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SUPREME COURT COPY

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff and Respondent,

v.

DAVID J. VALENCIA,

Defendant and Appellant.

Case No. S223825

SUPREME COURT
FILED

NOV - 3 2015

Frank A. McGuire Clerk

Fifth Appellate District, Case No. F067946

Tuolumne County Superior Court, Case No. CRF30714 Deputy

The Honorable Eleanor Provost, Judge

OPPOSITION TO APPELLANT'S REQUEST FOR JUDICIAL NOTICE

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TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Respondent hereby submits its Opposition to Appellant's Request for Judicial Notice as follows:

MEMORANDUM OF POINTS AND AUTHORITIES

Pursuant to rule 8.252 of the California Rules of Court, and to Evidence Code sections 451 and 452, appellant requested that this Court take judicial notice of items which are not subject to judicial notice.

Specifically, the objectionable items are:

1. A newspaper article authored by Paul Elias of the Associate Press, AP Exclusive: New '3 Strikes' law varies by county, dated May 4, 2013; and
2. An article authored by David Mills and Michael Romano, purported authors of Proposition 36 and 47: "The Passage and Implementation of the Three Strikes Reform Act of 2012 (Proposition 36)", Federal Sentencing Reporter, Vol. 25, No. 4, p. 264.¹

Appellant's opening brief cites to the specified articles as an after-the-fact representation of what the authors intended in Proposition 36, the alleged disparity in resentencing under Proposition 36 proceedings, and a contemporaneous view of how Proposition 47 should be considered in view of the author's intent "that all but the most extraordinary defendants are afforded the relief Prop. 36 contemplates." (AOB 17-18, citation omitted.)

¹ Appellant further requests that this Court take judicial notice of several docket entries in unrelated cases in this Court. While respondent submits that the dockets are not relevant to the question presented of the voters' intent underlying Proposition 47, respondent does not otherwise oppose the request for judicial notice of those items.

For the reasons shown below, neither of these articles is the proper subject of judicial notice

First, these articles do not fall within the category of items of which the court must take judicial notice (see, Evid. Code, § 451) or is permitted to do so (see, Evid. Code, § 452). In particular, appellant offers these articles not for the fact of their publication but for their content ostensibly supporting his reading of section 1170.18, subdivision (c), which is neither a fact or proposition of “such common knowledge within the territorial jurisdiction of the court that [it] cannot reasonably be the subject of dispute” (§ 452, subd. (g)) nor one that is “not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy” (§ 452, subd. (h)).

Second, such representations are not properly considered as evidence of the electorate’s intent in enacting Proposition 47. In *Kennedy Wholesale, Inc. v. Board Of Equalization* (1991) 53 Cal.3d 245, this Court engaged in an exercise of statutory interpretation in relation to a provision of the California Constitution that was added by voter initiative Proposition 13 in 1978. In support of their interpretation of the provision, the plaintiffs relied on amicus curiae briefs filed in a different case that purported to represent the views of the sponsors of Proposition 13. (*Id.* at p. 250, fn. 2.) The Court determined that the briefs merely advanced legal arguments about how Proposition 13 should be interpreted and did not say anything about the drafters’ intent, but even if they could be read as an after-the-fact declaration of intent by a drafter of the initiative, it would ““by no means . . . govern our determination how the voters understood the ambiguous provisions.”” (*Ibid.*, quoting *Carman v. Alvord* (1982) 31 Cal.3d 318, 331, fn. 10.) The Court ultimately determined that nothing in the official ballot pamphlet supported the plaintiff’s interpretation of the voters’ intent. (*Id.* at p. 250.)

Similarly, in *Calvillo-Silva v. Home Grocery* (1998) 19 Cal.4th 714, this Court refused to impute the objective of a statute's author, as stated in a press release, to the Legislature as a whole. The author's opinion was not included in any of the legislative analyses or reports and could not be reconciled with the statutory language, so there was no reliable indication that the Legislature adopted the author's view. (*Id.* at pp. 726-727; see also *People v. Garcia* (2002) 28 Cal.4th 1166, 1175-1176 & fn. 5 [denying request to take judicial notice of press releases and letters to and from the authoring legislator]; *People v. Ramos* (1997) 15 Cal.4th 1133, 1167 [facts and propositions in newspaper article do not fall within the scope of Evidence Code section 452]; cf. *People v. Massie* (1998) 19 Cal.4th 550, 580, fn. 4.)

The materials cited by appellant do not reflect the electorate's intent as a whole. The only documents that may properly be considered in ascertaining the intent and objective of the voters of the initiative are those that were presented to all statewide voters, such as the official ballot pamphlets. The opinions of individual members of the legislative body or of the electorate, even of the author of a particular provision, are not properly considered by the court as evidence of the intent of the larger body. (*In re Application of Lavine* (1935) 2 Cal.2d 324, 327; *Rich v. Board of Optometry* (1965) 235 Cal.App.2d 591, 603.) These opinions are of limited circulation and cannot be considered unless they are made known to all voters. To hold otherwise would be to condone construction of a voter initiative based upon information available to only a limited number of voters. Even knowledge of information made as easily accessible to potential voters as a website created by opponents of Proposition 47 cannot possibly be imputed to all voters. In this case, material beyond the official ballot pamphlets that were disseminated to all voters in the state by the Secretary of State is not properly considered as indicative of the electorate's

intent. For all these reasons, appellant's request for judicial notice of these materials should be denied.

CONCLUSION

For the reasons stated above, respondent respectfully submits that appellant's request for judicial notice of the specified articles should be denied.

Dated: October 27, 2015

Respectfully submitted,

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. Valencia**

No.: **S223825**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On October 29, 2015, I served the attached **OPPOSITION TO APPELLANT'S REQUEST FOR JUDICIAL NOTICE** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

Stephanie L. Gunther
Attorney at Law
841 Mohawk Street, Suite 260
Bakersfield, CA 93309

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 29, 2015, at Sacramento, California.

Signature