SUPREME COURT OF CALIFORNIA
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Supreme Court of California
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In the Supreme Court of the State of California

ATTORNEY GENERAL OF THE STATE OF CALIFORNIA, XAVIER BECERRA, AND CALIFORNIA DEPARTMENT OF PUBLIC HEALTH,

Defendants-Intervenors and Petitioners,

v.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE,

Respondent,

DR. SANG-HOON AHN, et al.,

Plaintiffs and Real Parties in Interest.

Case No. S253424

Court of Appeal, Fourth Appellate District, Division Two, Case No. E070545
Riverside County Superior Court, Case No. RIC 1607135
Hon. Daniel A. Ottolia, Judge

ANSWER TO PETITION FOR REVIEW

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INTRODUCTION

The End of Life Option Act (Health & Safety Code § 443 et seq.) (the Act) allows certain terminally ill patients to avoid prolonged suffering at the final stage of their illnesses. Plaintiffs and Real Parties in Interest Dr. Sang-Hoon Ahn, Dr. Laurence Boggeln, Dr. George Delgado, Dr. Philip Dreisbach, Dr. Vincent Fortanasce, Dr. Vincent Nguyen, and the American Academy of Medical Ethics (Plaintiffs) have sued to invalidate the Act. A majority of the Court of Appeal ruled that Plaintiffs had failed to establish standing to challenge the Act and remanded to the trial court for further proceedings. Nothing in the Court of Appeal's decision, which is consistent with settled law, warrants review.

Plaintiffs do not challenge the Court of Appeal's rejection of the third-party standing theory on which they primarily relied in the trial court. Nor do they challenge the rejection of their first-party standing theory or of the associational standing theory advanced by one Plaintiff. Instead, Plaintiffs ask this Court to review the theory that they have public interest standing. This theory, however, was not timely raised in the trial court, which did not consider it, and the Court of Appeal unanimously—and correctly—rejected it. As a consequence, the standing question presented by the petition does not warrant this Court's review.

Plaintiffs also ask this Court to review whether the Act was validly enacted in the special session in which it was passed. This request is both unwarranted and premature. Because a majority of the Court of Appeal ruled that Plaintiffs had failed to establish standing to challenge the constitutionality of the Act, review of the merits is not needed now to "secure uniformity of decision or to settle and important question of law." (Cal. Rules of Ct., rule 8.500(b)(1).) And, if Plaintiffs are later able to establish standing on remand, this Court would benefit from the views of all three of the justices of the Court of Appeal (rather than one justice's

separate opinion) in determining whether Plaintiffs' challenge to the Act raises an important question law and, if so, in considering that challenge on the merits. Consideration of the constitutionality of the Act is also premature because Plaintiffs have two other constitutional claims—based on Due Process and Equal Protection—that have not yet been decided by the appellate court or the trial court. If Plaintiffs establish standing on remand, the trial court, and ultimately the appellate courts, will be in a position to consider all challenges to the constitutionality of the Act concurrently.

STATEMENT OF THE CASE

I. THE END OF LIFE OPTION ACT

In 2015, California's Governor called a special session of the Legislature so that the Legislature could, among other things, "consider and act upon legislation" that would "[i]mprove the efficiency and efficacy of the health care system; reduce the cost of providing health care services, and improve the health of Californians." (*See* Appendix in Support of Petition for Writ of Mandate, Exhibit. 1.) One law enacted during that special session was the End of Life Option Act. (2nd Ex. Sess., 2015-2016, (ABX2-15); Health & Saf. Code, §§ 443-443.22.)[1]

The Act allows individuals who are suffering from terminal, irreversible diseases to request drugs to alleviate their suffering. Specifically, the Act authorizes an individual to request aid-in-dying drugs if the individual is a mentally competent adult and has been determined by his or her attending physician to be suffering from a terminal, irreversible

[1] Statutory references in this brief are to the Health and Safety Code, unless otherwise indicated. Exhibit references are to the exhibits contained in the Appendix filed with the Petition for Writ of Mandate (Exhibits 1-17) and the Supplemental Appendix filed with the First Amended Petition for Writ of Mandate (Exhibits 18-33) in the Court of Appeal.

disease that will result in death within six months. (§ 443.2.) In addition, the Act contains numerous safeguards to ensure that such requests are voluntary and not the product of a mental disorder, coercion, or whim. (§§ 443.3, 443.4, 443.5, subd. (a), 443.6, 443.7, 443.8, 443.10, 443.11, 443.17, subd. (d).) For example, before an attending physician can prescribe an aid-in-dying drug, the physician must refer the patient to a consulting physician (§ 443.5, subd. (a)(3)), who must also diagnose the patient as having a terminal disease. (§ 443.6, subd. (b).) In addition, if either the attending or the consulting physician finds indications that the patient has a mental disorder, he or she must refer the patient for a mental health specialist assessment. (§§ 443.5, subd. (a)(l)(A)(ii), 443.6, subd (d).)

If these and other conditions imposed by the Act are met, the attending physician may prescribe an aid-in-dying drug to the qualified individual. (§ 443.5, subd. (b).) The qualified individual may then self-administer the aid-in-dying drug. (§§ 443.1, subd. (b), 443.13, subd. (a)(2), 443.14, subd. (a).)

Health care providers who object to the Act may decline to prescribe aid-in-dying drugs and may decline to be otherwise involved with a patient's decision to exercise his or her end-of-life choice under the Act. (§ 443.14.) Specifically, "a person or entity that elects, for reasons of conscience, morality, or ethics, not to engage in activities authorized pursuant to this part is not required to take any action in support of an individual's decision under this part." (§ 443.14, subd. (e)(1).)

II. TRIAL COURT PROCEEDINGS

The plaintiffs in this case are five individual physicians and a professional organization. They sued Riverside County District Attorney Michael Hestrin, alleging that the Act violates the Equal Protection and Due Process guarantees of the California Constitution. (Exhibit 3.) The

complaint also alleged that the Act's passage during a special legislative session violated Article IV, section 3(b), of the California Constitution because it was outside of the scope of the Governor's proclamation. (*Id*., p. 26.)

Plaintiffs sought declaratory relief and a permanent injunction to enjoin the District Attorney "from recognizing any exceptions to the criminal law created by the Act in the exercise of his criminal enforcement duties." (*Id*., p. 27.) The complaint explained that the physician plaintiffs were "bring[ing] this action to protect the rights of their patients to be protected . . . from being assisted and abetting in committing suicide" and from receiving substandard care under the Act. (*Id.*, p. 16; *see also ibid.* [explaining that "all plaintiffs bring this action on behalf of their patients who reside in Riverside County and whose rights and interests may be injured" by the District Attorney's actions under the Act].) The complaint neither sought to vindicate any rights or interests held more broadly by the public, nor mentioned public interest standing and the doctrine of citizen suits. (*Ibid*.) Nor did the complaint request a writ of mandate, contain a claim under Code of Civil Procedure section 1084 et seq., or make assertions about how the Act would alter or affect the district attorney's discretionary practices or mandatory duties.

The Attorney General, and the State of California by and through the California Department of Public Health (the State Defendants), intervened in the case as defendants/intervenors. (Exhibit 4, p. 34.) State Defendants' complaint-in-intervention generally denied the allegations in Plaintiffs' complaint (including the allegations relevant to Plaintiffs' standing to bring their action), and alleged Plaintiffs' lack of standing as an affirmative defense. (*Id*., pp. 40, 46.) State Defendants subsequently moved for judgment on the pleadings based in part on Plaintiffs' lack of standing. (Exhibit 8, pp. 139-142.). In response, Plaintiffs argued that they had first-

party standing because of the Act's affect on them personally, and third-party standing to assert the rights of their patients, but made no mention of public interest standing. (Exhibit 9, p. 158; Exhibit 6, p. 88 ["[I] think we set forth clearly in our briefs . . . two separate bases for standing. One is third-party standing and the other is the direct standing of the doctors involved."].) The trial court denied State Defendants' motion. (Exhibit 9, p. 176.)

On February 9, 2018, Plaintiffs filed their own motion for judgment on the pleadings, raising only their claim that the Act was outside of the scope of the call for the special session. (Exhibit 10, p. 186.) Plaintiffs' reply in support of that motion was the first time they claimed that, even if they lacked personal injury, they could sue based on the doctrine of citizen standing. Their argument was contained in a paragraph which—as an alternative to their primary arguments about first-party and third-party standing (Exhibit 14, p. 381)—stated that citizen suits may be brought where a public right is at issue and the object is to ensure the enforcement of a public duty. (*Id.*, pp. 382-383.) Plaintiffs did not explain how those conditions were met in this case but instead simply asserted that "Plaintiffs are vigorously litigating . . . issues of great public interest." (*Id.*, p. 383.)

In granting judgment on the pleadings to Plaintiffs, the trial court did not discuss the citizen standing theory that Plaintiffs had briefly mentioned in their reply brief. Instead, the court held that Plaintiffs had third-party standing to raise constitutional claims on behalf of their patients. (Exhibit 16, pp. 400-401.) With respect to the merits, the court held that the Act exceeded the scope of the Governor's proclamation, because "[t]he decriminalization of suicide and doctor-assisted suicide does not relate to, is not reasonably germane to, or have a natural connection to patients' access to healthcare services, improving the efficiency and efficacy of the healthcare system, or improving the health of Californians." (*Id.*, p. 403.)

The trial court entered an order granting Plaintiffs' motion for judgment on the pleadings on May 21, 2018 (Exhibit 17), and the State Defendants filed a petition for writ of mandate that same day. The trial court entered judgment in Plaintiffs' favor on May 24, 2018 (Exhibit 18), and the State Defendants filed an amended petition at the Court of Appeal on June 6, 2018.[2]

III. THE COURT OF APPEAL PROCEEDINGS

After briefing and argument, the Court of Appeal granted the writ of mandate, vacated the trial court's judgment, and remanded the case to the trial court for further proceedings. Although all Justices on the panel agreed that the trial court's decision was incorrect, there were multiple opinions.

The majority opinion began by rejecting Plaintiffs' attempt to establish third-party standing—the theory of standing that "[t]he allegations of the complaint [were] clearly intended to assert" and the basis on which

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[2] On May 29, 2018, Matthew Fairchild, Joan Nelson, and Catherine S. Forest (Fairchild parties), who were not parties to the action, filed an ex parte application to vacate the judgment. (Exhibits 22-27.) The trial court denied the application without a hearing, and the Fairchild parties filed a notice of appeal. (Exhibit 32; Case No. E070634.) They also filed a return to State Defendants' petition for writ of mandate. The Court of Appeal's opinion in this writ petition case determined that it was not necessary to decide whether the Fairchild parties were parties to the appeal. (Maj. Opn. 9.) The court did, however, treat them as parties to the writ proceeding "for such purposes as whether they are subject to our jurisdiction, whether they are entitled to notice, and whether we can consider their return." (*Ibid.*; *see ibid.* [noting that "the State's writ petition did not name the Fairchild parties" and "the Fairchild parties [did not] formally move to intervene," but concluding that writ proceedings should reflect the rule that "a person can become a party to an action, even if not named in the complaint, by appearing and participating without any objection by the other parties"].) After granting the State Defendants' requested writ in the matter now under review, the Court of Appeal dismissed the Fairchild appeal, as well as a protective appeal that the State Defendants had separately filed.

the trial court relied. (Maj. Opn. 19.) Because the only group of patients affected by the Act would be those who *wanted* end-of-life assistance, the court concluded that the plaintiffs (who wished not to provide such assistance) could not speak for or represent those patients. (*Id.*, p. 20.) The court also rejected Plaintiffs' assertion of first-party standing to assert their own rights as physicians, because the complaint had failed to allege key facts that would be necessary to support any arguments about the Act's direct effects on Plaintiffs, and because the facts that the complaint did allege were contested and therefore could not support judgment in Plaintiffs' favor unless and until they were proven at a later stage. (*Id.*, pp. 19-20.)

The court, then, turned to the theory on which Plaintiffs' petition to this Court focuses: public interest standing. The court observed that standing is sometimes available, under the rubric of public interest standing, to a person who "has no legal or special interest in the result" but who "is interested as a citizen in having the laws executed and the duty in question enforced." (*Id.*, pp. 24-25, quoting *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 166.) The court noted, however, that public interest standing is available only in a mandate proceeding, not in an ordinary civil action (*id*., p. 25, citing *Reynolds v. City of Calistoga* (2014) 223 Cal.App.4th 865, 873-874), and that the complaint did not include any such request or cause of action (*ibid*). Nor did the court think it likely that such a cause of action would be conceivable, since a mandate petition "must allege that the respondent is failing to perform a ministerial duty," which did not seem to be the case here. (*Ibid*.)

Finally, the court rejected Plaintiffs' argument that they "must be deemed to have standing, because otherwise no one would have standing to seek a remedy for the asserted constitutional violation." (*Ibid.*) Without

trying to "exhaustively specify who would have standing," the court observed that district attorneys would seem to have standing if the Act interfered with their intended prosecutions, and that hospitals and professional associations that sought to discipline health care providers might have standing because of the effects of certain provisions of the Act. (*Id.*, pp. 26-27.) And the Court left open the possibility that on remand the Plaintiffs themselves could "amend their complaint so as to allege standing" and "prove up their amended allegations." (*Id*., p. 27; *see ibid*. ["It is possible (though by no means certain) that we will see this case again; if so, however, at least we will be sure that the constitutional issue is properly presented."].)

Justice Fields concurred in the court's opinion but wrote separately to emphasize why remand was appropriate so that the trial court could consider standing—and, if appropriate, the merits—under amended allegations. (*See* Conc. Opn., pp. 1-2 [observing that the trial court's theory as to standing was clearly wrong but that the Court of Appeal's opinions "carefully demonstrate what the Ahn parties may plead to demonstrate a judiciable controversy"]; *id.* p. 2 [noting this Court's statement that "'[n]otwithstanding the arguments for broad "public interest" standing . . . we have continued to recognize the need for limits [to finding public interest standing] in light of the larger statutory and policy context' (*Weatherford*, *supra*, 2 Cal.5th at p. 1248) of the statute being challenged, and the 'broader prudential and separation of powers considerations' (*ibid*.) weighing against public interest standing"]).

Justice Slough, in a concurring and dissenting opinion, agreed that the trial court's decision was incorrect and that a writ directing the trial court to vacate the judgment should issue. (Conc. & Dis. Opn., p. 56.) Justice Slough, however, based that conclusion on the merits of Plaintiffs' constitutional claim, rather than on a lack of standing. (*Id*.) Justice Slough

agreed with the court that "the trial court committed an elementary error" when it found standing established and granted plaintiffs' motion for judgment on the pleadings on that basis—because even if "the plaintiffs had properly *alleged* standing, there was not yet any basis to conclude the plaintiffs in fact *have* standing."[3] (*Id.* at p. 3.) And Justice Slough also "agree[d] [that] this case is not a writ of mandate case" of the sort that would support public interest standing. (*Id*., p. 41, fn. 21.) But Justice Slough believed that to be beside the point, because, in her view, California cases confer discretion to reach important constitutional issues where there is "doubt" or "concern[]" about standing. (*Id*. at pp. 38-40; *see id.* at p. 15 ["[t]he case law committing to the courts' discretion whether to reach the merits of important cases despite justiciability concerns is independent from the case law concerning public interest standing"].) Justice Slough concluded that this was such a case, because the majority's concerns about standing were "technical" and could be "easily remedied" by new allegations or proof at the trial court. (*Id.*, at p. 38.) She therefore addressed whether the Act was passed in compliance with Article IV, section 3(b), and concluded that it was. (*Id.*, pp. 47-55.)

ARGUMENT

I. THE STANDING ISSUE DOES NOT WARRANT REVIEW

The Court of Appeal's resolution of the standing-related issues in this case was correct under settled precedent and does not conflict with decisions from this Court or any other. Further review is not warranted.

[3] Justice Slough would have interpreted the allegations in Plaintiffs' complaint as sufficient to support first-party standing at a later stage if they were proven. (*Id*., p. 15.)

A. The Court of Appeal Correctly Applied Settled Precedent

Review should be denied because the Court of Appeal correctly held that Plaintiffs lack standing to challenge the Act.

California law on standing is well established. To have standing, a party "must be able to demonstrate that he or she has some such beneficial interest that is concrete and actual, and not conjectural or hypothetical." (*Teal v. Superior Court* (2014) 60 Cal.4th 595, 599.) The same is true with mandamus actions: "[t]o have standing to seek a writ of mandate, a party must be 'beneficially interested' (Code Civ. Proc., § 1086), i.e., have 'some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large.'" (*Associated Builders & Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 362, quoting *Carsten v. Psychology Examining Com.* (1980) 27 Cal.3d 793, 796.) "There is nonetheless a well-established exception to the beneficial interest rule for citizen suits. '[W]here the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty, the relator need not show that he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced. . . .'" (*Environmental Protection Information Center v. California Dept. of Forestry & Fire Protection* (2008) 44 Cal.4th 459, 479, quoting *Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 439, some quotation marks omitted.) "Notwithstanding the arguments for broad 'public interest' standing, though, we have continued to recognize the need for limits in light of the larger statutory and policy context." (*Weatherford v. City of San Rafael* (2017) 2 Cal.5th 1241, 1248.) Courts have applied public interest standing "only in the context of mandamus proceedings" (*Reynolds v. City of Calistoga* (2014) 223 Cal.App.4th 865, 874)—and

even there, public interest standing is not "a matter of right." (*Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 170, fn. 5; *see Reynolds v. City of Calistoga*, *supra*, 223 Cal.App.4th at p. 874). Even if a plaintiff establishes that a public right and mandatory, nondiscretionary public duty are involved (*Cape Concord Homeowners Assn. v. City of Escondido* (2017) 7 Cal.App.5th 180, 189 [describing ministerial duties subject to writ of mandate]), courts consider whether potential plaintiffs that have a personal beneficial interest in the litigation are well-placed to raise the legal issues involved on their own behalf. (*See Weiss v. City of Los Angeles* (2016) 2 Cal.App.5th 194, 204.)

Under these standards, the Court of Appeal correctly concluded that the plaintiffs in this case do not have public interest standing. Plaintiffs sued a public prosecutor, seeking to prevent him from recognizing or applying the Act's exceptions to his enforcement of the criminal law. As a general rule, no person "has a legally enforceable interest, public or private, in the commencement, conduct, or outcome of criminal proceedings against another." (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 450.) "Nor may the doctrine of 'public interest' standing prevail over the public prosecutor's exclusive discretion in the conduct of criminal cases." (*Id.* at p. 451.) Plaintiffs did not seek to sue under a theory of mandamus. And they did not establish that other parties would be unable to challenge the law under more traditional theories of standing. (*See* Maj. Opn., pp. 26-27 [hypothesizing about two kinds of plaintiffs who would have standing]; Conc. Opn., p. 2 [noting that on remand, the Ahn parties themselves would "have the opportunity to demonstrate their right to maintain an action challenging the constitutionality of [the Act]"; Conc. & Dis. Opn., p. 2 [explaining how the Plaintiffs "would be able to amend [their complaint] to articulate standing"].) In short, Plaintiffs did not establish that their claim was even eligible for public interest standing—let alone that the Court

should have granted such standing to them, if eligible, as a matter of judicial discretion.[4]

B. The Court of Appeal's Decision Does Not Conflict with Other California Decisions

Plaintiffs contend that the Court of Appeal's decision conflicts with this Court's holdings in *Common Cause v. Board of Supervisors*, *supra*, and *Anderson v. Phillips* (1975) 13 Cal.3d 733, and with the court of appeal's opinion in *Citizens for Amending Proposition L v. City of Pomona* (2018) 28 Cal.App.5th 1159. (Petn., pp. 8-9.) That is incorrect.

In *Common Cause*, several plaintiffs sued Los Angeles County, seeking to require the county to deputize as voting registrars certain county employees who have frequent contact with low-income and minority citizens. (*Common Cause v. Board of Supervisors*, *supra*, 49 Cal.3d at p. 437.) The plaintiffs explicitly sought "a writ of mandate compelling adoption of the employee deputization program." (*Id.* at p. 439.) This

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[4] In their separate Answer to the Petition, the Fairchild parties do not appear to contest the Court of Appeal's conclusions that Plaintiffs lacked first-party, third-party, and public interest standing. Instead, they ask this Court to grant review on a separate issue that Plaintiffs do not raise: whether California's standing doctrine is simply irrelevant in cases of urgent public interest. (Fairchild Answer, pp. 30-34.) But that does not present a compelling topic for this Court's review. Any previous need for urgent appellate review in this case was because the trial court had struck down a law that denied vital relief to the Act's beneficiaries. When the Court of Appeal determined that the lack of standing was a ground to vacate that decision, the urgency disappeared, since, as the Court of Appeal's first- and third-party standing analysis indicates, Plaintiffs here have not established that physicians or patients face harm under the Act. In the case's current posture, therefore, the Fairchild parties' questions about courts' authority to ignore the law of standing in cases of genuine urgency is entirely hypothetical. (*See People v. Leon* (2007) 40 Cal.4th 376, 396 [quoting the statement, in *Leroy v. Great Western United Corp.* (1979) 443 U.S. 173, 181, that "[a]s a prudential matter it is our practice to avoid the unnecessary decision of novel constitutional questions"].)

Court held that the plaintiffs had standing as citizens to seek vindication of the "public right to voter outreach programs" (*ibid*), but denied relief on the merits because the "County's authority to decide whether and how to deputize its employees is . . . quasi-legislative, and therefore is not subject to the broader review of administrative acts" (*id.* at p. 443).

Plaintiffs argue that, under *Common Cause*, the availability of mandate relief is irrelevant to the issue of public interest standing because *Common Cause* found standing even where relief was ultimately denied. (Petn., p. 21.) But *Common Cause* said nothing that would cast doubt on the general rule recognized by this Court in *Dix*, *supra*, that public interest standing is unavailable to those seeking to direct a prosecutor's decisions as to criminal cases—and nothing to support Plaintiffs' attempt to apply public interest standing to a case where they have not in fact sought a writ of mandate.

There is no conflict with *Anderson* either. In *Anderson*, a judge's claim to office was uncertain and the presiding judge refused to assign cases to him. (*Anderson*, *supra*, 13 Cal.3d at p. 736.) The judge sought "a writ of mandate" to compel the presiding judge to assign him cases. (*Id.* at p. 735.) The Court determined that, because the presiding judge's refusal to assign court business to the plaintiff was based solely on his determination that the plaintiff's term had expired, the writ would lie if that determination was erroneous. (*Id*. at p. 737.) The Court then held that the presiding judge's determination was in fact erroneous, and that the presiding judge was required to exercise his discretion to determine whether assignments to the appointed judge should be made. (*Id*. at pp. 737–741.)

Plaintiffs argue that "*Anderson* compels the conclusion that mandate lies to compel the relief [Plaintiffs] seek." (Petn., p. 19.) But far from involving an exercise of prosecutorial discretion, *Anderson* dealt with the

alleged failure to perform a ministerial duty. The statute invoked by the plaintiff in *Anderson* commanded the presiding judge to "'distribute the business of the court among judges'" (13 Cal.3d at p. 736, quoting Gov. Code, § 69508), and it was clear that the *only* reason the presiding judge was not assigning cases to the plaintiff was the presiding judge's "determination that petitioner is not now a judge of the Alameda County Superior Court." (*Id.*, at p. 737.) In contrast to this ministerial duty, the Riverside County District Attorney has no obligation to prosecute aid-in-dying cases, and the record contains no information about how the District Attorney would proceed in the absence of the Act. Moreover, this case involves prosecutorial discretion, which receives fundamentally different treatment under the law than does administrative discretion. (*See Dix v. Superior Court*, *supra*, 53 Cal.3d 451 [prosecutor's discretion is not subject to public interest standing or writ of mandate]; *People v. Cimarusti* (1978) 81 Cal.App.3d 314, 322.) And the plaintiff in *Anderson* actually sought a writ of mandate, which Plaintiffs have not done here.

Finally, contrary to Plaintiffs' contention, the Court of Appeal's decision in this case does not conflict with *Citizens for Amending Proposition L v. City of Pomona*. That case concerned a voter initiative providing that "'no new or structurally altered offsite billboards shall be allowed within the City of Pomona.'" (*Citizens for Amending Proposition L* , *supra,* 28 Cal.App.5th at p. 1165.) Various plaintiffs sued "for an alternative and peremptory writ of mandate" (*id*. at p. 1170), claiming that the city's adoption of an ordinance purporting to extend a development agreement with an advertising company constituted an agreement for new billboards in violation of the Proposition. (*Id*. at pp. 1169-1170.) The court of appeal affirmed the trial court's finding of public interest standing and issuance of a writ of mandate. (*Id*. at p. 1187.)

Plaintiffs argue that *Citizens for Amending Proposition L* establishes that mandate lies, and public interest standing is available, whenever "the executive branch is not enforcing the law due to its incorrect legal conclusion." (Petn., p. 21.) But Plaintiffs misread the case. First, the plaintiffs in *Citizens for Amending Proposition L* were not complaining about the executive branch's non-enforcement of a law against private parties; instead, they sought to prevent the city itself from taking actions that would breach the law—the plaintiffs' claim was that the city violated the law when it entered into an agreement with the billboard company. Plaintiffs here do not allege that the District Attorney or State Defendants are themselves taking affirmative steps that would violate the law as it existed before the Act. Instead, they complain that the defendants are not enforcing those laws against private parties—which, as *Dix v. Superior Court*, *supra*, 53 Cal.3d at p. 451, and *People v. Cimarusti*, *supra*, 81 Cal.App.3d at p. 322 recognize, is quite different.

II. REVIEW OF THE CONSTITUTIONALITY OF THE END OF LIFE OPTION ACT IS BOTH UNWARRANTED AND PREMATURE

Plaintiffs also ask this Court to decide whether the Legislature's enactment of the Act violated Article IV, Section 3(b) of the California Constitution. (Petn., p. 6.) This request is both unwarranted and premature. Plaintiffs do not assert any conflict among Court of Appeal decisions over this issue or provide any compelling reason why the constitutionality of the Act must be considered now. While Plaintiffs contend that the validity of the Act is a matter of "life-and-death" (petn., p. 24), the Act's many safeguards ensure that unwilling or incompetent patients will not be given aid-in-dying medications.

In addition, review now would be premature because this Court lacks the benefit of full consideration by the Court of Appeal. The Court of Appeal's opinion addressed only the standing issue and remanded to the

trial court for further proceedings. This Court should allow the lower courts an opportunity to develop a record and reach the merits.

To be sure, as the Governor indicated by approving the Act, the Act was within the scope of the Governor's proclamation calling the Legislature into session to consider and act upon legislation that would "[i]mprove the efficiency and efficacy of the health care system; reduce the cost of providing health care services, and improve the health of Californians." (Exhibit. 1; *see Martin v. Riley* (1942) 20 Cal.2d 28, 39-40 [Legislation passed in special session "will be held to be constitutional if by any reasonable construction of the language of the proclamation it can be said that the subject of [the] legislation is embraced therein"].) The one appellate justice who did consider the constitutionality of the Act concluded that it was valid. There is no reason to consider the constitutionality of a statute without the analysis of the Court of Appeal as a whole.

Consideration of the constitutionality of the Act is also premature because Plaintiffs' other constitutional claims—based on Due Process and Equal Protection—have not yet been decided by the appellate court, much less by the trial court. Allowing this case to progress in the ordinary course in the lower courts will likely permit the speediest resolution of all constitutional claims. If Plaintiffs establish standing on remand, or if another challenger establishes standing, then there may be occasion for this Court to consider all challenges to the constitutionality of the Act, which would be a much more efficient way for the Court to review the validity of the Act if the Court finds such review warranted.

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CONCLUSION

For the foregoing reasons, the petition for review should be denied.

Dated: January 25, 2019

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached **ANSWER TO PETITION FOR REVIEW** uses a 13 point Times New Roman font and contains 5332 words.

Dated: January 16, 2019

XAVIER BECERRA
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DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL

Case Name: **The People, ex rel. Xavier Becerra as Attorney General etc. v. The Superior Court of Riverside County; Sang-Hoon Ahn et al.**
No.: **S253424**

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 collecting and processing electronic and physical correspondence. 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. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On January 28, 2019, I electronically served the attached **ANSWER TO PETITION FOR REVIEW** by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on January 28, 2019, I placed 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 January 28, 2019, at Sacramento, California.

K. Spight	*s/ K. Spight*
Declarant	Signature

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