IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION FIVE

MICHAEL SCOTT, LEON SWEETING, MARTIN CERDA, ALL OF US OR NONE, LEAGUE OF WOMEN VOTERS OF CALIFORNIA, DORSEY NUNN, and GEORGE GALVIS, Plaintiffs and Respondents, **v.** **DEBRA BOWEN, Secretary of State of California,** Defendant and Appellant.	Case No. A142139

Alameda County Superior Court, Case No. RG14712570
The Honorable Evelio Grillo, Judge

APPELLANT'S REPLY BRIEF

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INTRODUCTION

Realignment was designed to move non-violent felons out of state prison and into county custody. There is no evidence that in adopting realignment, the Legislature intended to restore voting rights prohibited to felons during their terms of custody and parole by article II, section 4 of the California Constitution. Respondents' contention that felons now on PRCS and mandatory supervision regained the right to vote solely by virtue of realignment, while still serving their sentences, relies on a misinterpretation of the statutory and constitutional scheme at issue in this case. These arguments cannot overcome the fact, recognized by the Secretary, that realigned felons were not resentenced; they continue to serve those sentences under realignment, and they are serving the same felony sentences they would have prior to realignment. The only change wrought by realignment is that they are serving those felony sentences at county-run institutions and programs rather than in state custody. Further, the notion that the Legislature accidentally re-enfranchised tens of thousands of convicted felons is not justified by the Legislature's intent in enacting the realignment legislation, the specific language used in crafting it, or the voter intent behind article II, section 4. Accordingly, this Court should reverse the trial court's decision.

ARGUMENT

I. THERE IS NO EVIDENCE THAT THE LEGISLATURE INTENDED TO GRANT NEW RIGHTS TO REALIGNED FELONS

A. The Legislative History of Realignment Does Not Reflect Any Intent to Expand the Voting Rights of Felons

In her opening brief, the Secretary of State showed that the Legislature enacted criminal justice realignment to address issues unrelated to felon voting rights, specifically, the twin goals of saving money during a fiscal catastrophe and reducing prison population to comply with an order

of the United States Supreme Court. (Appellant's Opening Brief (AOB), pp. 9-11). Moreover, the opening brief showed that the Governor's budget proposal, Legislative Analyst reports, and the legislative committee summaries similarly focused on the reduction in the prison population and the cost saving features of realignment, and that none of these documents made any mention of re-enfranchising felons or granting any new rights. (AOB, pp. 14-16.) Respondent makes no meaningful effort to dispute this legislative history, arguing instead that either the history of the realignment legislation should be ignored (Respondents' Brief (RB), pp. 30-32) or that it is irrelevant because the meaning and purpose of the realignment legislation changed over time (RB, pp. 35-36).

Respondents argue incorrectly that an examination of the legislative history is unnecessary because the mere fact that the Legislature did not use the word "parole" necessarily means that it did not understand either PRCS or mandatory supervision under realignment to have the same effect on voting rights as traditional parole under article II, section 4.[1] (RB, p. 30.) This logical leap is unjustified.[2] The fact that the Legislature chose not to

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[1] Even if the realignment statutes were unambiguous, which they are not, this would not necessarily end the inquiry. "[W]hile ambiguity is generally thought to be a condition precedent to interpretation, this is not always the case. 'The literal meaning of the words of a statute may be disregarded to avoid absurd results or to give effect to manifest purposes that, in light of the statute's legislative history, appear from its provisions considered as a whole.'" (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1335, quoting *Silver v. Brown* (1966) 63 Cal.2d 841, 845.)

[2] In the opening brief, the Secretary drew an analogy between the treatment of felons on PRCS and that of federal parolees, who have long been disenfranchised under article II, section 4, even though they are not labeled as "parolees." (AOB, pp. 25-27.) Respondents assert that this argument is irrelevant because the change in the parole status of federal felons was essentially a "renaming." (RB, pp. 49-50) The Secretary does

(continued...)

use the word "parole" does not, standing alone, mean that PRCS and mandatory supervision should not be treated as parole for purposes of determining the right to vote of a convicted felon serving a sentence. Article II, section 4 is self-executing (*Flood v. Riggs* (1978) 80 Cal.App.3d 138, 155), meaning that the Legislature could not simply avoid the constitutional restriction and re-enfranchise convicted felons on parole by changing the name of the parole program to some other label, such as mandatory supervision. (See *Ex-Cell-O Corp. v. County of Alameda* (1973) 32 Cal.App.3d 135, 140 ["A statute cannot limit a self-executing provision of the Constitution"].) Respondents appear to have conceded this point. As respondents' counsel stated at the trial court hearing: "it would be a more difficult case maybe if the legislature had simply changed the name of parole to something else. It would still not be parole but maybe the government would have a point there." (Reporter's Transcript, p. 32:11-14.) Accordingly, just because the Legislature chose to call PRCS or mandatory supervision something different than "parole" does not end the inquiry.

Respondents' argument that re-enfranchisement of convicted felons still serving their sentences was a necessary though unintended consequence of realignment (RB, pp. 32-35) is similarly flawed. This "inadvertence" argument has been rejected when a court can determine the meaning of the statutory provision by reference to the entirety of the

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(...continued)
not dispute that the federal government simply changed the label, and that is the point of the analogy. Respondents urge that the absence of the term "parole" is determinative, that the realignment provisions are unambiguous because they do not use the term "parole," and, absent that term, felons on any sort of supervised release program can vote. (RB, pp. 24-28.) The fact that federal felons on release are no longer named "parolees" but still do not vote demonstrates the fallacy in this argument.

statutory scheme and its purpose. (See *In re Jovan B.* (1993) 6 Cal.4th 801, 811-812 [sentence enhancement applies to juvenile proceedings despite plain terms of statute when interpreted in context with other statutory provisions]; *In re Damien V.* (2008) 163 Cal.App.4th 16, 22-24 [statutory scheme applies to juvenile offenders after considering intent of proposition].) "The primary rule of statutory construction is that the courts should attempt to ascertain the intent of the Legislature and construe a statute so as to effectuate its purpose. *All other rules of construction are subordinate to this primary principle.*" (*People v. Superior Court (Arthur R.)* (1988) 199 Cal.App.3d 494, 498, emphasis added.)[3] Respondents' "inadvertence" argument is unsupported by any indications of legislative intent.[4]

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[3] Respondents argue that the presumption in favor of voting should tip the scales for their interpretation (RB, pp. 28-30), but such "constructional preferences 'are mere guides and will not be used to defeat legislative intent.'" (*People v. Frawley* (2000) 82 Cal.App.4th 784, 789, quoting *People v. Cruz* (1996) 13 Cal.4th 764, 782.) "Constructional preferences . . . are properly understood not as mechanical rules for the determination of statutory meaning but as aids in support of '[t]he fundamental task of statutory construction,' which is to 'ascertain the intent of the lawmakers so as to effectuate the purpose of the law.'" (*Ibid.*)

[4]Respondents also assert that at other times the Legislature has changed criminal law and no mention was made of voting rights. (RB, p. 33.) But if the Legislature changed a misdemeanor into a felony, for example, it would be understandable that the Legislature might not discuss voting rights as the California Constitution has undisputedly prohibited voting by felons since statehood. (See AOB, pp. 12-13 [discussing history of felon disenfranchisement in California].) Moreover, in changing misdemeanor sentences into felonies, the Legislature would only be affecting voting rights to felons sentenced under the new law *going forward*, and not changing the voting status of thousands of individuals *who had already been sentenced* prior to the change in law.

Finally, respondents incorrectly assert that the Secretary's argument relies on the "early legislative history" of realignment and that the realignment proposal changed over time. (RB, p. 35.) However, respondents ignore that among other items, the Secretary has cited legislative committee reports that were prepared just days before enactment of the bill. These reports, the Senate and Assembly Budget Committee reports on AB 109 (Stats. 2011, ch. 15), the primary realignment bill, discuss the changes brought about by realignment, which do not include any change to the voting rights of convicted felons already serving sentences. (See JA, vol. 2, pp. 282-289.)

Additionally, the record also contains a June 28, 2011 analysis of SB 87 (Stats. 2011, ch. 33), the budget bill that appropriated funds to implement realignment, which postdated enactment of AB 109 by more than two months. (See Legislative Counsel of California, http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0101-0150/ab_109_bill_20110404_history.html [showing that AB 109 was enacted on April 4, 2011].) This analysis explains that the "realignment plan will enable the state to meet the order set out by a recent United States Supreme Court decision . . . to require the reduction of overcrowding in the state prison system," but fails to mention any change to the voting rights of felons. (JA, vol. 2, p. 300.) Finally, the Senate Committee on Budget and Fiscal Review bill analysis on ABx1-16 (Stats. 2011, ch. 13), one of the many realignment clean-up bills, was prepared in September 2011 (more than five months after AB was enacted), and makes no mention of changes to the voting rights of felons, but does indicate that realignment "is expected to save the State up to $2 billion when it is fully implemented mainly from the reduction in State prison and parole activities." (*Id.* at p. 306.) Neither contemporaneous nor subsequent legislative history reflect any legislative intent to expand felon voting rights.

B. Moreover, the Legislature Had the Chance to Enact AB 938, Stating That Realigned Felons Could Vote, and Chose Not to Do So

Respondents assert that this Court need not consider previous unsuccessful litigation raising the same issues, or the Legislature's subsequent failure to enact AB 938, which would have expressly allowed realigned felons to vote. (RB, pp. 47-49.)[5]

But "in some circumstances . . . legislative inaction may represent a reliable indicant of the intended scope of existing legislation." (*Gay Law Students Assn. v. Pacific Tel. & Tel. Co.* (1979) 24 Cal.3d 458, 480, fn. 13; see also *League of Women Voters v. McPherson* (2006) 145 Cal.App.4th 1469, 1483, fn. 12 [finding that vetoed bill that clarified the regulatory election process "provides some 'impression' of the Legislature's intended meaning"].) The Legislature is presumed to be aware of administrative agency decisions and court decisions that determined the meaning of the statutory scheme. (*Moore v. California State Bd. of Accountancy* (1992) 2 Cal.4th 999, 1017-1018.) Here, the legislative history shows that the Legislature was actually aware of the Secretary's interpretation and the court decisions. One Assembly Committee report indicates that "the Secretary of State's (SOS) office . . . issued a memorandum on December 5, 2011 which analyzed [realignment] and its effect on voter eligibility" and concluded that realignment "does not change the voting status of offenders convicted of . . . low-level felonies." (JA, vol. 2, p. 226.) The Committee report also indicates that "[v]oting rights groups filed a lawsuit against the SOS arguing that realigned felons have a right to vote" and noted that this

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[5] The prior lawsuit similarly alleged that felons on PRCS and mandatory supervision should be allowed to vote. But the Secretary has not argued that the previous litigation, which resulted in in a summary denial after a *Palma* notice, and a denial of review by the California Supreme Court, is controlling here. (See AOB, p. 6.)

Court summarily denied the petition and that the Supreme Court denied review. (*Ibid.*) While not controlling, this makes clear that the Legislature was aware of both the Secretary's interpretation and the reluctance of this Court and the Supreme Court to overturn that determination.

II. PRIOR TO REALIGNMENT, AFFECTED FELONS COULD NOT VOTE, AND THERE IS A PRESUMPTION AGAINST A MAJOR CHANGE IN LAW BY IMPLICATION

It is beyond dispute that prior to realignment, none of the affected felons had voting rights, and there is no indication that the Legislature intended by enacting realignment to change their voting status. Respondents, however, challenge the Secretary's assertion that there is a presumption against a major change in the law by implication (AOB, pp. 16-19), contending that the cases cited by the Secretary instead "used the lack of legislative history to uphold, not override the statutory language." (RB, pp. 31-32.) But that is the Secretary's point: the lack of legislative history demonstrating an intent to change the voting status of felons supports leaving that status as it was prior to realignment.

For example, in *In re Christian S.* (1994) 7 Cal.4th 768, the question was whether amendments to the Penal Code had eliminated the doctrine of imperfect self defense. The California Supreme Court relied on the absence of legislative intent in the legislative history to conclude that the doctrine remained intact, noting that there was "no indication the Legislature considered any of the policy issues attendant to elimination of imperfect self-defense." (*Id.*, pp. 781-782.) The Court was "not persuaded the Legislature would have silently, or at best obscurely, decided so important and controversial a public policy matter and created a significant departure from the existing law." (*Id.*, p. 782.) Similarly, in *California Redevelopment Association v. Matosantos* (2011) 53 Cal.4th 231, 260, the issue was whether Proposition 22 had constitutionalized redevelopment

agencies that had previously been only a creature of statute. The Court refused to find that the status of redevelopment agencies had been changed absent some indication that such change was what the voters intended, noting that it would be highly unusual if that was the case. (*Ibid.*) The same principle applies here–one would expect that if the legislature had intended to change the voting status of thousands of individuals, it would have made such a decision explicit.

Moreover, in none of the cases respondents cite did the courts conclude that the statutory language was unambiguous without reviewing the legislative history, as urged by respondents here. For example, in *Ailanto Properties, Inc. v. City of Half Moon Bay* (2006) 142 Cal.App.4th 572, at issue was the meaning of language in the Subdivision Map Act. Although one of the parties argued that plain language should control, the Court refused to construe that language in isolation. (*Id.*, pp. 584-585.) The Court turned to the statute's legislative history to clarify its meaning, and found that the lack of legislative history indicated that it was "highly unlikely that the Legislature would make such a significant change in the power of local governments. . . without so much as a passing reference to what it was doing." (*Id.*, p. 589.)

Finally, respondents make no attempt to distinguish this Court's decision in *Flood v. Riggs*, the case that is most on point. There, the Legislature repealed two Penal Code provisions and enacted two new sections that restored certain civil rights to parolees. But this Court refused to read into the provisions an intent to change any parolee's voting status, noting that the statutes "expressly omitted to include the long-suspended right of suffrage attached to imprisonment. While the legislative history involving the repeal of section 3054 is silent, a reading of the various provisions relating to parole (Pen. Code, §§ 3000-3064), enacted under the Uniform Determinate Sentencing Law, as amended, discloses no attempt to

enfranchise parolees as suggested by appellant, nor in our view would such an attempt be constitutionally permissible." (*Flood v. Riggs* (1978) 80 Cal.App.3d 138, 154 fn. 19.) As in *Flood v. Riggs*, this Court should not infer a change in voting status absent a clear intent to do so.

III. PAROLE, PRCS, AND MANDATORY SUPERVISION ARE THE SAME FOR PURPOSES OF ARTICLE II, SECTION 4

In her opening brief, the Secretary showed that PRCS and mandatory supervision are the functional equivalent of parole for purposes of article II, section 4. (AOB, pp. 19-28.) Respondents fail to undermine these arguments.

Respondents respond first by attempting to dismiss the language in realignment statutes that refers to felons on PRCS as "parolees" as an "artifact" of early proposals. (RB, pp. 21-22, discussing Pen. Code, § 3450, subd. (b)(5), ["[r]ealigning the postrelease supervision of certain felons reentering the community after serving a prison term to local community corrections programs . . . will improve public safety outcomes *among adult felon parolees* and will facilitate their successful reintegration"], emphasis added; (*Id.*, § 3450, subd. (b)(6) noting a "partnership between local safety entities and the county to provide and expand the use of community-based-punishment for offenders *paroled* from state prison"], emphasis added.).) This ignores, however, that this language is consistent with the Governor's initial proposal (see, e.g., JA, vol. 2, p. 266 [Governor's budget summary discusses "[r]ealigning *adult parole* to the counties"], emphasis added) and the legislative history of the statute.

Next, respondents attempt to equate PRCS and mandatory supervision with probation, but the comparison is inapt. (RB, p. 21.) It is undisputed that probationers can vote, but a court must actually deny probation before sentencing an individual to PRCS and/or mandatory supervision (*People v. Fandinola* (2013) 221 Cal.App.4th 1415, 1422; *People v. Cruz* (2012)

207 Cal.App.4th 664, 671.) Moreover, unlike the probationers in *League of Women Voters v. McPherson* (2006) 145 Cal.App.4th 1469, a felon sentenced under PRCS or mandatory supervision has been convicted and sentenced. (*Id.*, p. 1482 [finding relevant that probationers have not had a sentence imposed].) Finally, respondents cannot and do not dispute that individuals sentenced to PRCS or mandatory supervision are serving a period of conditional release after imprisonment for a felony conviction, which is comparable to parole and unlike probation.

Next, respondents attempt but fail to distinguish PRCS and mandatory supervision from traditional parole. Respondents rely on the idea of reintegrating individuals on PRCS and mandatory supervision into society (RB, pp. 45-47), but this is also the function of parole. As our Supreme Court has noted, "It is apparent that a term of imprisonment and the onset of parole are distinct phases under the legislative scheme. . . . [T]he general objectives of sentencing include protecting society, punishing offenders, deterring future crimes, and treating with uniformity those committing the same types of offenses, whereas the objective of parole is, through the provision of supervision and counseling, to assist in the parolee's transition from imprisonment to discharge and reintegration into society." (*People v. Nuckles* (2013) 56 Cal.4th 601, 608, 609, quoting *In re Roberts* (2005) 36 Cal.4th 575, 589–590, internal citations omitted.) In short, respondents fail to undermine the arguments that PRCS and mandatory supervision are, for purposes of article II, section 4, the functional equivalent of parole.

Respondents' reliance on the ways in which parole is different under the current determinate sentencing law than it was when article II, section 4 was enacted in 1974 fares no better. (RB, pp. 11-12, 40-45.) The Secretary does not dispute that aspects of the parole system changed under the determinate sentencing law, but respondents' argument ultimately proves too much. First, this Court has already rejected the idea that changes to the

parole structure can serve to enfranchise felons. (*Flood v. Riggs* (1978) 80 Cal.App.3d 138, 153 fn. 19.) Second, this distinction between parole before and after 1977 is unhelpful because aspects of mandatory supervision under realignment are actually more akin to pre-1974 parole than is current "parole." As described by respondents, current "[p]arole is no longer part of a prison term that CDCR allows some prisoners to serve in constructive, rather than actual custody; instead it is a mandatory period of supervision imposed in addition to the prison term." (RB, p. 11.) But in contrast to current parole, and like pre-1977 parolees, felons on mandatory supervision are still serving their term of imprisonment, although not currently incarcerated. (Pen. Code, § 1170, subd. (h)(5)(B).) And the period of mandatory supervision is a fixed term based on the underlying sentence, just as pre-1977 parole and unlike current parole. Accordingly, "the Legislature has decided a county jail commitment followed by mandatory supervision imposed under section 1170, subdivision (h), is akin to a state prison commitment." (*People v. Fandinola* (2013) 221 Cal.App.4th 1415, 1422.) So, if it were the case that for article II, section 4 to apply, current versions of traditional parole had to be identical to the 1974 version of parole, even current parolees would be able to vote.

IV. THE CASES CITED BY RESPONDENTS AND THE TRIAL COURT ARE NOT DETERMINATIVE OF THE MEANING OF ARTICLE II, SECTION 4

Respondents rely on a number of post-realignment criminal decisions to assert that realigned felons should be re-enfranchised despite the absence of legislative intent (RB, pp. 23-24), most of which the Secretary distinguished in her opening brief. (OB, pp. 28-32.) The remaining cases add little to the analysis and do not change the result. In *People v. Lopez* (2013) 218 Cal.App.4th Supp. 6, 10, the court held that a statute that bans prosecution for nonfelony traffic offenses when a defendant is in the

"custody of the Director of Corrections" does not apply to a realigned felon in county jail. In *People v. Prescott* (2013), 213 Cal.App.4th 1473, 1476-1477, the court found that a statute exempting individuals "sentenced to state prison" from paying defense costs does not apply to a defendant sentenced under realignment. These cases interpret unambiguous statutory language and unsurprisingly find that the literal language means what it says—someone who is in "state prison" is not in county jail, and someone who is in the "custody of the Director of Corrections" is not in the custody of the local sheriff. [6]

Respondents miss the point by relying on these cases to argue that neither PRCS nor mandatory supervision are "parole." The Secretary is not arguing that PRCS and mandatory supervision are necessarily parole for all purposes, but rather that convicted felons on PRCS and mandatory supervision should be treated the same as convicted felons on traditional parole for purposes of article II, section 4 of the California Constitution.

In any event, this Court has determined the phrase '"imprisoned or on parole for the conviction of a felony,' as it appears in article II, section 4, is ambiguous." (*McPherson*, *supra*, 145 Cal.App.4th at p. 1482.) Respondents argue that in the prior case this Court was focused on the "imprisoned" language in article II, section 4, and never construed the "parole" language. (RB, p. 22.) However, in *McPherson* this Court found the entire phrase ambiguous, and did discuss the meaning of "on parole."

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[6] Respondents also cite several additional cases, but these add little to the analysis and do not change the result. In *People v. Espinoza* (2014) 226 Cal.App.4th 635, 639, the Court refused to reduce custody credits for defendant because he was on parole, not PRCS, but the Court was not interpreting an ambiguous constitutional provision. And *People v. Lynch* (2012) 209 Cal.App.4th 353, 356, resolved the question of whether the realignment legislation is retroactive, something that is far afield from the issues in this case.

(*McPherson, supra*, pp. 1482-1483.) Because article II, section 4 is ambiguous, the cited cases, which interpret unambiguous statutory provisions, are not dispositive. And when a constitutional provision is ambiguous, this Court must adopt that interpretation which carries out the intent of the voters. (*McPherson*, *supra*, at p. 1481.) That intent can be found in the ballot pamphlet and the arguments for and against the measure. (See *People v. Birkett* (1999) 21 Cal.4th 226, 243 ["When an initiative measure's language is ambiguous, we refer to other indicia of the voters' intent, particularly the analyses and arguments contained in the official ballot pamphlet"].) These ballot arguments state that the purpose of constitutional provision is to restore voting rights once an individual has "fully paid the price society has demanded." (JA, vol. 1, p. 119.) At that time article II, section 4 was enacted, that meant that felons would regain voting rights after a period of conditional release subject to revocation called "parole." Now, after realignment, it can and does include new forms of conditional release after imprisonment that are subject to revocation—otherwise, the voters would not be receiving what they voted for in 1974.

V. THE LEGISLATURE CANNOT CONTRAVENE THE LANGUAGE OF ARTICLE II, SECTION 4

The Secretary of State has argued that the Legislature did not intend to re-enfranchise anyone when it enacted realignment. Even if the Legislature had intended to do so, such an intent would be of questionable constitutionality. Respondents assert that article II, section 4 does not prohibit the Legislature from changing the scope of parole (RB, pp. 37-40), but this is irrelevant. What is at issue in this case is not whether the Legislature can change parole from, for example, determinate to indeterminate sentencing, but whether the Legislature can contravene article II, section 4, a voter-approved constitutional amendment. As the Secretary noted in her memorandum, "[a]n attempt, for example, to amend

the Penal Code solely by renaming state prisons as 'State Detention Centers' and state parole as 'State Supervised Release,' while stating an intent that felons imprisoned in State Detention Centers or on State Supervised Release should be entitled to register and vote because they are not 'in prison or on parole for the conviction of a felony' under Elections Code section 2101 would be very unlikely to pass constitutional muster." (JA, vol. 2, p. 210.)

The Legislature itself appears to be aware of these limitations. The legislative history of AB 938, the failed bill that attempted to clarify that realigned felons (both in county jail serving a felony sentence or on PRCS/mandatory supervision) had their voting rights restored, states that "provisions of the bill may be in conflict with the California Constitution. Article II, Section 4 . . . disqualifies those who are 'imprisoned or on parole for the conviction of a felony.' The California Constitution which is self-executing does not need the aid of legislation to give it effect." (JA, vol. 2, p. 226.) The legislative committee report noted that "because the California Constitution uses the term 'imprisoned,' which is a broader term that could incorporate state prison, federal prison, or county jail, it could be argued that this bill, which narrows the scope of where a felon could be imprisoned and disqualified from voting, may be in conflict with the Constitution." (*Id.*, p. 227.) Similarly, with respect to PRCS and mandatory supervision, "it can be argued that these new alternative post release supervised scenarios under [realignment] . . . are functionally equivalent to parole. . . . [in that] they essentially require post release supervision by a governmental entity that if violated, can be revoked." (JA, vol. 2, p. 227.) The report stated that "it can be argued that regardless of the name of the post release program in which a convicted felon is sentenced, their eligibility status remains the same. . . . [and therefore] this bill . . . may not withstand constitutional scrutiny." (*Ibid.*)

VI. THE SECRETARY'S MEMORANDUM WAS NOT AN "UNDERGROUND REGULATION"

In her opening brief, the Secretary showed why the memorandum was not an underground regulation, and why it was the only legally tenable interpretation of a provision of law. (See AOB, pp. 32-34; Gov. Code, § 11340.9, subd. (f).) Respondents disagree but offer no meaningful analysis other than that they believe their interpretation to be correct. As shown in both of the Secretary's briefs, the conclusion that realigned felons cannot vote is supported by the intent of the Legislature and the realignment provisions themselves.

Additionally, further evidence that the Secretary's interpretation is both this Court and California Supreme Court had the opportunity to accept the interpretation put forth by respondents, and both declined to do so. And the Legislature was given the opportunity to adopt the very interpretation of the Constitution that respondents allege here, and likewise declined. Moreover, as discussed in section V of this brief, the Legislature was concerned that respondents' interpretation was itself unconstitutional. Because the Legislature cannot contravene the language of article II, section 4, the Secretary's memorandum was undoubtedly the only legally tenable interpretation.

CONCLUSION

Accordingly, the trial court erred in granting the petition for writ of mandate, and this Court should reverse the trial court's decision.

Dated: December 24, 2014

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached APPELLANT'S REPLY BRIEF uses a 13 point Times New Roman font and contains 4,677 words.

Dated: December 24, 2014

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Scott, Michael, et al. v. Deborah Bowen (APPEAL)**
No.: **A142139**

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 December 24, 2014, I served the attached **APPELLANT'S REPLY BRIEF** 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:

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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 December 23, 2014, at Sacramento, California.

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Declarant


Signature

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