

A. Identification of CACJ¹

CACJ is a nonprofit California corporation. According to Article IV of its bylaws, CACJ was formed to achieve certain objectives including “to defend the rights of persons as guaranteed by the United States Constitution, the Constitution of the State of California and other applicable law.” CACJ is administered by a Board of Governors consisting of criminal defense lawyers practicing within the State of California. The organization has approximately 1,700 members, primarily criminal defense lawyers practicing before Federal and State courts. These lawyers are employed throughout the State both in the public and private sectors.

CACJ has often appeared before this Court, the United States Supreme Court, and the Courts of Appeal in California and elsewhere on issues of importance to its membership. CACJ’s appearance as an *amicus curiae* before this Court has been recognized in a number of the Court’s published decisions.

B. Statement of Interest

Amicus curiae CACJ, together with the California Public Defenders Association (CPDA), provides practitioners throughout California, and indeed throughout the United

¹ The undersigned, John T. Philipsborn, as Vice-Chair of the *Amicus Curiae* Committee of CACJ and counsel of record for CACJ in this case, certifies to this Court pursuant to the dictates of Rule 8.520(f)(4) that no party or counsel for a party in the pending appeal authored any part of this proposed *amicus* brief. In addition, the undersigned certifies that no party or person other than the undersigned, or *amicus curiae* and its members or counsel, has contributed any monies, services, or other form of consideration to assist in the preparation or submission of this brief.

States, with training and publications that address the defense function in death penalty cases. The CACJ/CPDA annual death penalty defense seminar is the largest continuing education program of its kind in the country. CACJ continues to publish a California Death Penalty Defense Manual.

CACJ has appeared in this Court and before the Supreme Court of the United States when questions have arisen concerning the procedural and/or substantive law related to the pursuit of the death penalty throughout the State of California and has also appeared on occasion in those other States and jurisdictions that permit the pursuit of the death penalty as a sanction in criminal cases. Throughout its existence, CACJ has manifested a keen interest in matters concerning the use of the death penalty and litigation of death penalty cases.

Examples of cases in which CACJ has appeared that addressed questions related to the pursuit of the death penalty under California law include briefing in *Jones v. Davis* (9th Cir., 2015) 806 F.3d 958; *Fields v. Woodford* (9th Cir., 2002) 315 F.3d 1062; *Fields v. Woodford* (9th Cir., 2002) 309 F.3d 1095 - cases involving matters litigated in this Court that transitioned to the Ninth Circuit. CACJ has appeared in this Court in capital cases that include: *In re Reno* (2012) 55 Cal.4th 428; *People v. Ary* (2011) 51 Cal.4th 510; *People v. Superior Court (Vidal)* (2007) 40 Cal.4th 999; *In re Hawthorne* (2005) 35 Cal.4th 40, as well as several other cases.

A number of CACJ members defend individuals who have either been charged with capital offenses or are appealing or collaterally attacking death penalty judgments. These CACJ members have immediate concerns to understand whether California can continue to maintain the requirement that the accused have counsel who must consider whether to consent to the entry of a guilty plea if and when that accused is seeking to plead guilty to an offense that carries the death penalty. Lawyers in California are currently informed of their duties in regard to a guilty plea to an offense that carries the death penalty, and of their obligations to the courts and their clients in such instances, by a breadth of authority from this Court that interprets and applies Penal Code Section 1018 as it is currently phrased. In *People v. Alfaro* (2007) 41 Cal.4th 1277, 1300, and *People v. Chadd* (1981) 28 Cal.3d 739, 750, this Court explained that there is sound policy, a state interest, and rational legislative bases that justify the continued vitality of Penal Code Section 1018. Notwithstanding the fact that Respondent continues to argue in favor of invalidating the statute, CACJ's membership argues in favor of the continued existence of Penal Code Section 1018.

There is a second reason, as well, that compels CACJ, through its *Amicus Curiae* Committee, to apply for permission to file a brief and be heard in this case. The State of California, through the Office of the Attorney General, is taking a position in this matter, set forth most recently in Respondent's Supplemental Brief to the effect that California Penal Code Section 1018 violates Federal constitutional protections notwithstanding

what appears to be settled law on the subject from this Court. Respondent's arguments here raise renewed questions about the basis (if any) for overruling this Court's precedents on the question presented. CACJ has an interest in responding to the State's arguments, and in demonstrating that there is no recent change in the interpretation of constitutional doctrines that this Court has previously considered in upholding the current phrasing and requirements of Penal Code Section 1018.

Third, CACJ has reviewed the briefing offered by the parties, and while deference is due them because of their familiarity with the case and knowledge of the pertinent record, CACJ respectfully notes that there are certain matters that neither party has yet addressed that this Court should consider in deciding whether the State is now correct that Penal Code Section 1018 can and should be invalidated as unconstitutional.

CACJ respectfully submits that based on the wide-ranging experience of its membership in addressing the issues presented in death penalty cases in the State of California, the Court may find that it does have information and arguments of interest to present to help the Court resolve the question it framed on September 26, 2018.

For the reasons stated, CACJ respectfully submits that this Court should grant CACJ permission to appear as *amicus curiae* on behalf of Appellant. This brief is submitted in compliance with the Court's Scheduling Order.

Dated: October 8, 2018

Respectfully submitted,

Stephen K Dunkle, Chair
John T. Philipsborn, Vice Chair
CACJ Amicus Committee

/s/ John T. Philipsborn
JOHN T. PHILIPSBORN
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PROOF OF SERVICE

I, Melissa Stern, declare that:

I am over the age of 18, employed in the County of San Francisco, California, and not a party to the within action; my business address is 507 Polk Street, Suite 350, San Francisco, California 94102.

On today's date, I served the within documents entitled:

APPLICATION OF CALIFORNIA ATTORNEYS FOR CRIMINAL JUSTICE TO APPEAR AS *AMICUS CURIAE* ON BEHALF OF APPELLANT JOSHUA MARTIN MIRACLE (RULE 8.520(f)(5))

- (X) By placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at San Francisco, CA, addressed as set forth below;

- (X) By electronically transmitting a true copy thereof;

Party

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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 this 8th day of October, 2018, at San Francisco, California.

Signed: /s/ *Melissa Stern*
Melissa Stern