THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re **KENNETH HUMPHREY,** On Habeas Corpus.	Case No. S247278

First Appellate District, Division Two, Case No. A152056
San Francisco County Superior Court, Case No. 17007715
The Honorable Joseph M. Quinn, Judge

APPLICATION TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF IN SUPPORT OF RESPONDENT KENNETH HUMPHREY

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APPLICATION TO FILE AMICUS CURIAE BRIEF

The Amicus Curiae California DUI Lawyers Association (CDLA) respectfully requests permission to file the attached Amicus Curiae Brief in support of the Respondent, Kenneth Humphrey. This Court's decision on the issues presented in this case may have great impact in driving under the influence cases in California. Therefore, CDLA seeks to make this Court aware of CDLA's views. CDLA has been an amicus curiae in some of the leading DUI cases in California. See *People v. McNeal* (2009) 46 Cal.4th 1183; *People v. Vangelder* (2013) 58 Cal.4th 1; and *People v. Harris* (2015) 234 Cal.App.4th 671. CDLA has also been an amicus curiae in the Confrontation Clause related cases of *People v. Dungo* (2012) 55 Cal.4th 608, in this Court, and in *Williams v. Illinois* (2012) 567 U.S. 50, in the United States Supreme Court. CDLA is currently an amicus curiae in a case now pending before this Court, *People v. Arredondo*, Case No. S233582.

CDLA is a non-profit organization and has an estimated three hundred plus members throughout the state. Collectively, CDLA members likely represent thousands of citizens accused of driving under the influence in any given year. CDLA maintains a website. It is a nonprofit corporation and has a President, two Vice Presidents, a Board of Directors, and an Executive Director. CDLA regularly sponsors Continuing Legal Education courses pertaining to DUI related matters throughout California. As representatives of the California's DUI defense bar, CDLA is in a position

to assist the Court in making its decision in this matter by informing the Court about the perspective of the DUI defense bar, and how the Court's decision in this case will impact those arrested for DUI offenses. CDLA's attorney members collectively have significant experience in dealing with bail issues in DUI related cases.

No party or counsel for any party in this case has authored any part of this proposed amicus brief. No party or counsel for any party in this matter has made any monetary contributions for the preparation of submission of this proposed amicus brief. No person or entity has made a monetary contribution intended to fund the preparation or submission of the proposed amicus brief, other than the amicus curiae or its counsel.

Respectfully submitted,

Dated: October 8, 2018

BARTELL, HENSEL & GRESSLEY

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases

State Cases

Statutes

Constitutional Provisions

TABLE OF AUTHORITIES (cont.)

Other Authorities

INTRODUCTION

Eight years ago, the United States Supreme Court conclusively held that the Eighth Amendment's bail provision applies to the States. This observation is noteworthy because the Court had previously decided that the sole purpose of bail under the Eighth Amendment is to ensure the appearance of a defendant in court. Any state law that purposes bail for a reason other than securing the attendance of a defendant in court is unconstitutional under the Eighth Amendment. The Eighth Amendment does not mandate that bail must be granted in all criminal cases, but where bail is authorized, it can only be used to guard against flight risk.

In California, bail is not only authorized, it is a constitutional right. Article I, section 12 of the California Constitution specifies that, with limited exceptions, persons who have been arrested have the right to bail. A separate provision of the California Constitution, article I, section 28(f)(3), came into existence in 2008 with the passage of Proposition 9. That constitutional provision also addresses bail. The provision did not abolish the right to bail, but added the requirement that courts primarily consider public and victim safety in making bail determinations.

These two California constitutional provisions are not inconsistent with each other in that they both recognize the right to bail, with some exceptions. What is inconsistent, at least with respect to the Eighth Amendment and the bail provisions of article I, section 28(f)(3), is that

contrary to the restrictions of the Eighth Amendment, section 28(f)(3) mandates that courts make public and victim safety the primary considerations in setting bail. Under the Eighth Amendment, bail for these purposes is unconstitutional.

Because in California defendants have a right to bail, the recently passed Senate Bill No. 10 which eliminates bail, is unconstitutional. The provisions of Senate Bill No. 10 also exceed what the U.S. Supreme Court has permitted with regard to the U.S. Constitution and preventive detention.

ARGUMENT

I. IN SETTING MONETARY BAIL, A TRIAL COURT MAY NOT CONSIDER PUBLIC AND VICTIM SAFETY.

As discussed below, because the Eighth Amendment applies to the States, and because that amendment only authorizes bail for the purpose of ensuring a defendant's appearance in court, a court cannot consider public and victim safety in setting bail.

A. The Eighth Amendment's Bail Clause applies to the States.

The Eighth Amendment reads: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." The United States Supreme Court has held that fundamental federal constitutional rights apply to the States through the Due Process Clause of the Fourteenth Amendment. In *Benton v. Maryland* (1969) 395 U.S. 784, 795, the United States Supreme Court wrote: "Once it is decided that a particular Bill of Rights guarantee is 'fundamental to the American scheme

of justice,' [Citation], the same constitutional standards apply against both the State and Federal Governments." *Ibid.* (quoting *Duncan v. Louisiana* (1968) 391 U.S. 145, 149.)

The Eighth Amendment's Bail Clause applies to the States because it is fundamental to our justice system. Without bail, pretrial detention hinders the ability of defendants to assist in the preparation of their defense. Without bail, the presumption of innocence loses some of its cherished meaning. And without bail, pretrial detention effectively punishes a person before that person has been convicted. The right to pretrial release on bail is fundamental to the American justice system. The U.S. Supreme Court has concurred with all of the above assertions. In *Stack v. Boyle* (1951) 342 U.S. 1, 4 the Court wrote:

> [t]his traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction. [Citation] Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning.

Perhaps because the right to pretrial release is so embedded in our criminal justice system it has been largely uncontroverted. The Bail Clause of the Eighth Amendment is historically one of the least litigated provisions in the Bill of Rights. See Richard S. Frase, *Excessive Prison Sentences, Punishment Goals, and the Eighth Amendment: "Proportionality" Relative to What?,* 89 Minn. L.Rev. 571, 603 (2005).

In the past, the U.S. Supreme Court has stated that it assumed that

the excessive bail prohibition applied to the States. "Bail, of course, is basic to our system of law, [Citation], and the Eighth Amendment's proscription of excessive bail has been assumed to have application to the States through the Fourteenth Amendment." *Schilb v. Kuebel* (1971) 404 U.S. 357, 365; See also *Baker v. McCollan* (1979) 443 U.S. 137, 144, fn. 3 ["We of course agree with the dissent's quotation of the statement from *Schilb v. Kuebel*, 404 U.S. 357, 365, 92 S.Ct. 479, 484, 30 L.Ed.2d 502 (1971), that 'the Eighth Amendment's proscription of excessive bail has been assumed to have application to the States through the Fourteenth Amendment.'"]

The assumption that the Eighth Amendment applies to the States proved to be correct. In *McDonald v. City of Chicago, Ill.* (2010) 561 U.S. 742, the U.S. Supreme Court acknowledged that only a few constitutional rights have *not* been fully incorporated by the Due Process Clause of the Fourteenth Amendment. Although the Eighth Amendment's excessive fines prohibition made the list of those rights not yet incorporated,[1] the Eighth Amendment's Bail Clause does not appear on this waning list. The *McDonald* case involved a determination as to whether the Second Amendment's right to keep and bear arms was incorporated by the Fourteenth Amendment's Due Process Clause. Before ultimately deciding

[1] The U.S. Supreme Court has granted certiorari in a case to determine whether or not the Eighth Amendment's excessive fines clause is incorporated against the States under the Due Process Clause of the Fourteenth Amendment. See *Timbs v. Indiana*, 17-1091, Decision below 84 N.E.3d 1179 (cert. granted 6/18/18).

that the right to keep and bear arms under the Second Amendment has been incorporated by the Fourteenth Amendment, the U.S. Supreme Court in *McDonald* wrote:

> In addition to the right to keep and bear arms (and the Sixth Amendment right to a unanimous jury verdict, see n. 14, *infra*), the only rights not fully incorporated are (1) the Third Amendment's protection against quartering of soldiers; (2) the Fifth Amendment's grand jury indictment requirement; (3) the Seventh Amendment right to a jury trial in civil cases; and (4) the Eighth Amendment's prohibition on excessive fines.

McDonald v. City of Chicago, Ill., 561 U.S. at 832, fn. 13.

By omitting the Eighth Amendment's Bail Clause from the above list, the Supreme Court sealed the notion that the clause has been incorporated by the Fourteenth Amendment.

B. Bail can only be used for the purpose of securing appearance in court.

As stated above, the *McDonald* decision confirmed that the Eighth Amendment's Bail Clause applies to the States. What this means, of course, is that the clause must be adhered to by the States. Because the U.S. Supreme Court has also held that the Eighth Amendment prohibits bail for any use other than securing the appearance of a defendant in court, any differing practice is unconstitutional.

This does not mean that the Bail Clause limits considerations to concerns other than flight risk. See *United States v. Salerno,* (1987) 481 U.S. 739, 754. ["Nothing in the text of the Bail Clause limits permissible Government considerations solely to questions of flight."] What it does

mean though is that bail itself cannot be used for any other purpose than flight risk. As discussed below, the U.S. Supreme Court has approved preventive detention in very restrained circumstances. Bail is not a mechanism to preventively detain someone. Bail is limited to the purpose of assuring a defendant's appearance in court. In *Stack v. Boyle*, 342 U.S. at 5, the U.S. Supreme Court confirmed this observation when it held: "Since the function of bail is limited, the fixing of bail for any individual defendant must be based upon standards relevant to the purpose of assuring the presence of that defendant." If bail is used for any purpose other than to guard against flight risk, such practice is contrary to the Eighth Amendment.

Making bail determinations for public and victim safety is exploiting bail for something other than guarding against flight risk. Not only is this practice unconstitutional, but it makes little sense. The only way the public or a victim can be protected through the use of bail, is if bail is set in an amount that an alleged perilous person cannot meet. Mr. Humphrey's case is a perfect example. Mr. Humphrey had no prospect of posting the amount of bail the trial court ordered. This was the equivalent of no bail at all.

II. THE BAIL PROVISIONS OF ARTICLE I, SECTIONS 12 AND 28(f)(3), CAN BE RECONCILED.

Article I, sections 12 and 28(f)(3) of the California Constitution are reconcilable. They both permit bail with limited exceptions.

A. The two provisions are not inconsistent.

Article 1, section 12 of the California Constitution indicates that there is a right to bail. There are three exceptions to this constitutional right. One deals with capital offenses, and the other two exceptions deal with certain felonies. Those specified felony exceptions are set forth in the footnote below.[2]

Article I, section 28(f)(3), passed in 2008, did not eliminate section 12's right to bail. What section 28(f)(3) did was add the requirement that courts take into consideration the protection of the public and victims in making bail determinations. The section also required that public and victim safety be the primary considerations in setting the amount of bail. "Public safety and the safety of the victim shall be the primary considerations." Cal. Const. Art. I, §28(f)(3).

Both provisions recognize that there is a right to bail, with some exceptions. Section 28(f)(3) did not alter the right to bail. The section

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[2] The non-capital crimes exceptions read as follows:
"(b) Felony offenses involving acts of violence on another person, or felony sexual assault offenses on another person, when the facts are evident or the presumption great and the court finds based upon clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to others; or
(c) Felony offenses when the facts are evident or the presumption great and the court finds based on clear and convincing evidence that the person has threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released."

modified what a court takes into account when making bail determinations.[3] Section 28(f)(3) did not expressly repeal section 12. Nor did section 28(f)(3) impliedly repeal section 12. The two constitutional provisions, on their face, do not conflict.

This Court has recognized a judicial duty to reconcile two constitutional provisions when possible, and that there is a strong presumption against implied repeal. See *City and County of San Francisco v. County of San Mateo* (1995) 10 Cal.4th 554, 570. [The Court held that there is a "strong presumption against implied repeal and [there is a] duty to harmonize constitutional provisions wherever possible ...."] In *City and County of San Francisco*, the Court further wrote: "'So strong is the presumption against implied repeals' that we will conclude one constitutional provision impliedly repeals another only when the more recently enacted of two provisions constitutes a revision of the entire subject addressed by the provisions." *Id.* at 563 (quoting *Board of Supervisors v. Lonergan* (1980) 27 Cal.3d 855, 868). The presumption

[3] Article I, section 28(f)(3) reads: "Public Safety Bail. A person may be released on bail by sufficient sureties, except for capital crimes when the facts are evident or the presumption great. Excessive bail may not be required. In setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, the safety of the victim, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. Public safety and the safety of the victim shall be the primary considerations. A person may be released on his or her own recognizance in the court's discretion, subject to the same factors considered in setting bail."

against implied repeal is so great that, "'To overcome the presumption the two [provisions] must be irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation.'" *Western Oil & Gas Assn. v. Monterey Bay Unified Air Pollution Control Dist.* (1989) 49 Cal.3d 408, 419-420 (quoting *Penziner v. West American Finance Co.* (1937) 10 Cal.2d 160, 176).

As stated above, the provisions of sections 12 and 28(f)(3) are not in conflict. The strong presumption against implied repeal is not rebutted. Section 28(f)(3) did not constitute "a revision of the entire subject addressed by the provisions." *City and County of San Francisco, supra.* The two sections also are not "clearly repugnant, and so inconsistent that the two cannot have concurrent operation." *Western Oil & Gas Assn., supra.*

If there is any doubt as to the meaning of a statute, courts explore the legislative history for the intent of the legislature. In the case of a constitutional provision passed by proposition, courts looks to the Voter Information Guide to determine the intent of the voters. Courts also look to the Legislative Analyst's analysis to determine the intent of the proposition. See *City and County of San Francisco, supra*, at 563 and 570.

Prior to Proposition 9's enactment in 2008, the Legislative Analyst's Office indicated that section 28(f)(3) was enacted "to specify that the safety of a crime victim must be taken into consideration by judges in setting bail

for persons arrested for crimes." (See California Legislative Analyst's Office, *Changes Made by This Measure, Other Expansions of Victims' Legal Rights*, www.lao.ca.gov/ballot/2008/9_11_2008.aspx.) There is nothing in the Legislative Analyst's Office analysis that indicated a total revision of section 12, or that a repeal of the right to bail was ever contemplated. And as for the Voter Information Guide for the General Election in 2008, there was no reference by the proponents or by the opponents of Proposition 9 to indicate that Proposition 9 would be a repeal of section 12, or of the right to bail. (See Voter Information Guide for General Election 2008, vigarchive.sos.ca.gov/2008/general/argu-rebut/argu-rebutt9.htm.)

Had the right to bail been eliminated in 2008, the legal earthquake this would have caused would have been felt throughout the State. Legal commentators, judges, prosecutors, defense attorneys, bail agents, and the media alike would have all weighed in on this catastrophic change in the bail landscape. Yet no murmurs or even rumors were heard. If the right to bail was abolished in 2008, why is it that no one knew? The reason is that the right was not abolished. It remains today.

B. The two constitutional provisions can also be harmonized because part of section 28(f)(3) is unconstitutional.

As stated above, the proposition containing section 28(f)(3) was passed in 2008. At that point in time, the United States Supreme Court had not definitively held that the Eighth Amendment's Bail Clause was

incorporated against the States. This would not occur for two more years, when the Court issued the *McDonald* decision in 2010. That decision leaves no doubt that the Bail Clause of the Eighth Amendment applies to the States. As previously mentioned, the Eighth Amendment requires that bail be used only for the purpose of ensuring that a defendant makes his or her court appearances. *Stack v. Boyle*, 342 U.S. at 5.

The case of *In re Humphrey* is this Court's first opportunity to weigh in on the constitutionality of section 28(f)(3), since the U.S. Supreme Court's pronouncement in *McDonald*. The provisions of section 28(f)(3) that require a court to make its primary focus in bail determinations public and victim safety go far beyond the Eighth Amendment's permissible purpose of bail. The language in 28(f)(3) that makes public and victim safety the focus of bail decisions is unconstitutional. The remaining constitutional provisions in that section are essentially a restatement of section 12's right to bail, with the limited exceptions previously discussed. For this reason, if the unconstitutional language is removed from section 28(f)(3), the section can not only be harmonized with section 12, it effectively becomes a reiteration of section 12.

III. SB 10 HAS NO EFFECT ON THE ISSUES IN THIS MATTER BECAUSE IT IS UNCONSTITUTIONAL.

A. SB 10 violates the California Constitution.

As stated above, the California Constitution guarantees the right to bail. Senate Bill No. 10 (hereinafter "SB 10") *eliminates* the right to bail.

Under SB 10, there will no longer be any bail options of any kind. Even a person arrested for a misdemeanor offense would not have the right to post bail. Despite the state legislature's presumably good intentions in passing SB 10, the legislature cannot enact a bill that abolishes a constitutional right. The passage of SB 10 has done exactly that - the bill is unconstitutional as it violates the state constitutional right to bail.

B. SB 10 violates the United States Constitution.

The expansive nature of SB 10's preventive detention provisions also violates the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution. The U.S. Constitution permits preventive detention in a very limited set of circumstances. There are a broad range of offenses in SB 10 that can make a person susceptible to preventive detention. In *U.S. v. Salerno* (1987) 481 U.S. 739, one of the factors the U.S. Supreme Court considered in upholding the use of preventive detention was the federal statute's narrow scope. The Court wrote: "The Bail Reform Act carefully limits the circumstances under which detention may be sought to the most serious of crimes." *U.S. v. Salerno*, 481 U.S. at 747; See also 18 U.S.C. 3142(f).

In contrast, SB 10 in theory permits preventive detention of anyone arrested for *any criminal offense* in California. The bill does not limit itself to capital offenses, violent offenses, or sexual assault offenses. *Any* offense could expose someone to SB 10's preventive detention measures. For

example, if a person is arrested for a misdemeanor and the court believes that the alleged misdemeanant would not appear in court, that person could be held in jail pending trial without any right to release. See the procedural machinery laid out in Pen. C. §§ 1320.18(a)(5), 1320.18(d), and 1320.20(d)(1).

The federal statute limits the circumstances in which the government may move to have a person preventively detained. See 18 U.S.C. 3142(f)(1). The federal statute authorizes federal prosecutors to move for preventative detention only in cases involving serious felony crimes. See 18 U.S.C. 3142(f)(1). Under SB 10 there are no similar restrictions on the prosecution's ability to file a motion for preventive detention. In fact, section 1320.18(a)(5) provides that a prosecutor may make the motion in any case if that individual prosecutor has a "substantial reason to believe" that no conditions will assure public safety or the person's appearance in court. See Pen. Code, § 1320.18(a)(5).

SB 10 also provides for *pre-arraignment* detention for people charged with numerous crimes, including again, some misdemeanors.[4] The

[4] SB 10 does not allow release for various *misdemeanor* offenses pending arraignment or pre-arraignment court review. See for example, Pen. C. §1320.10(e)(5), which provides that a person arrested "for an offense of driving with a blood alcohol level of .20 or above" *shall not be released* by Pretrial Assessment Services. Not only is this language legally incorrect (there is no actual criminal offense for 'driving with a blood alcohol level of .20 or above; there is only a potential enhancement for driving with a blood alcohol level of .20% or above), but the Penal Code section is also contrary to article I, section 12, which only excepted certain *felony* offenses from the constitutional right to bail.

pre-arraignment and pretrial detention of people charged with misdemeanors is far beyond anything the United States Supreme Court ever envisioned in *Salerno*. The preventive detention of such persons lacks proportionality and violates due process. The Court in *Salerno* observed that detention conditions "not be 'excessive' in light of the perceived evil." *U.S. v. Salerno*, 481 U.S. at 754. Preventive detention of presumptively innocent misdemeanor defendants is excessive in light of the perceived evil of those offenders.

In addition to preventive detention, one portion of the federal statute that was upheld in *Salerno* dealt with rebuttable presumptions against release. The federal law provides that under certain limited circumstances, a rebuttable presumption can arise that no release conditions of any kind can assure public safety. Under the federal statute, the presumption can apply in two circumstances. One occurs when a particular type of charge is filed. Those charges involve some of the most serious federal offenses.[5] The rebuttable presumption can also arise upon a motion made by the Government. That motion may be made only in cases involving the following: an offense in which the maximum sentence is *life in prison or death*; a controlled substance offense in which the maximum term *is ten or more years in prison*; any felony in which the person has been convicted of

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[5] See 18 U.S.C. §3142(e)(3)(A)-(E).

two or more priors; or any felony that involves a *minor victim* or the possession or use of a *firearm or destructive device*. See 18 U.S.C. §3142(f)(1)(A)-(E).

After such a motion is filed under the federal statute, the rebuttable presumption then applies if the court finds *all* three of the following: the person has been *previously convicted of one of those serious offenses* described above; *and* the offense was *committed while the person was on release* pending trial for another offense; *and* a period of *not more than five years has elapsed since the date of conviction or release* of the person from prison on the prior offense. See 18 U.S.C.A. §3142(e)(2)(A)-(C). The statute's narrow scope allows the presumption only in cases in which the arrested person presents the most serious of risks to public safety.

Contrast the provisions of the federal statute with those of SB 10. Like the federal statute, SB 10 contains a rebuttable presumption provision for certain enumerated crimes where no condition or combination of conditions can assure the safety of the public. See Pen. C. §1320.20(a)(1). But unlike the federal statute, SB 10 does not put comparable limitations on the circumstances under which a rebuttable presumption can arise.

Under SB 10, the presumption can arise if a court finds probable cause that *either* the current offense charged is a crime of physical violence or one involving a threat of violence, *or* that the person has been assessed "high risk" and *any one* (not all) of the following exist: the person has one

prior serious or violent felony conviction within the past 5 years; *or* the person committed the current crime while pending sentencing for a serious or violent offense; *or* the person intimidated, dissuaded or threatened a witness; *or* at the time of arrest the person was on any form of post-conviction supervision other than informal probation. See Pen. C. §§1320.20(a)(1) and 1320.20 (a)(2)(A)-(D). The avenues under which the presumption can arise are far more numerous and more easily taken in SB10 than they are in the federal statute. The Bill violates the Due Process Clause of the Fifth and Fourteenth Amendments.[6]

In addition, a major due process failing of SB 10 is that it does not give the detained person (who has not been convicted of the allegations levied) the right to appeal a court's preventive detention determination. Under the federal statute in *Salerno*, a detained person's recourse is adequately protected. A person detained under the federal statute has the right to an immediate appeal that must be *promptly determined*. See 18 U.S.C. §3145(c). This fact was significant to the *Salerno* Court, where the Court wrote: "The Act's review provisions ... provide for immediate appellate review of the detention decision." *U.S. v. Salerno*, 481 U.S. at 752. SB 10 only allows a detained person to take a discretionary writ,

[6] As a practical matter, violations of the Fifth and Sixth Amendment may also regularly occur at the preventive detention hearings. People who do not qualify for court appointed counsel may not have been able to secure private counsel in time for the hearing. The bill creates the opportunity for repeated structural constitutional errors.

which can be summarily denied without any explanation. Due process should never allow a judge to preventively detain a person, unless that person has the right to appellate review of the preventive detention decision. Again, the disparity between the federal statute upheld in *Salerno* and SB 10 is vast. SB 10's provisions violate the due process provisions of the Fifth and Fourteenth Amendments to the United States Constitution. SB 10 also violates article 1, section 12 of the California Constitution.

CONCLUSION

"In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *Salerno*, 481 U.S. at 755. The Court of Appeal in *In re Humphrey* embraced that liberty standard. The California DUI Lawyers Association asks this Court to affirm the *Humphrey* decision, and to reaffirm that in our society liberty steadfastly remains the norm.

Dated: October 8, 2018

BARTELL HENSEL & GRESSLEY

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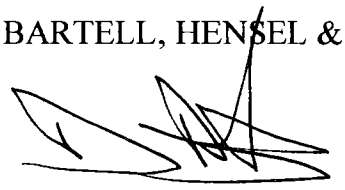
CERTIFICATE OF COMPLIANCE

I certify that the attached **AMICUS CURIAE BRIEF IN SUPPORT OF RESPONDENT KENNETH HUMPHREY** uses 13 point type with a Times New Roman font, and contains collectively 4198 words as indicated by a word count feature in the computer program used in drafting the brief.

Dated: October 8, 2018

BARTELL, HENSEL & GRESSLEY



Donald J. Bartell
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PROOF OF SERVICE BY MAIL

I am over the age of eighteen years and not a party to the cause entitled on the attached document. My business address is 5053 La Mart Drive, Suite 201, Riverside, California, 92507 and I am employed in Riverside County, California. On October 8, 2018, I served a copy of the foregoing documents described as **APPLICATION TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF IN SUPPORT OF RESPONDENT KENNETH HUMPHREY** on the below persons by placing said documents in enclosed sealed envelopes addressed as follows:

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I then placed such envelopes with postage thereon fully prepaid into the United States mail by depositing such documents in a mailbox regularly maintained by the United States Postal Service in Riverside, California.

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

Dated: October 8, 2018

Donald Bartell