CASE NO. S247278

IN THE SUPREME COURT OF CALIFORNIA

In Re KENNETH HUMPHREY,

on Habeas Corpus.

RESPONDENT'S SUPPLEMENTAL BRIEF REGARDING SENATE BILL 10

Court of Appeal Case No. A152056 (First Appellate District)
Superior Court Case No. 17007715 (County of San Francisco),
Hon. Joseph M. Quinn

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This Court has asked the parties to brief what effect, if any, Senate Bill No. 10 (2017-2018 Reg. Sess.) has on the issues here. Respondent Kenneth Humphrey submits that the enactment of Senate Bill 10 ("SB 10") has no effect on those issues.

BACKGROUND

SB 10, which is scheduled to take effect in October 2019, repeals laws that permitted the use of money bail and adopts a new system for determining whether an arrestee should be detained pretrial or instead released, either on recognizance or subject to non-monetary conditions. *See* SB 10, Legislative Counsel's Digest. In essence, the bill divides arrestees into various categories—those arrested for misdemeanors and those classified as "low risk," "medium risk," or "high risk"—and it establishes a different process for determining the conditions of release, if any, for arrestees in each category. SB 10 also authorizes pretrial detention in many circumstances in lieu of release on bail, and for many offenses it creates a presumption that detention is warranted.

ARGUMENT

I. THIS COURT SHOULD RESOLVE THE FIRST AND SECOND QUESTIONS HERE BECAUSE THEY CONTINUE TO AFFECT THE THOUSANDS OF PEOPLE WHO WILL BE ARRESTED BEFORE SB 10 GOES INTO EFFECT—IF IT EVER DOES

The first two questions presented involve the federal constitutional standards that apply when a court requires financial conditions of release. Because SB 10 will not go into effect for at least a year, guidance on these

issues remains important for the thousands of individuals who have been or will be arrested and potentially subject either to unconstitutional conditions of release or to an unconstitutional process for determining such conditions before October 2019.

While that alone suffices to justify a ruling from this Court, there is a significant possibility that SB 10 will either never take effect, or will not do so until well after October 2019, in which case a decision by the Court will have an even greater effect. Shortly after SB 10 was signed, representatives of the bail-bond industry announced that they would seek to repeal the law via referendum. *See, e.g.*, Alexei Koseff, *Bail bondsmen ask voters to kill California law that puts them out of business*, The Sacramento Bee (August 29, 2018), *available at* https://www.sacbee.com/news/politics-government/capitol-alert/article217523875.html. If supporters of this repeal obtain the requisite number of signatures, SB 10 will be stayed until a referendum in late 2020. *See* Cal. Const. art. II, § 10(a); *Assembly of State of California v. Deukmejian*, 30 Cal. 3d 638, 656-657 (1982) (filing of valid referendum challenging statute stays implementation of that statute until after the vote of the electorate). Given this uncertainty, and the weighty liberty interests at stake, this Court should take this opportunity to address the first two questions presented.

II. SB 10 DOES NOT AFFECT THE THIRD QUESTION HERE BECAUSE A NEW STATUTE IS NOT RELEVANT TO THE PROPER INTERPRETATION OF TWO PRE-EXISTING CONSTITUTIONAL PROVISIONS

SB 10's enactment likewise does not affect the third question in this case, which asks under what circumstances the California Constitution permits bail to be denied in non-capital cases (including the subsidiary question of whether article I, section 12, or article I, section 28(f)(3), governs the determination of bail in such cases). Under this Court's precedent, that issue is resolved by determining the intent of the voters in the 1982 and 2008 elections—i.e., the key elections involving sections 12 and 28 of the Constitution. *See Board of Supervisors v. Lonergan*, 27 Cal. 3d 855, 863 (1980) ("[C]onstitutional provisions adopted by the people are to be interpreted so as to effectuate the voters' intent."); *see also* Humphrey Br. 10-11. A statute enacted in 2018 does not affect the meaning of constitutional amendments at issue in elections from over a decade ago.

SB 10 itself does not purport to modify the constitutional bail analysis. And rightly so. The California Constitution is the supreme law of the state, subject only to the supremacy of the United States Constitution. *see* U.S. Const. art. VI, cl. 2. SB 10 recognizes this; the very first section explains that the law authorizes "preventative detention of pretrial defendants ... only to the extent permitted by the California Constitution as interpreted by the California courts of review." SB 10, § 1; *see also id.* § 4 (adding a new section 1320.20(d)(1) to the Penal Code, which provides that

pretrial detention be allowed only if permitted "under the United States Constitution and under the California Constitution"). If anything, then, this Court's ruling on the third question will shape how SB 10 should be understood, not the other way around.

CONCLUSION

The enactment of SB 10 does not affect the questions presented here. The Court should answer those questions, following oral argument, in light of the record and the briefs that have been and will be filed with the Court.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

According to the word-count function of the computer program used to prepare the foregoing brief, the brief contains 800 words, excluding the portions exempted by California Rule of Court 8.520(c)(3).

Chesa Boudin

DECLARATION OF SERVICE

I, Armando Miranda, state:

That I am a citizen of the United States, over eighteen years of age, an employee of the City and County of San Francisco, and not a party to this action. My business address is 555 Seventh Street, San Francisco, California 94103. I am familiar with the business practice at the Office of the San Francisco Public Defender for collecting electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system is deposited in the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic system. Participants who are registered with TrueFiling will be served electronically. Participants who are not registered will receive hard copies through the mail via the United States Postal Service.

That on October 10, 2018, I electronically served the attached Respondent's Supplemental Brief Regarding Senate Bill 10 by transmitting a true copy through this Court's TrueFiling system. Because one or more of the participants has not registered with the Court's system or are unable to receive electronic correspondence, on October 10, 2018, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at Office of the San Francisco Public Defender at 555 Seventh Street, San Francisco, California 94103, addressed as follows:

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I declare, under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed October 10, 2018, at San Francisco, California.

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