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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

<p>MICHAEL SCOTT, et al, Plaintiffs, v. DEBRA BOWEN, Secretary of State of California, Defendant.</p>	<p>Case No. RG14-712570 ORDER (1) GRANTING PETITION OF PETITIONERS FOR WRIT OF MANDATE AND (2) SETTING HEARING ON ISSUE OF REMEDY. DATE: 4/2/14 TIME 1:30 PM DEPT. 31</p>
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The petition of Michael Scott, et al (“Petitioners”) for a writ of mandate came on for hearing on April 2, 2014, in Department 31 of this Court, the Honorable Evelio Grillo presiding. After consideration of the briefing and the argument, IT IS ORDERED: The petition for a writ of mandate is GRANTED.

1. The court holds as a matter of law that Election Code 2101 requires that the State of California provide all otherwise eligible persons on Mandatory Supervision (Penal Code 1170(h)(5)(B)) and Post-Release Community Supervision (“PRCS”) (Penal Code 3451) the same right to register to vote and to vote as all other otherwise eligible persons.

1 2. The court directs the parties to meet and confer regarding the appropriate scope of the
2 remedy and the text of a proposed judgment and writ. If the parties cannot reach
3 agreement, then on or before May 21, 2014, the parties may file cross-opening briefs
4 of up to 8 pages on the remedy. On or before May 28, 2014, the parties may file
5 cross-opposition briefs of up to 5 pages on the remedy. The court will hold a further
6 hearing on the remedy at 1:30 pm on June 4, 2014, in Department 31.
7

8 EVIDENCE.
9

10 The court GRANTS the requests of Petitioners for judicial notice of Exhibits A-G
11 (Dictionary definitions) (*Sierra Club v. Superior Court* (2113) 57 Cal.4th 157, 171), of Exhibit H
12 (legislative history in the form of ballot Initiative materials) (*Sierra Club, supra.*), and of Exhibit
13 I (data from Chief Probation officers of California website) (*People v. Alexander* (1985) 163
14 Cal.App.3d 1189, 1201 fn 3).
15

16 The court GRANTS the request of the Secretary for judicial notice of Exhibit 1 (The
17 Memorandum), of of Exhibits 2-3 (Court records), of Exhibits 4-8 and 11-14 (legislative
18 history). (*Sierra Club, supra.*), and of Exhibits 9-10 (Governor’s budget summary) (*Carmel
19 Valley Fire Protection Dist. v. State* (2001) 25 Cal.4th 287,293, fn 2).
20

21 FACTUAL BACKGROUND.

22 The first California Constitution, adopted in 1849, permanently disenfranchised all
23 persons “convicted of any infamous crime.” In 1972, the voters passed an initiative to amend
24 the California Constitution to state: “[T]he legislature shall prohibit improper practices that affect
25 elections and shall provide that no severely mentally deficient person, insane person, person
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1 convicted of an infamous crime, nor person convicted of embezzlement or misappropriation of
2 public money shall exercise the privileges of an elector in this State.” (*League of Women Voters*
3 *of California v. McPherson* (2006) 145 Cal.App.4th 1469, 1475-79 [historical summary].)

4 On 11/4/74 the people of the State of California through a referendum amended the
5 California Constitution, Article II to read: “The Legislature shall prohibit improper practices that
6 affect elections and shall provide for the disqualification of electors while mentally incompetent
7 or imprisoned or on parole for the conviction of a felony.”

8 On 1/12/10, a three judge panel of the federal District Court ordered California to reduce
9 its prison population to 137.5% of the prisons' design capacity within two years. (*Coleman v.*
10 *Schwarzenegger* (E.D. Cal. 2010) 2010 WL 99000.)¹

11
12 In 2010, the California Governor proposed a realignment plan that included what the
13 Legislative Analyst’s Office described as a “Proposal to Shift Adult Parole” (Secretary RJN, Ex.
14 8, pp12-14.) The Legislative Analyst stated that the Governor’s proposal was designed to both
15 reduce the cost to the state and to “improve offender outcomes and reduce their risk of
16 reoffending.” The Governor later issued Budget Summaries that stated his goals. (Secretary
17 RJN, Ex. 9, 10.)

18
19 On 4/4/11, AB109 (the “Realignment Act”) was filed with the Secretary of State. Section
20 479 of the Realignment Act added Penal Code 3450 et seq, which “shall be known and may be
21 cited as the Postrelease Community Supervision Act of 2011.”

22 The Legislature’s stated purpose for the Realignment Act and in the Postrelease
23 Community Supervision Act was to address both the stagnant or worsening reincarceration rates
24 and the unsustainable policy of building and operating more prisons by reinvesting criminal

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26 ¹ On 5/23/11, the United States Supreme Court affirmed the decision directing California
to reduce its prison population. (*Brown v. Plata* (2011) 131 S.Ct. 1910.)

1 justice resources to support community-based corrections programs with the goal of achieving
2 improved public safety returns. To accomplish this goal, the Realignment Act transferred
3 responsibility for low-level felony offenders who do not have prior convictions for serious,
4 violent, or sex offenses to locally run community-based corrections programs with the goal of
5 improving public safety outcomes and facilitating their reintegration back into society. (Penal
6 Code 17.5(a)(1)-(6); Penal Code 3450(a)(1)-(6).) The Legislature noted that such correctional
7 practices would align with sound fiscal policy because the realignment will “manage and allocate
8 criminal justice populations more cost-effectively, generating savings that can be reinvested in
9 evidence-based strategies that increase public safety while holding offenders accountable.”
10 (Penal Code 17.5(a)(8); Penal Code 3450(a)(8).)
11

12 The Realignment Act created two new forms of noncustodial supervision:

13 • Mandatory Supervision. The Realignment Act states that
14 defendants without prior or current felony convictions for serious, violent, or sex
15 related crimes are sentenced to county jail rather than to state prison. (Penal Code
16 1170(h).) Under Penal Code 1170(h)(5)(B), the court may suspend the term and
17 release the defendant to Mandatory Supervision, “during which time the
18 defendant shall be supervised by the county probation officer in accordance with
19 the terms, conditions, and procedures generally applicable to persons placed on
20 probation.” A person on Mandatory Supervision is serving their felony sentence
21 under the supervision of a county probation officer instead of in a county jail.

19 • Post-Release Community Supervision (“PRCS”). The Postrelease
20 Community Supervision Act states that defendants without prior or current felony
21 convictions for serious, violent, or sex related crimes will, upon release from state
22 prison, “be subject to community supervision provided by a county agency.”
(Penal Code 3451(a).) A person on PRCS is serving their mandatory period of
23 supervision following release under the supervision of a county agency instead of
24 the state Department of Corrections and Rehabilitation.

23 There is no indication that the Legislature ever considered how the creation of Mandatory
24 Supervision or PRCS would affect the voting rights of persons who would be placed on
25 Mandatory Supervision or PRCS.
26

1 On 12/5/11, Respondent Debra Bowen as California Secretary of State (the “Secretary”)
2 issued Secretary of State County Clerk/Registrar of Voters Memorandum #11134 (the
3 “Memorandum”). The Memorandum was supported by an 18 page legal analysis and concluded
4 that persons on Mandatory Supervision or PRCS were ineligible to vote because mandatory
5 supervision was “akin to parole.” (Secretary RJN, Ex. 1.) The Memorandum reasoned that
6 PRCS is “functionally equivalent” to parole (Memorandum, page 11) and that Mandatory
7 Supervision is a “form of probation that is more akin to parole than to [] post-conviction, pre-
8 sentencing probation” (Memorandum, page 13). When the Secretary issued the Memorandum
9 there was no case law interpreting the the Realignment Act and addressing whether, or how,
10 Mandatory Supervision or PRCS were different from parole.
11

12 On 3/7/12, an organization filed a petition directly in the Court of Appeal seeking to
13 resolve whether otherwise eligible persons on Mandatory Supervision and PRCS had the right to
14 vote. On 5/17/12, the Court of Appeal denied that petition without issuing an opinion.
15 (Secretary RJN, Ex. 2.) On 5/30/12, the petitioner sought review in the California Supreme
16 Court. On 7/26/12, the California Supreme Court denied the petition for review without issuing
17 an opinion. (Secretary RJN, Ex. 2.)
18

19 On 2/22/13, Assemblyman Weber introduced AB938, which would have amended
20 Elections Code 2101 to state that Mandatory Supervision and PRCS are not state parole. The
21 bill’s author stated that it “clarifies that people sentenced pursuant to the Criminal Justice
22 Realignment Act retain their constitutional right to vote.” The legislative analyst stated that the
23 bill would make “significant changes to voter eligibility.” (Secretary RJN, Exh 5.) Ultimately
24 the bill was withdrawn by its author before it was subjected to a vote by the full Assembly.
25 There is no evidence in the record of any legislator having introduced any legislation to state
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1 affirmatively that Mandatory Supervision and PRCS are within the definition of “parole” for
2 purposes of voting rights.

3 This petition squarely presents the question of whether in enacting the Realignment Act
4 the Legislature intended Mandatory Supervision and PRCS to be “parole” for purposes of voting
5 rights under the California Constitution, Article II, Section 2 and Election Code 2101.
6

7 PROCEDURE.

8 Plaintiff seeks a traditional writ of mandate under CCP 1085 to compel the Secretary to
9 perform the ministerial duty of permitting qualified voters to register. Mandamus is the proper
10 remedy for compelling an officer to register voters according to law. (*Legal Services for*
11 *Prisoners with Children v. Bowen* (2009) 170 Cal.App.4th 447, 451 fn 2.)
12

13 ANALYSIS.

14 THE COURT OF APPEAL HAS DETERMINED THAT MANDATORY SUPERVISION AND
15 PRCS ARE NOT “PAROLE.”
16

17 Stripped to its essence, Petitioner’s argument is (1) Elections Code 2101 states that
18 United States citizens who are residents of California and “not in prison or on parole for the
19 conviction of a felony” are entitled to register to vote; (2) persons on Mandatory Supervision and
20 PRCS are not on “parole for the conviction of a felony,” so (3) persons on Mandatory
21 Supervision and PRCS are entitled to register to vote. Petitioner’s argument finds substantial
22 support in three recent opinions published by three separate panels of our Court of Appeal, each
23 of which concluded that Mandatory Supervision and PRCS are not “parole.” *People v. Cruz*
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1 (2012) 207 Cal.App.4th 664; *People v. Fandinola* (2013) 221 Cal.App.4th 1415; *People v. Isaac*
2 (2014) 224 Cal.App.4th 143.

3 In *People v. Cruz* (2012) 207 Cal.App.4th 664, the Court of Appeal (Fifth District) held
4 that disparate treatment of defendants sentenced before and after operative date of Realignment
5 Legislation did not violate equal protection. In the course of reaching that decision, the Court
6 noted that a defendant sentenced under Penal Code 1170(h), whether for a straight jail term or a
7 hybrid term of jail time and Mandatory Supervision, is not subject to a state parole period after
8 his or her sentence is completed. The Court then observed, “Accordingly, such a defendant is
9 not subject to a parole revocation restitution fine.” (207 Cal.App.4th 672 fn 6.) The holding that
10 a person sentenced to Mandatory Supervision “is not subject to a parole revocation restitution
11 fine,” is a holding that Mandatory Supervision is not “parole.”
12

13 In *People v. Cruz, supra*, 207 Cal.App.4th at 672, the Court of Appeal also stated, “A
14 defendant sentenced to state prison is subject to a mandatory period of supervision following
15 release, either parole supervision by the state (§ 3000 et seq.), or postrelease community
16 supervision by a county probation department (§ 3450 et seq.)” The reference to parole and
17 PRCS in the alternative is a strong indicator that PRCS is not “parole.”
18

19 In *People v. Fandinola* (2013) 221 Cal.App.4th 1415, the Court of Appeal (Third
20 District) directed the parties to address whether the court could impose a probation supervision
21 fee under Penal Code 1203.1b where a defendant was sentenced to Mandatory Supervision under
22 Penal Code 1170(h). The Court of Appeal resolved the issue, stating “We conclude the answer is
23 no.” After reviewing the plain text of 1203.1b (the probation supervision fee), the Court
24 observed that the Legislature, following enactment of the Realignment Act, amended Penal Code
25 1202.45 (concerning a parole revocation restitution fine) to also provide for a “mandatory
26

1 supervision revocation restitution fine.” The Court then stated, “this amendment indicates *the*
2 *Legislature understood mandatory supervision is neither probation nor parole*, and specific
3 authorization for a mandatory supervision revocation restitution fine was therefore required even
4 though probation and parole revocation restitution fines were already authorized by sections
5 1202.44 and 1202.45, respectively.” (Emphasis added.) The finding that “the Legislature
6 understood mandatory supervision is neither probation nor parole” is tantamount to a holding
7 that Mandatory Supervision is not “parole.”

8
9 In *People v. Isaac* (2014) 224 Cal.App.4th 143, the Court of Appeal (First District) held
10 that the trial court lacked authority to impose a parole revocation restitution fine because the
11 defendant was sentenced to PRCS rather than to parole. The court first reaffirmed the holding in
12 *Cruz*, 207 Cal.App.4th at 672 fn 6, that under former Penal Code 1202.45, “defendants facing
13 [Mandatory Supervision] instead of parole are ‘not subject to a parole revocation restitution
14 fine.’” The court then addressed the Attorney General’s argument that under former Penal Code
15 1202.44, a defendant’s sentence to PRCS was “substantially equivalent to a ‘conditional
16 sentence’ referenced in [Penal Code 1202.44].” The court found no merit to the “substantially
17 equivalent” argument advanced by the Attorney General. The court noted that the defendant was
18 sentenced to PRCS and that PRCS is different from the statutory definition of “conditional
19 sentence” in Penal Code 1203(a). (*Isaac*, 224 Cal.App.4th at 147.) The court then observed that
20 “the Attorney General’s sweeping interpretation of the term “conditional sentence” under section
21 1202.44 would render that section applicable to parolees, and make the original provisions of
22 1202.45, now located in subdivision (a), entirely superfluous.” (*Isaac*, 224 Cal.App.4th at 148.)
23 The holding that a person sentenced to PRCS is not subject to a parole revocation restitution fine,
24 is a holding that PRCS is not “parole.”
25
26

1 This trial court is required to follow the Court of Appeal’s decisions in *Cruz, Fandinola,*
2 and *Isaac*. (*People v. Taylor* (2009) 47 Cal.4th 850, 880 [Court of Appeal decisions are binding
3 on a trial court].) (See generally *Auto Equity Sales, Inc. v. Superior Court of Santa Clara County*
4 (1962) 57 Cal.2d 450, 455).² The Secretary must raise an argument in the trial court to preserve
5 it for appeal, but a trial court is not free to reach a conclusion contrary to that of the Court of
6 Appeal.

7 In short: (1) the plain language of Elections Code 2101 states that United States citizens
8 who are residents of California and “not in prison or on parole for the conviction of a felony” are
9 entitled to register to vote; (2) *Cruz, Fandinola,* and *Isaac* each hold that Mandatory Supervision
10 and PRCS are not “parole,” so (3) persons on Mandatory Supervision and PRCS are entitled to
11 register to vote.
12

13 The court can discern two potential arguments with the above analysis and conclusion.
14 First, *Cruz, Fandinola,* and *Isaac* addressed whether Mandatory Supervision and PRCS were
15 “parole” under Penal Code 1202.44 and 1202.45, not whether Mandatory Supervision and PRCS
16 were “parole” under Elections Code 2101. *Cruz, Fandinola,* and *Isaac* never considered
17 Elections Code 2101 or voting rights. Cases are not authority for propositions not decided.
18 (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 620.) Second, *Cruz, Fandinola,* and *Isaac* addressed
19 the definitions of Mandatory Supervision, PRCS, and parole under Penal Code 1202.44 and
20 1202.45, and “parole” could have a different definition for purposes of Elections Code 2101.
21 (*Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 222; *Heritage Residential Care, Inc. v.*
22 *Division of Labor Standards Enforcement* (2011) 192 Cal.App.4th 75, 84.)
23

24 ² (See also *Lavie v. Procter & Gamble Co.* (2003) 105 Cal.App.4th 496, 514 (Haerle,
25 concurring) [Stating “As I am sure the Attorney General’s office understands, we are required to
26 follows applicable precedent” and noting that the Attorney General’s office was asking court “to
become *the only court* to” adopt the asserted reading of the statute].)

1 The court is not persuaded by either argument. First, in prior appellate cases, Attorney
2 General Opinions and administrative memoranda, the Court of Appeal, the Attorney General,
3 and the Secretary of State have all relied on the Penal Code when considering California
4 Constitution Article II, section 4 and Elections Code 2101. (*McPherson*, 145 Cal.App.4th 1469;
5 *Flood v. Riggs* (1978) 80 Cal.App.3d 138, 153 fn 19; 88 Ops. Cal. Atty. Gen. 207; Ptnr, RJN,
6 Ex. 1 (Memorandum).) If the Court of Appeal, the Attorney General and the Secretary of State
7 rely on the Penal Code when seeking to define “parole” in various contexts, then this court
8 should similarly rely on the Penal Code when determining the meaning of “parole” in the context
9 of Elections Code 2101. Second, Mandatory Supervision and PRCS should have consistent
10 definitions in the Realignment Act and throughout the Penal Code. It should make no difference
11 whether the Court of Appeal held that Mandatory Supervision and PRCS were not “parole”
12 under Penal Code 1202.44, Penal Code 1202.45, or any other section of the Penal Code.
13 (*Joannou v. City of Rancho Palos Verdes* (2013) 219 Cal.App.4th 746, 755-756; *Miranda v.*
14 *National Emergency Services, Inc.* (1995) 35 Cal.App.4th 894, 905 [“A word or phrase ...
15 accorded a particular meaning in one part or portion of a law, should be accorded the same
16 meaning in other parts or portions of the law, especially if the word is used more than once in the
17 same section of the law”]; *Legal Services for Prisoners with Children v. Bowen* (2009) 170
18 Cal.App.4th 447, 459 and fn 7 [“identical words used in different parts of the same act are
19 intended to have the same meaning”].)

20 The court will now address the statutory construction, legislative intent, and other
21 arguments presented by the parties.

22
23 **THE TEXT OF ELECTIONS CODE 2101.**

24 The court will address the meaning of the word “parole” in the context of Elections Code
25 2101 rather than in the context of the Constitution. This is consistent with the principle that the
26

1 court should reach Constitutional issues only as a last resort. (*NBC Subsidiary (KNBC-TV), Inc.*
2 *v. Superior Court* (1999) 20 Cal.4th 1178, 1190; *Cumero v. Public Employment Relations Bd.*
3 (1989) 49 Cal.3d 575, 585.)

4 The Legislature can determine the precise scope of the terms in the California
5 Constitution, Article II, section 4, and therefore the precise scope of the right to vote. (*Ramirez*
6 *v. Brown* (1973) 9 Cal.3d 199, 204.) (See also *McPherson*, 145 Cal.App.4th at 1484
7 [Legislature's interpretation of Constitution deserves great deference]; *In re Fain* (1983) 145
8 Cal.App.3d 540, 554-556 [summary of legislative changes to “parole”].) Elections Code 2101 is
9 the statute that implements California constitution, Article II, section 4. (*Legal Services for*
10 *Prisoners with Children v. Bowen* (2009) 170 Cal.App.4th 447, 452.) Section 2101 states: “A
11 person entitled to register to vote shall be a United States citizen, a resident of California, not in
12 prison or on parole for the conviction of a felony, and at least 18 years of age at the time of the
13 next election.” Neither Petitioners nor the Secretary cite to Elections Code 2101 in their briefs,
14 and the Realignment Act does not mention Elections Code 2101. The text of Elections Code
15 2101 provides no assistance to the court, and the court must therefore look to the Realignment
16 Act for guidance.

17 18 THE REALIGNMENT ACT’S DEFINITION OF “PAROLE.”

19 The text of the Realignment Act is the starting point for determining whether the
20 Legislature intended Mandatory Supervision and PRCS to be “parole” for purposes of voting
21 rights under Elections Code 2101. When examining the text of a statute to ascertain the
22 Legislature's intent, the court must first look to the words of the statute, giving them their usual
23 and ordinary meaning. If the language of the statute is susceptible to more than one reasonable
24 construction, then the court may consider various extrinsic aids, including the purpose of the
25 statute, the evils to be remedied, the legislative history, public policy, and the statutory scheme
26

1 encompassing the statute. (*People v. Cornett* (2012) 53 Cal.4th 1261, 1265.) (See also *Ailanto*
2 *Properties, Inc. v. City of Half Moon Bay* (2006) 142 Cal.App.4th 572, 582.) Where the
3 language of a statute is clear, trial courts should not engage in exercises of statutory construction
4 in order to determine the plain meaning of the statute’s words. (*Regents of University of*
5 *California v. Superior Court* (2013) 222 Cal.App.4th 383, 399 [no further analysis necessary
6 where statute defining meaning of “public records” is clear].)

7 The Legislature did not define “parole” in the Penal Code. The Realignment Act
8 contains neither a definition of parole, nor does the statute address whether Mandatory
9 Supervision and PRCS are “parole” for purposes of voting rights under Elections Code 2101.
10 The court must therefore resort to extrinsic aids to assist in its task.

11 The definitions of parole contained in dictionaries are of limited assistance to the court
12 because modern dictionaries conflate the term “parole” with “probation.” “Parole” is
13 consistently defined as something in the nature of “The release of a prisoner before his or her
14 term as expired on condition of continued good behavior.” (Ptnr RJN, Ex. A-G.) The Merriam
15 Webster online dictionary³ defines probation first as “a situation or period of time in which a
16 person who has committed a crime is allowed to stay out of prison if that person behaves well,
17 does not commit another crime, etc.” and then states the Full Definition as “the action of
18 suspending the sentence of a convicted offender and giving the offender freedom during good
19 behavior under the supervision of a probation officer.” The online “Free Dictionary”⁴ states that
20 the American Heritage Dictionary (2000) defines probation as “The act of suspending the
21 sentence of a person convicted of a criminal offense and granting that person provisional
22 freedom on the promise of good behavior”; the Collins English Dictionary (2003) defines
23 probation as “a system of dealing with offenders by placing them under the supervision of a
24

25 ³ <http://www.merriam-webster.com/dictionary/probation>

26 ⁴ <http://www.thefreedictionary.com/probation>

1 probation officer”; and the Webster's College Dictionary (2010) defines probation as “the
2 conditional release of an offender under the supervision of a probation officer.”

3 Courts, too, have accorded great similarity to the words “parole” and “probation.” The
4 California Supreme Court in *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 347 fn 7 stated,
5 “the purpose and procedures involved in parole matters closely resemble those present in the
6 probation context.” Similarly, in *Gagnon v. Scarpelli* (1973) 411 U.S. 778, 781, fn 3, The
7 United States Supreme Court referred to “undoubted minor differences between probation and
8 parole.” In this case, however, the distinction between probation and parole is crucial.
9 *McPherson*, 145 Cal.App.4th at 1484, holds that persons on probation can vote but persons on
10 parole cannot vote.

11 It is noteworthy that California’s Penal Code contains a spectrum of categories under
12 which a court can sentence a person convicted of a felony to noncustodial supervision, including
13 parole, Mandatory Supervision (Penal Code 1170(h)), PRCS (Penal Code 3451), probation
14 (Penal Code 1203(a)), alternative custody programs for female inmates (Penal Code 1170.05),
15 post-guilty plea diversion (Penal Code 1000), pre-guilty plea diversion (Penal Code 1000.5), and
16 participation in the Back on Track deferred entry of judgment reentry program (Penal Code
17 1000.8 et seq).⁵ Each of these species of noncustodial supervision is defined differently and has
18 unique procedural and substantive attributes and the courts have been careful to distinguish
19 between them. (*E.g.*, *People v. Willis* (2013) 222 Cal.App.4th 141, 145 [work release is not
20 probation].) The court has no confidence that any dictionary defines California’s categories of
21 noncustodial supervision and accurately describes each such category.

22
23
24 ⁵ California’s Penal Code also contains numerous categories under which persons
25 convicted of misdemeanors are under noncustodial supervision, including probation (Penal Code
26 1203(a)), post-guilty plea diversion (Penal Code 1000), pre-guilty plea diversion (Penal Code
1000.5), conditional sentences (Penal Code 1203(a)), and a Work Release Program (Penal Code
4024.2).

1 Given California’s detailed statutory scheme with numerous categories of noncustodial
2 supervision and the generalized non-state specific dictionary definitions of “parole,” the court
3 finds that there is no commonly understood definition of “parole” and that dictionaries are of
4 limited use in determining the meaning of the word “parole” as used in Elections Code 2101.

5
6 **TEXT OF THE REALIGNMENT ACT - FUNCTIONAL EQUIVALENCE WITH “PAROLE”**

7 The Secretary argues that Mandatory Supervision and PRCS are the functional equivalent
8 of parole and should be considered to be parole for purposes of Elections Code 2101. As a
9 starting point, the Secretary has not cited, and this court has not found, any California case law,
10 statute, or principle of statutory construction suggesting that when the Legislature uses a word or
11 phrase to describe something specific that the Legislature presumptively intends to include other
12 specific (but unlisted or unidentified) things that are “functionally equivalent.”

13 The Secretary rests her “functional equivalence” argument on *Young v. Harper* (1997)
14 520 U.S. 143, where the United States Supreme Court held that the right to due process in the
15 protection of a parolee’s liberty interest under the 14th Amendment applies equally to a persons
16 on “preparole” under Oklahoma law. In *Young*, the Court held that there were minor differences
17 between parole and preparole under Oklahoma law, but that preparole “differed from parole in
18 name alone,” was “fundamentally parole-like,” and that preparole was sufficiently parole like for
19 the purpose of determining whether that parolees have a constitutionally protected due process
20 liberty interests. *Young* concerned whether preparole and parole are equivalent for the purposes
21 of due process analysis. *Young* contributes little or nothing to a meaningful, reasoned, analysis
22 of the definition of “parole” in the context of Mandatory Supervision and PRCS under
23 California’s Realignment Act. *Young* concerned the concept of “due process” under the 14th
24 Amendment, in the context of the Oklahoma Legislature’s definitions of parole and preparole. In
25 contrast, this case concerns the California Legislature’s definition of the precise meaning or
26

1 scope of “parole,” and whether Mandatory Supervision and PRCS are within the scope of
2 “parole” for purposes of Election Code 2101.

3 The court’s analysis of the “functional equivalent” argument is guided by *People v.*
4 *Superior Court (Flores)* (2014) 223 Cal.App.4th 1535, where the court held that a Penal Code
5 section that applies to offenders with a specific type of sentence does not apply to offenders with
6 functionally equivalent sentences. The court stated:

7
8 There is nothing in the language that indicates the Legislature intended for [Penal
9 Code 1170(d)(2)] to also apply to sentences that may be the functional equivalent
10 of life without the possibility of parole. Had the Legislature intended that effect,
11 we presume it would have expressly stated so. It is not “the province of this court
12 to rewrite the statute to imply an intent left unexpressed by the Legislature.... The
13 courts may not speculate that the legislature meant something other than what it
14 said. Nor may they rewrite a statute to make it express an intention not expressed
15 therein.”

16 (*Flores*, 223 Cal.App.4th at 1541.) Similarly, in *People v. Isaac* (2014) 224 Cal.App.4th 143, the
17 Court of Appeal rejected the Attorney General’s argument that that under former Penal Code
18 1202.44, a defendant’s sentence to PRCS was “substantially equivalent to a ‘conditional
19 sentence’ referenced in [Penal Code 1202.44].”⁶

20 Similarly in this case, there is nothing in the language of the Realignment Act indicating
21 the Legislature intended “parole,” as defined in Elections Code 2101, to apply to noncustodial
22 supervision that might be the functional equivalent of parole. As stated in *Flores*, had the
23 Legislature intended that effect, this court presumes it would have expressly stated so and, as in
24 *Flores*, it is not the province of this court to rewrite a statute to make it express an intention not
25 expressed therein. (See also *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53,
26 59.)

⁶ The “functional equivalent” argument advanced by the San Diego District Attorney in *Flores*
and the “substantially equivalent” argument advanced by the Attorney General in *Isaac* were
both rejected by the Court of Appeal.

1 Given the lack of California authority for this court to apply a “functional equivalency”
2 analysis under the facts of this case, and the California authorities holding that courts should not
3 presume an unexpressed legislative intent, the court finds the Secretary’s “functional
4 equivalency” analysis unsound and lacking legal support.

5
6 TOOLS OF STATUTORY CONSTRUCTION.

7 Express statement of legislative purpose. A prime consideration in statutory
8 interpretation is to ascertain the objective sought to be achieved by a statute as well as the evil to
9 be prevented. (*People v. Superior Court* (2014) 223 Cal.App.4th 1535.) The Realignment Act
10 states that the purpose of the Act is to address the state’s stagnant or worsening reincarceration
11 rates by supporting community-based corrections programs. (Penal Code 17.5(a)(1)-(4); Penal
12 Code 3450(a)(1)-(4).) (*People v. Lynch* (2012) 209 Cal.App.4th 353, 361 [“The Legislature’s
13 stated purpose for the Realignment Act, codified in section 17.5, is to reduce crime and use
14 resources more efficiently by moving less dangerous felons from prison to local supervision”].)

15 The Realignment Act states its purpose as follows:

16
17 Realigning low-level felony offenders who do not have prior convictions for
18 serious, violent, or sex offenses to locally run community-based corrections
19 programs, which are strengthened through community-based punishment,
20 evidence-based practices, improved supervision strategies, and enhanced secured
21 capacity, *will improve public safety outcomes among adult felons and facilitate
22 their reintegration back into society.*

23 (Penal Code 17.5(a)(5); Penal Code 3450(a)(5).) (Emphasis added.) There is no language in the
24 Realignment Act suggesting the Legislature intended to fight voter fraud by restricting the voting
25 rights of persons on Mandatory Supervision and PRCS, and a legislative goal of improving
26 public safety outcomes by restricting the right to vote should not be read into the statute.

(*Ramirez v. Brown* (1973) 9 Cal.3d 199, 216, revd. sub. opn. *Richardson v. Ramirez* (1974) 418
U.S. 24 [“the enforcement of modern statutes regulating the voting process and penalizing its

1 misuse - rather than outright disfranchisement of persons convicted of crime - is today the
2 method of preventing election fraud which is the least burdensome on the right of suffrage”];
3 *Collier v. Menzel* (1985) 176 Cal.App.3d 24, 34 [to same effect].) In contrast, the legislative
4 goal of facilitating the reintegration of felons back into society suggests generally that the
5 Legislature would have intended to restore some of the rights of citizens to persons on
6 Mandatory Supervision and PRCS, potentially including the right to vote.⁷

7 The Realignment Act also states that the Act was expected to have financial benefits to
8 the state. The Act states:

9
10 Fiscal policy and correctional practices should align to promote a justice
11 reinvestment strategy that fits each county. “Justice reinvestment” is a data-driven
12 approach to reduce corrections and related criminal justice spending and reinvest
13 savings in strategies designed to increase public safety. The purpose of justice
reinvestment is to manage and allocate criminal justice populations more cost-
effectively, generating savings that can be reinvested in evidence-based strategies
that increase public safety while holding offenders accountable.

14 (Penal Code 17.5(a)(8); Penal Code 3450(a)(8).) The Secretary argues that Legislative
15 committee reports and statements by the Legislative Analyst describe the fiscal concerns as the
16 primary motivating factor behind the Realignment Act and suggests that the Legislature was
17 really not concerned about facilitating the reintegration of felons back into society.

18 The court is persuaded that the Realignment Act was enacted primarily to improve public
19 safety outcomes among adult felons and facilitate their reintegration back into society and that
20 the anticipated financial benefits were a secondary goal of the Act. (Penal Code 17.5(a)(5) and
21 3450(a)(5).) The statement of legislative purpose states unequivocally that the Act was designed
22 to improve public safety outcomes and facilitate the reintegration of felons back into society, but
23 more cautiously states that “Fiscal policy and correctional practices should align.” To the extent
24

25 ⁷ Although the declaration of Jeff Manza submitted by Petitioners suggests that the ability
26 to vote helps integrate felons into society, there is no indication that the Legislature considered
Mr. Manza’s studies in the decision to enact the Realignment Act.

1 that the statements of the Legislature in Penal Code 17.5 and 3450 suggest different goals from
2 those identified in in the Governor’s Budget Summary and in legislative committee reports, the
3 court finds the Legislature’s express statements of its own intent to be more persuasive than
4 suggestions of legislative intent by either the executive branch and by legislative staff analysts.
5 The Secretary has proffered no argument or evidence to support a finding by this court that
6 denying the right to vote to persons under Mandatory Supervision or Post-Release Community
7 Service would either increase public safety, or align fiscal policy with correctional goals, both
8 stated goals of the Act. Conversely, the plain language of the statute suggests that the integration
9 of adult felons into society would be facilitated by allowing persons under Mandatory
10 Supervision or Post-Release Community Service to vote, thus giving full effect to one of the
11 Legislature’s stated goals.

12 For the above reasons, the court finds the legislative intent weighs in heavily favor of
13 interpreting Mandatory Supervision and PRCS as being different from “parole” as “parole” is
14 defined for purposes of Elections Code 2101.

15 Reading the Statute as a Whole / Use of Different Words. “A statute is passed as a
16 whole and not in parts or sections and is animated by one general purpose and intent.
17 Consequently, each part or section should be construed in connection with every other part or
18 section so as to produce a harmonious whole. Thus, it is not proper to confine interpretation to
19 the one section to be construed.” (*People v. Ramirez* (2014) 224 Cal.App.4th 1078, 1085.)
20 “Where different words or phrases are used in the same connection in different parts of a statute,
21 it is presumed the Legislature intended a different meaning.” (*Briggs v. Eden Council for Hope*
22 *& Opportunity* (1999) 19 Cal.4th 1106, 1117.) (See also *Joannou v. City of Rancho Palos*
23 *Verdes* (2013) 219 Cal.App.4th 746, 755-756.)

24 The Realignment Act expressly created Mandatory Supervision and PRCS as alternatives
25 to parole. The creation of these two categories of noncustodial supervision suggests that the
26

1 Legislature intended them to be different from the existing forms of noncustodial supervision
2 and, in fact, they are different from parole regarding organization (the identity of the supervising
3 government entity) and substance (the restrictions placed on the supervised persons). The
4 Legislature has consistently distinguished between parole, Mandatory Supervision, and PRCS.
5 (Penal Code 290.015(c)(2), 667.5(d), 830.5(a)(1) and (3), 1202.45, 1214(a), 7510, 7520(b),
6 7521(d), 7519, 11105(b)(9), 13155, 13300(b)(9).) The Legislature has also referred to parole
7 and PRCS in the alternative. (Penal Code 3000(a)(1), 3003(a).) The general conditions of parole
8 are different from the conditions of PRCS. (Compare 15 CCR 2512 and 2513 with Penal Code
9 3453.)

10 The organizational and substantive distinctions between Mandatory Supervision, PRCS,
11 and parole weigh in favor of holding Mandatory Supervision and PRCS are not “parole” as that
12 term is used in Elections Code 2101. Similarly, the separate legislative references to parole,
13 Mandatory Supervision, and PRCS suggest that the Legislature did not consider them to be
14 functional equivalents.

15 Presumption in Favor of Right to Vote. The Supreme Court and the Court of Appeal can
16 establish legal presumptions. (*Shadow Traffic Network v. Superior Court* (1994) 24 Cal.App.4th
17 1067, 1085, fn 12.) This trial court is obliged to follow the decisions of higher courts and apply
18 any such legal presumptions (*Auto Equity Sales, supra*, 57 Cal.2d at 455).

19 California law requires this court to give every reasonable presumption in favor of the
20 right of people to vote. “No right is more precious in a free country than that of having a voice
21 in the election of those who make the laws under which, as good citizens, we must live. Other
22 rights, even the most basic, are illusory if the right to vote is undermined.” (*Legal Services for*
23 *Prisoners with Children v. Bowen* (2009) 170 Cal.App.4th 447, 452.) Giving effect to the
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1 importance of the right to vote, in *Otsuka v. Hite* (1966) 64 Cal.2d 596, 603-604,⁸ the California
2 Supreme Court stated:

3
4 [W]e keep in mind the rule that ‘every reasonable presumption and interpretation
5 is to be indulged in favor of the right of the people to exercise the elective
6 process. ... The exercise of the franchise is one of the most important functions
7 of good citizenship, and ***no construction of an election law should be indulged
8 that would disfranchise any voter if the law is reasonably susceptible of any
9 other meaning.*** (Emphasis supplied.)

10 (See also *Castro v. State of California* (1970) 2 Cal.3d 223, 234; *McPherson*, 145 Cal.App.4th at
11 1482.) The presumption in favor of the right of the people to vote weighs heavily in favor of
12 interpreting “parole” in Elections Code 2101 to be limited to “parole” in the Penal Code and not
13 to alternatives to parole such as Mandatory Supervision and PRCS.

14 Workability. When faced with a latent ambiguity, the court is directed to “infer that the
15 Legislature intended an interpretation producing practical, workable results, not one producing
16 mischief or absurdity.” (*People v. Childs* (2013) 220 Cal.App.4th 1079, 1101.) It would
17 produce practical and workable results if the Secretary restricted persons on “parole” from voting
18 consistent with the Elections Code 2101. Although not necessarily producing mischief, it would
19 certainly create uncertainty and absurdity if in the absence of clear legislative direction the
20 Secretary could interpret “parole” in Elections Code 2101 as including not only “parole” but also
21 forms of noncustodial supervision that are neither identified by the Legislature as “parole,” nor
22 interpreted by the Court of Appeal as constituting “parole.” *People v. Cruz* (2012) 207
23 Cal.App.4th 664; *People v. Fandinola* (2013) 221 Cal.App.4th 1415; *People v. Isaac* (2014) 224
24 Cal.App.4th 143.

25 Constitutionality. “[I]f reasonably possible the courts must construe a statute to avoid
26 doubts as to its constitutionality.” (*People v. Smith* (1983) 34 Cal.3d 251, 259.) (See also *Powell*

⁸ Overruled on other grounds in *Ramirez v. Brown* (1973) 9 Cal.3d 1999, rev’d *Richardson v. Ramirez* (1974) 418 U.S. 24.

1 v. *County of Humboldt* (2014) 222 Cal.App.4th 1424, 1444.) It does not raise any Constitutional
2 doubts to use the same definition to “parole” in California Constitution Article II, section 4,
3 Elections Code 2101, and in the Penal Code. Conversely, serious Constitutional issues could
4 arise were the court to adopt the construction of “parole” advanced by the Secretary and hold that
5 the legislative definition of “parole” for purposes of limiting the right to vote in Elections Code
6 2101, is different from, and broader than, the legislative definition of “parole” in the Penal Code.
7 The court declines the Secretary’s invitation to attribute different meanings to parole under the
8 Constitution, the Penal Code and the Elections Code.

9 No Major Change by Implication. The Legislature was fully aware that the Realignment
10 Act made significant changes in California law regarding where convicted persons would be
11 incarcerated, which government entity would supervise them, how incarcerated persons would
12 be returned to society, and the allocation of responsibility between the state and local entities in
13 achieving those goals. The Legislature was fully aware that it was creating Mandatory
14 Supervision and PRCS as forms of noncustodial supervision that were alternative to, and
15 different from, parole.

16 In the context of the Realignment Act as a whole and the changes it was making, the
17 effect of the Realignment Act on voting rights was not a significant unconsidered change.
18 Rather, the effect on the voting rights of persons who would no longer be on “parole” was a
19 natural consequence of the purposeful effects of the legislation. It is not surprising that in
20 drafting the Realignment Act the Legislature did not anticipate, consider, and address every
21 effect of the legislation. The Court is guided by *In re Gabriel G.* (2005) 134 Cal.App.4th 1428,
22 1437, which states:

23
24 Although eliminating a placement option from the juvenile court's consideration
25 may seem illogical, we must recall that in construing a statute, “that which is
26 construed is the statutory text.” ... Evidence of legislative inadvertence would
... have to be quite compelling before we would ignore the plain language of the law.
... The only evidence of inadvertence the Department offers is its assessment of

1 the unintended consequences the change will have. *Legislation often has*
2 *unintended consequences.* But we cannot construe the amendment in a manner
3 wholly unsupported by its text merely to avoid the purported unintended
4 consequences.

(Emphasis added.)

4 If the Legislature overlooked the effect of the Realignment Act on voting rights and
5 actually intended to restrict the voting rights of persons on Mandatory Supervision and PRCS,
6 then the Legislature can address the issue. “Since passing the Realignment Act of 2011, the
7 Legislature has amended the Penal Code in a number of ways to clarify how the new legislation
8 is to be interpreted in conjunction with preexisting laws.” (*People v. Prescott* (2013) 213
9 Cal.App.4th 1473, 1477.) (See also *People v. Isaac* (2014) 224 Cal.App.4th 143.)

10 Proposed Legislative Amendment to the Statute. The court can draw “very limited
11 guidance” from the fact that the Legislature did not enact the proposed amendment that would
12 have stated expressly that persons on Mandatory Supervision and PRCS could vote. (*Grupe*
13 *Development Co. v. Superior Court* (1993) 4 Cal.4th 911, 922-923.) Similarly, the court draws
14 very limited guidance from the fact that the Legislature has not enacted an amendment that
15 would have stated expressly that persons on Mandatory Supervision and PRCS cannot vote.
16 This is not a situation where a court has decided an issue of statutory construction, the decision
17 has been followed on many occasions, and the the Legislature has declined to amend the statute
18 despite making numerous other amendments to the statute over a period of many years.

19 (Compare *Olson v. Automobile Club of Southern California* (2008) 42 Cal.4th 1142, 1155-1156.)

20 The Legislature’s decision not to enact any amendment to state clearly whether Mandatory
21 Supervision and PRCS fall within the definition of “parole” in Elections Code 2101 does not
22 provide any guidance to the court.

23 Prior Case in Court of Appeal. An organization previously filed a petition regarding the
24 voting rights of persons on Mandatory Supervision and PRCS directly in the Court of Appeal,
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1 and the Court of Appeal denied that petition without issuing an opinion. (Secretary RJN, Ex. 2.)

2 The California Supreme Court denied review without an opinion. (Secretary RJN, Ex. 2.)

3 “The summary denial of a petition for a prerogative writ properly is viewed as a refusal
4 by the court to exercise original jurisdiction over the matter.” (*Lewis v. Superior Court* (1999) 19
5 Cal.4th 1232, 1260 fn 18.) Therefore, a summary denial of the petition is “without prejudice to
6 the right of petitioners to seek such relief as they may be advised they are entitled to in the
7 proper tribunal.” (*Funeral Directors Ass'n of Los Angeles and Southern California v. Board of*
8 *Funeral Directors and Embalmers* (1943) 22 Cal.2d 104, 110.) The prior case filed directly in
9 the Court of Appeal does not provide any guidance to the court.

10 Administrative Interpretation / Secretary of State Memorandum. The law on judicial
11 deference to the interpretations of a state agency is multi-layered. As a general rule, where an
12 agency has authority to adopt a regulation and does so under the Administrative Procedures Act,
13 then Court must give substantial deference to any reasonable interpretation of the regulation
14 advanced by the agency. “An administrative agency's interpretation of its own regulations is
15 generally given great weight by courts, and a reviewing court must “defer to an agency’s
16 interpretation of a regulation involving its area of expertise, unless the interpretation flies in the
17 face of the clear language and purpose of the interpretive provision.” (*Margarito v. State*
18 *Athletic Com.* (2010) 189 Cal.App.4th 159, 168.) Judicial deference to an agency’s
19 interpretation of its own regulations promulgated under the APA is inapplicable on the facts of
20 this case because the Memorandum is not a regulation under the APA, because the Memorandum
21 concerns the Legislature’s intent in enacting the Realignment Act and amending the the Penal
22 Code, which is not the Secretary’s area of expertise, and because this case concerns the
23 interpretation of Elections Code 2101 and not the interpretation of the Memorandum.

24 Where an agency has the authority to adopt a regulation under the APA but instead elects
25 to issue a memorandum for “guidance” without complying with APA’s notice, and public
26

1 comment procedural requirements, the agency has promulgated an underground regulation, and
2 the court gives no deference to agency interpretation. *California Grocers Association v.*
3 *Department of Alcoholic Beverage Control* (2013) 219 Cal.App.4th 1065, 1073-1074,
4 summarizes the law as follows:

5
6 The APA requires that an agency comply with the notice and comment
7 procedures for formalizing a regulation and the failure to do so voids the
8 regulation. ... A regulation subject to the APA ... has two principal identifying
9 characteristics. First, the agency must intend its rule to apply generally.... Second,
10 the rule must ‘implement, interpret, or make specific the law enforced by ... [the
11 agency]. The first is a test of the generality of the agency's promulgation; the
12 second is a test of the conformity of the interpretation with the statute interpreted.
13 ... As to the second test, an agency interpretation of a statute is not subject to the
14 APA if it is “the only legally tenable interpretation” of the statute.... That phrase
15 has been construed to apply only if the interpretation is “patently compelled by ...
16 the statute's plain language.” ... An interpretation is “patently compelled” when it
17 “ ‘can reasonably be read only one way’ such that the agency's actions or
18 decisions in applying the law are essentially rote, ministerial, or ... repetitive of ...
19 the statute's plain language.”

20 (See also *County of San Diego v. Bowen* (2008) 166 Cal.App.4th 501, 516-520.)

21 The court finds that the Memorandum is an invalid underground regulation, and as such
22 the court is not required to give deference to the Memorandum in arriving at the court’s analysis
23 and conclusions. (*Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 576.)

24 First, the Memorandum was written to interpret Elections Code 2101 and implement the
25 Secretary’s interpretation of the law. The Memorandum is not exempt from the APA as a mere
26 restatement of the only legally tenable interpretation of a statute. (*California Growers*, 219
Cal.App.4th at 1074.) To the contrary, the Memorandum is supported by 18 page legal opinion
that addresses an issue where there is no directly applicable statutory text and no guidance in the
legislative history. Second, the Memorandum sets out a policy that the Secretary intended to
apply generally to all persons on Mandatory Supervision and PRCS. Third, though in the
absence of a regulation the court will give deference to agency interpretation of a statute if the
agency has special expertise in the area, “[t]he degree of ‘respect’ accorded the agency's

1 interpretation depends on the circumstances. An administrative agency’s interpretation of a
2 statute is entitled to significant deference only if ... the agency has expertise and technical
3 knowledge, especially where the legal text to be interpreted is technical, obscure, complex, open-
4 ended, or entwined with issues of fact, policy, and discretion.” (*Powerhouse Motorsports*
5 *Group, Inc. v. Yamaha Motor Corporation* (2013) 221 Cal.App.4th 867, 880.) (See also *Holland*
6 *v. Assessment Appeals Bd. No. 1* (2014) 58 Cal.4th 482, 494.) The Memorandum is unrelated to
7 the mechanics of how to implement Elections Code 2101, which would be an area of the
8 Secretary’s expertise. Conversely, The Secretary has no special expertise in statutory
9 interpretation, or discerning the Legislature’s intent. The Memorandum is not entitled to
10 significant weight in deciding the issue before the court – whether otherwise eligible persons on
11 Mandatory Supervision (Penal Code 1170(h)(5)(B)) and Post-Release Community Supervision
12 (“PRCS”) (Penal Code 3451) have the same right to register to vote and to vote as all other
13 otherwise eligible persons.

14 15 CONCLUSION ON THE MERITS.

16 The petition for a writ of mandate is GRANTED. The court holds as a matter of law that
17 California Constitution Article II, section 2 and Elections Code 2101, require the State of
18 California to provide all otherwise eligible persons on Mandatory Supervision (Penal Code
19 1170(h)(5)(B)) and Post-Release Community Supervision (“PRCS”) (Penal Code 3451) the same
20 right to register to vote and to vote as all other otherwise eligible persons. Neither Mandatory
21 Supervision nor PRCS is “parole” under the Penal Code, which compels this court to hold that
22 neither Mandatory Supervision nor PRCS is “parole” under Elections Code 2101. *People v. Cruz*
23 (2012) 207 Cal.App.4th 664; *People v. Fandinola* (2013) 221 Cal.App.4th 1415; *People v. Isaac*
24 (2014) 224 Cal.App.4th 143. The text of the Realignment Act as a whole suggests that the
25 Legislature considered parole, Mandatory Supervision, and PRCS to be distinct forms of
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1 noncustodial supervision that are not functionally equivalent. The legislative history of the
2 Realignment Act states that a Legislative goal was to reintroduce felons into the community,
3 which is consistent with restoring their right to vote when they enter Mandatory Supervision or
4 PRCS. And finally, the presumption in favor of the right of the people to vote weighs heavily in
5 favor of interpreting “parole” in Elections Code 2101 to be limited to “parole” in the Penal Code
6 and not to alternatives to parole such as Mandatory Supervision and PRCS, and this court should
7 not engage in any construction of the an election law that would disfranchise any voter if the law
8 is reasonably susceptible of any other meaning.

9
10 THE REMEDY.

11 The court in this order does not decide the nature or scope of the appropriate relief.
12 Petitioners seek a writ directing the Secretary (1) to withdraw the Memorandum because it
13 misstates the law and was issued in violation of the APA and and (2) to issue a memorandum
14 informing the county clerks and elections officials that otherwise eligible Californians on
15 Mandatory Supervision of PRCS have the right to vote, and (3) to amend voter-registration and
16 information materials to be consistent with the law. (*McPherson*, 145 Cal.App.4th at 1486.) The
17 Secretary cautions that the Memorandum addresses issues other than those at issue in this case.

18 Petitioners are seeking a traditional writ of mandate to compel a public official to perform
19 an official act required by law. (CCP 1085.) The court can issue a writ to compel the Secretary
20 to exercise her discretion under a proper interpretation of the applicable law, but the court cannot
21 issue a writ to compel the Secretary to exercise her discretion in a particular manner, such as by
22 issuing a new memorandum. (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432,
23 442; *County of Los Angeles v. Superior Court* (2013) 222 Cal.App.4th 434, 444.) If the parties
24 cannot agree on the appropriate remedy, then in further briefing the parties are to address
25 whether the court can order the relief sought by Petitioners and, if not, what alternative relief
26

1 might be lawful and appropriate in this case. The briefing schedule is stated at the beginning of
2 this order.

3
4 Dated: May 7, 2014

5 Evelio Grillo
6 Judge of the Superior Court