ch. 1616, p. 3459.) Minors received numerous rights, including the right to counsel and the right to have the State meet a burden of proof. (*Id.* at pp. 3474-3476, 3481-3482, former Welf. & Inst. Code, §§ 554, 633-634, 701-702.) 16 years old was the minimum age at which a minor could be transferred to criminal court for prosecution. (*Id.* at pp. 3462, 3472, 3485, former Welf. & Inst. Code, §§ 510, 603, 707.)

In 1975, the guidelines for the transfer process were clarified in amendments to Welfare and Institutions Code section 707 stating that "upon motion of the petitioner prior to the attachment of jeopardy," a judge was to evaluate the "fitness" of juveniles prior to possible transfer to adult court. (Stats. 1975, ch. 1266, § 4, p. 3325, amending Welf. & Inst. Code, § 707.) The juvenile court was to use the fitness criteria to determine whether the minor would be "amenable to the care, treatment and training program available through the juvenile court." (*Ibid.*)

Effective January 1, 1977, amendments to Welfare & Institutions Code sections 650, subdivision (b) and 681 transferred the power to file petitions to initiate juvenile court proceedings from probation officers to local prosecutors. (Welf. & Inst. Code, § 650, subds. (b), (c).) Since that time, it has been clear that juvenile court judges have only had discretion to transfer juveniles to adult court as a byproduct of the Legislature's grant of jurisdiction to prosecutors to seek to transfer juveniles to adult court.

In 1994, the same year that California's Legislature passed the Three Strikes Law, the Legislature decreased the minimum

age for adult prosecution that had been in place for more than 30 years, seeking to punish more minors as adults. In response to "public anxiety about the increase in juvenile crime in terms of numbers and level of violence," the Legislature lowered the minimum age at which prosecutors could seek to transfer a minor to 14, thereby opening the door of the adult courthouse to 14- and 15- year-olds as of January 1, 1995. *(Hicks v. Superior Court* (1995) 36 Cal.App.4th 1649, 1652, 1658 (Stats. 1994, ch. 448, § 3 [Assem. Bill No. 1948 (AB No. 1948)]; Stats. 1994, ch. 453, § 9.5 [Assem. Bill No. 560 (AB 560)].)

In 1999, the Legislature vested even more power in local district attorneys to prosecute minors in adult court. It amended Welfare and Institutions Code section 602 by adding a new subdivision (b), mandating direct filing of an adult criminal complaint against any juvenile 16 years old or older who had previously been declared a ward of the court for commission of a felony after he or she was 14 years old if the juvenile was alleged to have committed certain enumerated serious offenses. (Former Welf. & Inst. § 602, subd. (b)(1)–(5), as amended by Stats. 1999, ch. 996, § 12.2, p. 7560; see *Manduley v. Superior Court* (2002) 27

Cal.4th 537, 549 (*Manduley*).)

Proposition 21, the Gang Violence and Juvenile Crime Prevention Act of 1998, approved in the March 7, 2000 election, further expanded the prosecutor's jurisdiction to bring adult cases against 14- and 15-year-olds in both mandatory and discretionary situations, depending on the charges and/or the juvenile's delinquency history. (Former Welf. & Inst. Code,§ 707, subd. (d)3; see Ballot Pamp., Primary Elec. (Mar. 7, 2000) Prop. 21, § 26, pp. 126-127; Exhibit C, pp. 55-56; see generally *Manduley, supra,* 27 Cal. 4th at p. 537, 548-550; *Juan G. v. Superior Court* (2012) 209 Cal.App.4th 1480, 1489 & fn. 4.)

In the 16 years between passage of Proposition 21 in 2000 and Proposition 57 in 2016, there was "a sea change in penology regarding the relative culpability and rehabilitation possibilities for juvenile offenders, as reflected in several judicial opinions." (*People v. Vela* (2018) 21 Cal. App. 5th 1099, 1106, see, e.g., *Graham v. Florida* (2010) 560 U.S. 48, 67 [176 L.Ed. 2d 825, 130 S.Ct. 2011] [a juvenile cannot be sentenced to life without the possibility of parole (LWOP) for a nonhomicide offense]; see also *Miller v. Alabama* (2012) 567 U.S. 460, 469–470 [183 L.Ed.2d

407, 132 S.Ct. 2455] [no mandatory LWOP sentence for juveniles even for a homicide offense; there must be a consideration of youth-related factors in sentencing].) In the same period, the California Legislature enacted sweeping legislation reflecting a rethinking of punishment alternatives for the minors being punished for acts committed when their brains were not fully developed.[6] These laws were inspired by the High Court's

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[6] In 2012, the Legislature enacted Senate Bill 9, amending Penal Code section 1170 so as to permit the vast majority of juveniles sentenced to life without opportunity for parole (LWOP) to petition, at various times during their term of imprisonment, for recall of their LWOP sentence and resentencing to a life with parole sentence. (Reg. Sess. 2011-2012, Ch. 828 (S.B. 9), § 1.) In 2013, the Legislature enacted Senate Bill 260, amending Penal Code sections 3041, 3046, 3051, and 4801 to create "youth offender parole," thereby affording the vast majority of imprisoned juvenile offenders serving lengthy determinate term sentences or indeterminate term sentences, "a meaningful opportunity to obtain release." Reg. Sess. 2012-2013, Ch. 312 (S.B. 260), § 4; Pen. Code, § 3051, subd. (e).) In 2015, the "youth offender parole" statutes were again amended to require such an opportunity for eligible inmates who were younger than twenty-three when their commitment offense occurred. (Reg. Sess. 2015-2016, Ch. 471 (S.B. 261), § 1.) In addition, in 2015, the Legislature enacted Senate Bill 382, amending Welfare and Institutions Code section 707 to specify evidence-based individualized youth-related factors which must be considered in determining whether a minor is fit to be treated under the juvenile court law. (Reg. Sess. 2014-2015, Ch. 234 (S.B. 382), § 1.)

recognition of scientific research on adolescent brain development confirming the commonsense understanding that children are different from adults in ways that are critical to identifying age-appropriate criminal sentences. (See *Roper v. Simmons* (2005) 543 U.S. 551, 569-571, *Graham v. Florida* (2010) 560 U.S. 48, 68-75, *Miller v. Alabama* (2012) 567 U.S. 460, 471, 479; see also *People v. Gutierrez* (2014) 58 Cal.4th 1354, 1375-1376, *People v. Caballero* (2012) 55 Cal.4th 262, 267.)

The public endorsed this course correction in favor of rehabilitation for minors with the passage of Proposition 57. The voters repealed presumptions favoring juvenile transfer and eliminated the power of local prosecutors to direct file. Voters are assumed to be aware of the state-wide trends in legislation that were mitigating the draconian sentencing options with juvenile justice reform measures that recognized the benefits of rehabilitative programs. (*Juan G., supra,* 209 Cal.App.4th at p. 1494 [Voters are presumed to be aware of existing law at the time an initiative was enacted.]) "The voters apparently rethought their votes on Proposition 21 and passed Proposition 57." (*J.N. v. Superior Court* (2018) 23 Cal.App.5th 706, 710-711, *People v.*

Cervantes (2017) 9 Cal.App.5th 569, 596 ["Proposition 57 was designed to undo Proposition 21"].)

2. Ballot Materials for Proposition 57

The initiative's official title and summary, prepared by the Attorney General and included in the ballot materials provided to the voters said that Proposition 57: "Provides juvenile court judges shall make determination, *upon prosecutor motion*, whether juveniles age 14 and older should be prosecuted and sentenced as adults for specified offenses." (Prop. 57 Pamp., official title and summary, p. 54; Exhibit C, p. 63, emphasis added.) In the Legislative Analyst's description of the current law, prior to Proposition 57, it was explained that in some situations, minors were in adult court, "At the Discretion of a Judge Based on Hearing," which was something that a "prosecutor can request." (Prop. 57 Pamp., analysis by the Legislative Analyst, p. 55; Exhibit C, p. 64.)

Discussing the summary of the changes Proposition 57 would make, the Legislative Analyst explained that related to "Juvenile Transfer Hearings," Proposition 57 will "require that, before youths can be transferred to adult court, they must have a

hearing in juvenile court to determine whether they should be transferred. As a result, the only way a youth could be tried in adult court is if the juvenile court judge in the hearing decides to transfer the youth to adult court. Youths accused of committing certain severe crimes would no longer automatically be tried in adult court and no youth could be tried in adult court based only on the decision of a prosecutor." (Prop. 57 Pamp., analysis by the Legislative Analyst, p. 56; Exhibit C, p. 65.) The analysis further expounds that "the measure specifies that prosecutors can only seek transfer hearings for youths accused of (1) committing certain significant crimes ... when they were age 14 or 15 or (2) committing a felony when they were 16 or 17. As a result of these provisions, there would be *fewer youths tried in adult court.*" (*Ibid.*, emphasis added.)

There is no specific mention of 14- and 15- year-olds in the ballot arguments for or against Proposition 57. The official "Argument in Favor of Proposition 57" said that Proposition 57 will "focus[ ] resources on keeping dangerous criminals behind bars, while rehabilitating juvenile and adult inmates and saving tens of millions of taxpayer dollars." (Prop. 57 Pamp., argument

in favor, p. 58; Exhibit C, p. 67.) Further, argument in favor states:

> Overcrowded and unconstitutional conditions led the U.S. Supreme Court to order the state to reduce its prison population. Now, without a common sense, long-term solution, we will continue to waste billions and risk a court-ordered release of dangerous prisoners. This is an unacceptable outcome that puts Californians in danger – and this is why we need Prop. 57. (*Ibid.*)

Thereafter, addressing juveniles specifically, the argument in favor claims that Proposition 57 "[r]equires judges instead of prosecutors to decide whether minors should be prosecuted as adults, emphasizing rehabilitation for minors in the juvenile system." (*Ibid.*) Under the heading "*We know what works*," (emphasis in the original), the arguments explain:

> Evidence shows that the more inmates are rehabilitated, the less likely they are to re-offend. Further evidence shows that minors who remain under juvenile court supervision are less likely to commit new crimes. Prop. 57 focuses on evidence-based rehabilitation and allows a juvenile court judge to decide whether or not a minor should be prosecuted as an adult.

(*Ibid.*)

3. Text of Proposition 57

To discern the purposes of an initiative so as to determine

whether a legislative amendment furthers its purpose and thus is valid, courts are also "guided by, but not limited to, the general statement of purpose found in the initiative." *(Proposition 103 Enforcement Project v. Quackenbush* (1988) 64 Cal.App.4th 1473, 1490-1491.) Thus, as noted *supra*, the uncodified section two of Proposition 57 states it is the purpose and intent of the people of the State of California to:

1. Protect and enhance public safety.
2. Save money by reducing wasteful spending on prisons.
3. Prevent federal courts from indiscriminately releasing prisoners.
4. Stop the revolving door of crime by emphasizing rehabilitation, especially for juveniles.
5. Require a judge, not a prosecutor, to decide whether juveniles should be tried in adult court.

(Prop. 57 Pamp., text of proposed laws, § 2, p. 141; Exhibit C, p. 69.)

4. The Major and Fundamental Intent of Proposition 57

In light of the historical context, ballot materials and the enumerated purposes and intent, it is apparent that the major and fundamental intent of Proposition 57 was to reduce the number of minors who would be prosecuted as adults, with a preference for rehabilitation in the juvenile system. (See *K.L,*

supra, 36 Cal.App.5th at p. 541 ["Taken as a whole, and in the context of juvenile offenders, it appears the intent of Proposition 57 was to reduce the number of youths who would be prosecuted as adults."], *T.D., supra*, 38 Cal.App.5th at p. 374 ["The Act's overriding purpose was to channel more juvenile offenders into the juvenile justice system and to have a juvenile court judge make the transfer decision if one was to be made, not to set in stone the age parameters for such a determination."])

Identifying the major and fundamental intent of Proposition 57 as one focused on reducing the occurrence of juveniles in adult court, with an emphasis on rehabilitation, is in accord with this Court's earlier assessment of the intent of the voters with Proposition 57 in the retroactivity analysis articulated in *People v. Lara, supra*, 4 Cal. 5th at p. 309. This Court observed that, "Proposition 57 is an 'ameliorative change[ ] to the criminal law' that we infer the legislative body intended 'to extend as broadly as possible.'" This assessment also squares with the Court of Appeal's analysis in *Vela, supra*, 21 Cal.App.5th at p. 1107, holding that the intent of the electorate in approving Proposition 57 "was to broaden the number of minors who could

potentially stay within the juvenile justice system, with its primary emphasis on rehabilitation rather than punishment." (*People v. Vela, supra*, 21 Cal.App.5th at p. 1107; *S.L., supra*, 40 Cal.App. 114 at p. 122.)

E. Reasonably Construed, S.B. 1391 Is Consistent With And Furthers The Intent of Proposition 57

S.B. 1391 removes the prosecutor's ability to move to transfer 14- and 15-year-olds to adult court. The major and fundamental intent of Proposition 57 was to reduce the number of minors who would be prosecuted as adults, with a preference for rehabilitation in the juvenile system. Not allowing transfer for 14- and 15-year olds necessarily reduces the number of minors prosecuted as adults and increases the number of minors who receive rehabilitative services. Applying the "reasonable construction" test (*Amwest, supra*, 11 Cal. 4th at p. 1256, *People v. DeLeon, supra*, 3 Cal.5th at p. 651), it is a reasonable construction that S.B. 1391 is consistent with and furthers the major and fundamental intent of Proposition 57.

The soundness of this logic is clarified by considering a hypothetical legislative amendment that would increase the number of minors eligible for adult prosecution by lowering the

age for transfer to age 12. Such an amendment would fail because it would not be consistent with and further the intent of Proposition 57. Crucially, it would not fail because it was explicitly inconsistent with the text or language of Proposition 57, but it would fail because it would expose more minors to adult prosecution, clearly in contravention of the intent of Proposition 57.

In addition to looking at the overall intent of Proposition 57, S.B. 1391 is consistent with and furthers Proposition 57's five enumerated purposes and intents, particularly given the judicial mandate to harmonize a later legislative act and an initiative when there is a reasonable construction that the statute satisfies the amendment clause. (*People v. DeLeon, supra,* 3 Cal.5th at p. 651, *Amwest, supra,* 11 Cal.4th at p. 1256.)

1. S.B. 1391 Is Consistent With And Furthers Proposition 57's Purposes Related To Saving Money By Reducing Spending on Prisons, Preventing Indiscriminate Inmate Releases and Stopping the Revolving Door of Crime by Emphasizing Juvenile Rehabilitation

First, S.B. 1391 is consistent with and furthers Proposition 57's goal of reducing spending on prisons. S.B. 1391 does this by assuring that fewer minors will be transferred to adult criminal

court where they could serve sentences in the adult prison system, reducing state funds spent on prisons. Second, S.B. 1391 is consistent with and furthers Proposition 57's goal of preventing federal courts from indiscriminately releasing prisoners. Since S.B. 1391 assures that fewer minors are ultimately sent to adult prison, there will be fewer prisoners potentially indiscriminately released.

Third, specific to juveniles, both Proposition 57 and S.B. 1391 seek to stop the revolving door of crime by emphasizing rehabilitation, especially for juveniles. Proposition 57 furthers this aim by repealing the practice of prosecutorial direct filing, thereby "broaden[ing] the number of minors who could potentially stay within the juvenile justice system, with its primary emphasis on rehabilitation rather than punishment." (*Vela, supra*, 11 Cal.App.5th at p. 76, [interpreting the purpose behind Prop. 57's juvenile offender provisions].) S.B. 1391 continues in this vein by shielding 14- and 15-year olds from criminal court. As the Assembly Committee on Public Safety concluded when it analyzed S.B. 1931, "Keeping 14 and 15 year olds in the juvenile justice system will help to ensure that youth receive treatment,

counseling, and education they need to develop into healthy, law abiding adults." (Assem. Com. on Public Safety, Rep. on Sen. Bill 1391 (2017–2018 Reg. Sess.) as amended May 25, 2018, p. 4.) "The juvenile [justice] system is very different from the adult system. The juvenile system provides age-appropriate treatment, services, counseling, and education, and a youth's participation in these programs is mandatory. The adult system has no age-appropriate services, participation in rehabilitation programs is voluntary, and in many prisons, programs are oversubscribed with long waiting lists." (Sen. Com. on Public Safety, Rep. on Sen. Bill 1391 (2017–2018 Reg. Sess.) Feb. 16, 2018, p. 4; Exhibit C, p. 140.) Because S.B. 1391 definitely, not just potentially, increases the number of juveniles who will remain in the juvenile justice system and receive rehabilitation-focused services as a consequence of their offenses, it necessarily follows that the legislative amendment furthers Proposition 57's aim of youth rehabilitation. (*B.M., supra,*, 40 Cal. App. 5th at p. 755.)

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2. S.B. 1391 Is Consistent With And Furthers Proposition 57's Purpose Requiring A Judge To Be The Decision Maker When A Juvenile Is Transferred to Adult Court

The fifth enumerated purpose and intent of Proposition 57 is "Require a judge, not a prosecutor, to decide whether juveniles should be tried in adult court." (Prop. 57 Pamp., text of proposed law, § 2, p. 141; Exhibit C, p. 69.) The primary way Proposition 57 accomplishes this enumerated purpose is by eliminating direct filing and not allowing local prosecutors to bypass judges to go directly to adult court. S.B. 1391 does not attempt to reinstate direct filing so there is no conflict with the fifth purpose in that regard.

a. S.B. 1391 Does Not Contravene or Contradict The Fifth Purpose Because Under S.B. 1391, Judges Maintain the Power to Transfer Juveniles to Adult Court

Post-1391, when there is a transfer decision to be made, it will still be made by a judge, instead of by a prosecutor. S.B. 1391 has not eliminated that procedural scheme. Post-S.B. 1391, the prosecutor continues to make a motion to transfer charged minors over age 16 and the juvenile court determines whether the minor should be transferred. (Welf. & Inst., § 707, subd. (a).)

Proposition 57 did not grant trial court judges new jurisdiction to transfer 14- and 15-year-olds to adult court that S.B. 1391 took away. Rather, Proposition 57 took away *prosecutorial* power to bypass juvenile court jurisdiction entirely by eliminating the direct filing authority. S.B. 1391 narrowed prosecutorial power further.

Certainly, not transferring 14- and 15-year-olds to adult court is a change from the prior practice, but that change is what makes S.B. 1391 an amendment to Proposition 57. (See *Pearson, supra*, 48 Cal.4th at p. 571 [The test of whether the new legislation is an amendment is "whether it [the new law] prohibits what the initiative authorizes, or authorizes what the initiative prohibits."].) After deciding something is potentially an amendment, courts must uphold the amendment if the *Amwest* test is satisfied. (*Amwest, supra*, 11 Cal. 4th at p. 1256, *People v. DeLeon, supra*, 3 Cal.5th at p. 651.)

The fifth enumerated purpose of Proposition 57 did not state that judges would *always* decide if 14- and 15- year olds that commit serious crimes should be prosecuted in adult court. Indeed, judges only had the power to make transfer decisions if

the prosecutor first moved to transfer the minor, as the voters were advised in the official title and summary as well as in the analysis by the Legislative Analyst. (Prop. 57 Pamp., official title and summary, analysis of the Legislative Analyst, pp. 54-56; Exhibit C, pp. 63-66.) The fifth enumerated purpose did not specifically say "judges will decide whether to transfer 14- and 15-year olds." The fact that S.B. 1391 eliminates the prosecutor's ability to seek to transfer 14- and 15- year-olds is not in conflict with the words stated or concepts being endorsed with the fifth purpose of Proposition 57.

The electorate's decision to agree with the uncodified purpose of Proposition 57 to "[r]equire a judge . . . to decide whether juveniles should be tried in adult court," did not enshrine juvenile judges with any more jurisdiction than they had before Proposition 57 passed. (See *People v. Canty* (2004) 32 Cal.4th 1266 at 1280 ["statements in an uncodified section do not confer power, determine rights, or enlarge the scope of a measure"].) A juvenile court judge only had jurisdiction to transfer a minor for prosecution in adult court to the extent that prosecutors gave them the opportunity to transfer a minor in the first place. This

power only exists because in 1995 the Legislature gave local prosecutors the power to file transfer motions for 14- and 15-year-olds who committed qualifying offenses. (*Hicks v. Superior Court, supra,* 36 Cal.App.4th at pp. 1652, 1658.) A juvenile judge does not have jurisdiction to transfer a 13-year-old to adult court, no matter how terrible a crime the 13-year-old is alleged to have committed. Before and after S.B. 1391, judges maintain the power to transfer juveniles to adult court, as long as the prosecutor has been conferred the authority to initiate the transfer process. The only thing S.B. 1391 did was to "repeal the power of the prosecutor to make a motion to transfer a minor from juvenile court to adult criminal court if the minor was alleged to have committed certain serious offenses when he or she was 14 or 15 years old." (Sen. Com. on Public Safety Analysis of Sen. Bill No. 1391 (2017-2018 Reg. Sess.), as amended April 3, 2018, p. 2; Exhibit H, p. 138.)

As a comparison, the Court of Appeal in *Gardner v. Schwarzenegger, supra,* 178 Cal. App. 4th 1366, struck down a law seeking to amend Proposition 36 (Drugs. Probation and Treatment), passed in 2000, because the new law directly

contradicted one of the enumerated purposes of the initiative. Proposition 36 had an amendment clause stating, "All amendments to this act shall be to further the act and shall be consistent with its purposes." (*Ibid.* at p. 1370, Ballot Pamp., General Elec. (November 7, 2000, text of Prop. 36, § 9, p. 69.) Proposition 36 had three enumerated purposes[7] related to sending people with drug offenses and probation violations to substance abuse programs rather than jail, to spend less money on incarceration and to save jail cells for serious and violent offenders while promoting public health by reducing drug dependence. (*Ibid.* at 1377, Prop. 36, 2000, § 3, p. 66.) The Legislature's new law permitted incarceration of defendants who

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[7] Proposition 36's express purposes were: "(a) To divert from incarceration into community-based substance abuse treatment programs nonviolent defendants, probationers and parolees charged with simple drug possession or drug use offenses; [¶] (b) To halt the wasteful expenditure of hundreds of millions of dollars each year on the incarceration—and reincarceration—of nonviolent drug users who would be better served by community-based treatment; and [¶] (c) To enhance public safety by reducing drug-related crime and preserving jails and prison cells for serious and violent offenders, and to improve public health by reducing drug abuse and drug dependence through proven and effective drug treatment strategies." (Ballot Pamp., General Elec. (November 7, 2000, text of Prop. 36, § 3, p. 66.)

violated probation related to drugs in circumstances where incarceration was prohibited by Proposition 36, and narrowed eligibility for Proposition 36 drug diversion programs. The Court of Appeal found that the challenged law was unconstitutional because its expansion of authority to jail probationers for drug-related probation violations "clearly contravenes" several of the enumerated purposes of Proposition 36. The new law violated the purpose "to divert from incarceration" probationers charged with drug offenses, it necessarily increased spending on incarceration and did not necessarily preserve jail and prison cells for serious and violent offenders. (*Gardner, supra*, 178 Cal. App. 4th at pp. 1377-1379.) The new law was invalidated because it could not be reasonably construed to satisfy the amendment clause's requirement to further the act and be consistent with its purposes.

Similarly, the Court of Appeal in *Shaw v. People ex rel. Chiang* (2009) 175 Cal.App.4th 577 (*Shaw*), disapproved on other grounds by *County of San Diego v. Commission on State Mandates* (2018) 6 Cal.5th 196, 214, fn. 4), struck down a law seeking to amend Proposition 116 from 1990 which amended the

Public Utilities Code section 99310.5 to designate a trust fund to be used by the Legislature "*only* for transportation *planning and mass transportation* purposes." (*Id.* at pp. 588, 589, italicized language added by Prop. 116.) Proposition 116 had an amendment clause that allowed an amendment if it was "consistent with, and furthers the purposes of this section." (*Id.* at p. 597.) A taxpayer challenged the legality of the Legislature's transfer of money from gas tax revenue, that would have otherwise gone into a public transportation account (PTA) under Proposition 116, into a newly created mass transportation fund (MTF) and subsequent appropriation of that money and other money directly from the PTA for a number of other purposes, including costs related to debt service. (*Shaw*, at pp. 593–594.) Applying *Amwest*, the Court of Appeal invalidated the Legislature's actions, finding there was no reasonable construction by which the Legislature's financial transactions satisfied the amendment clause because they were directly contradictory and were not "actually used for transportation planning and mass transportation purposes" as required by Proposition 116. (*Id.* at pp. 602, 603.)

Unlike the challenged laws in *Gardner* and *Shaw*, S.B.

1391 is not in express conflict with Proposition 57 and its enumerated purposes like the challenged laws in *Gardner* and *Shaw*. S.B. 1391 does not "clearly contravene" the enumerated purpose that judges, rather than prosecutors, will decide whether juveniles should be tried in adult court. (*Gardner, supra*, 178 Cal. App.4th at 1377-1379.) Defining the group of minors covered by the word "juveniles" in the fifth enumerated purpose is not in conflict with Proposition 57. With S.B. 1391, the Legislature did not defy a direct mandate from voters that judges shall always make transfer decisions with regard to all 14- and 15- year-olds in the way that the Legislature defied the voters that demanded that all funds shall be used "*only*" for specific transportation purposes. (*Shaw, supra*, 175 Cal.App.4th at pp. 588, 589.) Neither the ballot materials for Proposition 57, nor the text of the proposed law gave judges the unequivocal right to evaluate every 14- and 15-year-old and determine transfer. Only those minors accused of selected crimes, first selected by the prosecution, would be evaluated for transfer. (Prop. 57 Pamp., official title and summary, analysis of the Legislative Analyst, pp. 54-56; Exhibit C, pp. 63-66.) With the passage of S.B. 1391, however,

judges maintain the power to transfer juveniles to adult court and therefore S.B. 1391 is not unconstitutional.

b. The Mention of The Possibility of Judicial Transfer of 14- and 15-Year-Olds in the Text of Proposition 57 Did Not Make it A Provision That Cannot Be Changed, Especially In the Context of A Proposition With An Amendment Clause That Allowed For Further Amendment of the Juvenile Transfer Laws

Although 14- and 15- year-olds were not specifically mentioned in the arguments in favor or against Proposition 57 (Prop. 57 Pamp.,arguments and rebuttals, pp. 58-59; Exhibit C, pp. 67-68.), petitioner recognizes that there was language in the "Legislative Analyst's Analysis" and in the "Text of Proposed Law" where 14- and 15-year-olds were identified as a class potentially transferable to adult court. The Legislative Analyst's analysis of the legal changes made by Proposition 57 explained the circumstances under which the measure would permit such transfer. (Prop. 57 Pamp., analysis by the Legislative Analysts, p. 56; Exhibit C, p. 65.) The fact that transferring 14- and 15-year olds to adult court was authorized by law at the time Proposition 57 was passed, however, does not render the text that allowed that practice frozen or unalterable.

The text of Proposition 57 is not the sole embodiment of its intent and purpose, such that any and every amendment that modifies that text is, for that reason, impermissible. Were that the rule, Proposition 57's express authorization of amendments consistent with its purpose would be a nullity. (*Tuolumne Jobs & Small Business Alliance v. Superior Court* (2014) 59 Cal.4th 1029, 1038, ["courts should give meaning to every word of a statute and should avoid constructions that would render any word or provision surplusage"].) If the Legislature may only pass statutes that do not authorize what Proposition 57 prohibits, or prohibit what Proposition 57 authorizes, which is the *Pearson* definition of an amendment, then only legislative acts that do not qualify as amendments are valid. This renders the amendment provision effectively useless, violating a basic principle of statutory interpretation and frustrating the will of the voters that supported Proposition 57 and the amendment clause that was contained therein. (*Branciforte Heights, LLC v. City of Santa Cruz* (2006) 138 Cal.App.4th 914, 937 ["[a]n interpretation that renders statutory language a nullity is obviously to be avoided... "].) As one court observed in upholding the constitutionality of

S.B. 1391, "limiting authorized amendments to those consistent with the express language of the Act would appear to preclude *any* amendment that deletes or repeals any portion of the Act, no matter how consistent such action might be with the purpose of the Act itself. Had that been the aim of the language in question [the amendment clause], it seems likely Proposition 57 would have been drafted so as not to permit any amendments whatsoever absent voter approval." (*T.D., supra*, 38 Cal. App.5th at p. 372, emphasis in the original.) The Court in *Alexander C.* had the same concerns. (*Alexander C., supra*, 34 Cal. App.5th at p. 1003.)

Here, nothing in the analysis or the arguments for the act can be read to suggest that maintaining the minimum age for adult prosecution at 14 was the focus of the measure, as opposed to limiting the prosecution of minors as adults. S.B. 1391 does not violate a specific primary mandate of Proposition 57. (*Foundation, supra*, 132 Cal.App.4th at p. 1370 [amendment must not violate a "primary mandate" of the initiative].) As noted, the fundamental and major purpose of Proposition 57 was to reduce the number of youths who would be prosecuted as

adults, with a preference for rehabilitation in the juvenile system. It was not a primary mandate of Proposition 57 to maintain the minimum transfer age at 14. S.B. 1391 does not impermissibly amend Proposition 57.

Critically, Proposition 57 voters approved an amendment clause that was targeted at the juvenile transfer process--with a specific command that it was to be broadly construed. (Prop. 57 Pamp., text of proposed laws, § 5, p. 145; Exhibit C, p. 73.) If voters specifically wanted prosecutors to have authority to file transfer motions on 14- and 15-year-olds to adult court in perpetuity, it seems unlikely they would have approved an amendment clause aimed at the transfer provisions. The amendment clause only requires a majority vote from each house of the Legislature, not even the more stringent two-thirds requirement seen in other amendment clauses. (Cf. Prop. 21, § 39, Prop. 115 § 30 requiring a two-thirds vote of each house for any amendments.) This Court has already recognized that Proposition 57 was an "ameliorative change[ ] to the criminal law" which voters wanted to "extend as broadly as possible." (*People v. Lara, supra*, 4 Cal.5th 299 at p. 309, citing *People v.*

Conley (2016) 63 Cal.4th 646, 657.) As observed by the majority in *T.D*, "We find nothing in Proposition 57 to suggest that voters intended the Act to extend as broadly as possible for one purpose but not for another." (*T.D., supra*, 38 Cal.App.5th at p. 371.) The amendment clause allowed the Legislature to devise future amendments to the juvenile transfer process and the voter-approved amendment clause ensured those amendments would move the ball in the same direction as Proposition 57 – toward a goal of fewer juveniles in adult court, with an emphasis on rehabilitation. Indeed, as noted *supra*, the Legislature previously changed the minimum age for transfer to adult court with AB 560 in 1995, like the legislature has set the minimum age in other areas. (See e.g. Bus. & Prof. Code, § 25658, subd. (b) [must be 21 years old to purchase alcohol; Elec. Code, § 2000, subd. (a) [must be 18 years of age to vote].)

Ultimately, S.B. 1391 is consistent with and furthers the fifth stated intent of Proposition 57, that judges, not prosecutors, decide who is transferred to adult court. Respondent cannot rebut the presumption that further reducing the pool of juveniles that judges may lawfully transfer to adult court is consistent with

and furthers the intent of the act, thus Proposition 57's amendment clause is satisfied.

3. S.B. 1391 Is Consistent With and Furthers Proposition 57's Purpose of Protecting and Enhancing Public Safety

The first enumerated purpose and intent of Proposition 57 was to "Protect and enhance public safety." (Prop. 57 Pamp., text of proposed laws, § 2, p. 141; Exhibit C, p. 69.) Public safety was an obvious focus of Proposition 57 because it involved not just changes to juvenile transfer proceedings, but also large-scale changes to parole consideration for nonviolent offenders, as well as the award of credits for prison inmates allowing for earlier releases of prisoners. (Prop. 57 Pamp., analysis by the Legislative Analyst, p. 56; Exhibit C, p. 65.) Proposition 57's supporters argued that Proposition 57 "focuses our system on evidence-based rehabilitation for juveniles and adults because it is better for public safety than our current system." (Prop. 57 Pamp., argument in favor, p. 58; Exhibit C, p. 67.) By further narrowing the pool of juveniles eligible for transfer to the adult court and thereby increasing the number of juveniles able to obtain rehabilitative services, S.B. 1391 is consistent with and

furthers the public safety intent of Proposition 57.

Rehabilitation of juveniles through juvenile court with the focus on rehabilitation, rather than adult court and adult prison, protects public safety in the long-run by discouraging recidivism. S.B. 1391 "can easily be construed to promote public safety and reduce crime, since it increases the number of youth offenders who will remain in the juvenile justice system and avoid prison where the chance of recidivism is higher." (*B.M. v. Superior Court*, *supra*, 40 Cal. App. 5th at p. 756.) In passing S.B. 1391, the Legislature considered evidence supporting a policy determination that keeping 14- and 15-year olds out of the adult prison system would enhance public safety, including research demonstrating that youths tried as adults are "more likely to commit new crimes in the future than their peers in the juvenile system." (Sen. Com. on Public Safety Analysis of Sen. Bill No. 1391 (2017-2018 Reg. Sess.), as amended April 3, 2018, p. 4; Exhibit H, p. 140.) The Assembly Committee on Public Safety echoed this conclusion in its report on S.B. 1391. "When youth are given [the] age-appropriate services and education that are available in the juvenile justice system, they are less likely to

recidivate." (Assem. Com. on Public Safety, Rep. on Sen. Bill 1391, supra, as amended May 25, 2018, p. 4.) "Most youth will eventually be released from prison and in the interest of protecting public safety, we need to ensure they get the treatment and tools they need to succeed when they return to society." (Sen. Com. on Public Safety, Rep. on Sen. Bill 1391, *supra*, Feb. 16, 2018, p. 4; Exh. H, p. 140..) S.B. 1391's author added that the practice of transferring 14- and 15- year-olds to criminal court "'was started in the 90's, a time in California history where the state was getting "tough on crime," but not smart on crime. Back then, society believed that young people were fully developed at around age 14. Now, research has debunked that myth and cognitive science has proven that children and youth who commit crimes are very capable of change.'" (Assem. Com. on Public Safety, Rep. on S.B. 1391, *supra*, as amended May 25, 2018, p. 3.)

On this point, the *O.G.* Court briefly mentioned that S.B. 1391, "may contravene Proposition 57's express purpose to 'protect and enhance public safety,'" because "it may be rationally stated that S.B. 1391 does the opposite. It provides for juvenile treatment versus punishment for a person who commits murder

or multiple murders. It thus provides less protection for the public." (*O.G., supra*, 40 Cal.App.5th at p. 630.)[8] The *O.G.* Court's, or any other court's, individual assessment as to what is rational or good public policy, however, is not controlling as to whether S.B. 1391 furthers the purpose of Proposition 57. Since there is a reasonable construction of S.B. 1391 that it furthers the purposes of Proposition 57, including public safety, it should be upheld as constitutional. (*Amwest, supra*, 11 Cal.4th at p. 1252.) As this Court has observed, the role of the judiciary is not to "judge the wisdom of statutes." (*People v. Zapien* (1993) 4 Cal.4th 929, 954–955.) It is not an unreasonable construction to find that narrowing the pool of juveniles being transferred to the adult court protects public safety. The doctrine of separation of powers

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[8] The legislative history of S.B. 1391 includes the fact that in signing the law, the Governor "considered the fact that young people adjudicated in juvenile court can be held beyond their original sentence" under Welfare and Institutions Code section 1800. (Governor's message to Sen. on [S.B.] 1391 (Sept. 30, 2018) Sen. J. (2017-2018 Reg. Sess.) p. 6230.) That section gives the District Attorney the ability to petition a court to extend the duration of juvenile court jurisdiction if discharging a juvenile offender would be physically dangerous to the public because of the person's mental or physical deficiency disorder or abnormality that causes the person to have serious difficult controlling his or her dangerous behavior. (Welf. & Inst. Code § 1800, subd. (a).) (*Alexander C., supra*, 34 Cal.App.5th at pp. 1001-1002.)

commands that "neither the trial nor appellate courts are authorized to 'review' legislative determinations." (*Santa Monica Beach v. Superior Court* (1999) 19 Cal.4th 952, 962.) In these cases, the function of this Court is to determine whether the exercise of legislative power has exceeded constitutional limitations. Here, it has not. Thus, it is a reasonable construction that S.B. 1391 is consistent with and furthers the intent of Proposition 57 with regard to protecting and enhancing public safety.

CONCLUSION

It is a reasonable construction that S.B. 1391 furthers Proposition 57's major and fundamental purpose of reducing the number of minors who would be prosecuted as adults, with a preference for rehabilitation in the juvenile system. To decide otherwise would be to usurp the power of the voters to decide whether and how Proposition 57 could be amended.

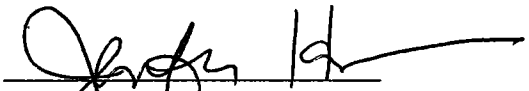
For the reasons stated above, it is a reasonable construction that S.B. 1391 satisfies Proposition 57's amendment clause and is therefore constitutional. Accordingly, petitioner respectfully requests this Court vacate the actions of the lower courts and order the matter assigned to the juvenile court for all purposes.

Dated: March 16, 2020

Respectfully submitted,

CALIFORNIA APPELLATE PROJECT

RICHARD B. LENNON
Executive Director



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WORD COUNT CERTIFICATION

I certify that this document was prepared on a computer using Corel Wordperfect, and that, according to that program, this document contains 9,732 words.

JENNIFER HANSEN

PROOF OF SERVICE

I am a citizen of the United States, over the age of 18 years, employed in the County of Los Angeles, and not a party to the within action; my business address is 520 S. Grand Avenue, 4th Floor, Los Angeles, California 90071. I am employed by a member of the bar of this court.

On March 16, 2020, I served the within

PETITIONER'S BRIEF ON THE MERITS

in said action, by emailing and e-filing through Truefiling a true copy thereof to:

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and by placing a true copy thereof enclosed in a sealed envelope, addressed as follows, and deposited the same in the United States Mail at Los Angeles, California:

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

Executed March 16, 2020, at Los Angeles, California.

JACQUELINE GOMEZ