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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,	)	No. S223698
Plaintiff/Respondent,	)	
vs.	)	
MARK BUZA,	)	
Defendant/Appellant,	)	

First Appellate District, Case No. A125542
San Francisco County Superior Court, Case No. SCN 207818
The Honorable Carol Yaggy, Judge Presiding

AMICUS CURIAE BRIEF

Orange County District Attorney's Application to File Amicus Curiae Brief and Amicus Curiae Brief in Support of Respondent, The People of the State of California

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Defendant/Appellant,	)	

TO THE HONORABLE TANIA CANTIL-SAKAUYE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

The Orange County District Attorney hereby applies for permission to file a brief as amicus curiae in the above-entitled matter, pursuant to rule 8.520 of the California Rules of Court.

This application is timely made in accordance with California Rules of Court, rule 8.520(f)(2), and rule 8.25(b)(3), in that the People filed their Reply Brief on the Merits on October 21, 2015.

INTEREST OF AMICUS CURIAE

The People of the State of California, by and through their attorney Tony Rackauckas, District Attorney for the County of Orange, State of California, assert that Mark Buza's ("Buza") claims regarding the collection

of the arrestee database samples and the expungement provisions of State DNA database statute are without merit. Specifically, Buza seeks to abrogate the intent of the people who voted overwhelmingly for Proposition 69 (Prop. 69, as approved by voters, Gen. Elec. (Nov. 2, 2004)) by claiming that collection of DNA from all adult felony arrestees is unconstitutional and should be limited to a few enumerated offenses at the time of arraignment or upon a judicial determination of probable cause. Buza further asserts that the current expungement provision of the State DNA database statute is unconstitutional because it requires a defendant initiated expungement. The Orange County District Attorney believes that the matter before the Honorable Court is of great importance and significance to the residents of Orange County because they have been the beneficiary, through greater public safety, of the current provisions of the California DNA Act. Therefore, this Amicus Curiae brief bound with this application argues:

1) Buza has failed to meet his burden to argue a facial challenge for his misdemeanor conviction for refusing to provide a DNA sample upon arrest pursuant to Penal Code section 298.1;

2) Contrary to Buza's claim, the collection of a DNA sample from all felony arrestees enhances public safety;

3) Contrary to Buza's assertion that a DNA sample from all felony arrestees provide little value to the court system, the DNA identification of arrestees at the time of booking provides a substantial benefit in determining who the arrestee is and what the arrestee has done since the average time from arraignment to resolution of a case in Orange County is approximately six months which allows for the DNA identification to assist with bail hearings and the like during the pendency of the case;

4) Contrary to Buza's allegation that there is no correlation between the collection of a DNA sample from low level arrestees and the number of DNA cold hits to serious or violent crimes, Orange County statistics demonstrate that over 50% of the DNA cold hits to serious or violent offenses resulted from the DNA sample being collected from an arrestee for a low level felony offense;

5) Contrary to Buza's assertion that defendants are arraigned within two to four days, Orange County statistics demonstrate that an in custody arraignment takes approximately seven to ten days and an out of custody arraignments take approximately 36 days and that over 40% of the felony arraignments are done with

the defendant out of custody;

6) The John Doe DNA warrants have proved to be incredibly valuable tool in identifying the defendant and bringing justice to many victims whose cases had remained unsolved;

7) Contrary to Buza's assertion, California's expungement provision, similar to many other states and the federal statute, does not give rise to a constitutional claim.

The Orange County District Attorney has read the briefs previously filed by the parties and believes that a need exists for additional argument on the points specified above.

If the Court grants this application, then the Orange County District Attorney, as Amicus Curiae, requests that this Court permit filing of the brief which is bound with the application.

Dated this 20th day of November, 2015.

Respectfully submitted,

TONY RACKAUCKAS, DISTRICT ATTORNEY
COUNTY OF ORANGE, STATE OF CALIFORNIA

BY: 

CAMILLE HILL
ASSISTANT DISTRICT ATTORNEY

AMICUS CURIAE BRIEF

INTRODUCTION AND STANDARD OF REVIEW

The People of the State of California, by and through their attorney Tony Rackauckas, District Attorney for the County of Orange, assert that Proposition 69, "The DNA Fingerprint, Unsolved Crime and Innocence Protection Act," which requires adult felony arrestees to provide a DNA database buccal (cheek) swab sample at booking, within the context of a use-restricted statutory and regulatory program is constitutional.[1]

Orange County further asserts that there is no legal or factual basis for this Court to halt or cripple the state's presumptively valid statutory database program which now identifies over 600 adult felons each month in terms of their dangerousness and suitability for release from custody. (*Legislature v. Eu* (1991) 54 Cal.3d 492, 500-501["[a]s with statutes adopted by the Legislature, all presumptions favor the validity of initiative measures and mere

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[1] See DNA and Forensic Identification Database and Data Bank Act of 1998 (Pen. Code, § 295 et seq.), as modified by voter initiative, the DNA Fingerprint, Unsolved Crime and Innocence Protection Act (Prop. 69, approved by voters, Gen. Elec. (Nov. 2, 2004) ("Proposition 69" or "DNA Act"); see also Pen. Code, § 296.1, subd. (a); *People v. Robinson* (2010) 47 Cal.4th 1104, 1120-1121 [California's DNA database program of sample collection from convicted offenders does not violate the Fourth Amendment]).

doubts as to validity are insufficient; such measures must be upheld unless their unconstitutionality clearly, positively, and unmistakably appears. [Citation.]"];[2] Cal. DOJ, DNA Laboratory Monthly Statistics <http://www.oag.ca.gov/sites/all/files/agweb/pdfs/bfs/monthly-statistics-september-2015.pdf?> [as of Nov. 18, 2015].)

In the context of his facial challenge to Penal Code[3] section 298.1 and his misdemeanor conviction for refusing to provide a DNA database sample at arrest, Buza cannot meet his burden of proof to demonstrate that Proposition 69 is "clearly, positively and unmistakably unconstitutional." (*Legislature v. Eu, supra*, 54 Cal.3d 492, 500-501.) This is particularly true in light of the Court's holding in *Maryland v. King* (2013) ___ U.S. ___ [133 S.Ct. 1958, 1972, 186 L.Ed.2d 1] ("*King*") that "DNA identification of arrestees is a reasonable search *that can be considered part of a routine booking procedure*[,]" and that the only difference between fingerprint, photographs,

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[2] See also California Constitution, article II, section 1 ["All political power is inherent in the People. Government is instituted for their protection, security, and benefit, and they have the right to alter or reform it when the public good may require."]; cf. *Loder v. Municipal Court* (1976) 17 Cal.3d 859, 875-876 [recognizing "primacy of the legislative branch" in regulating the use of arrest records]; see also *Haskell v. Harris* (9th Cir. 2014) 745 F.3d 1269, 1271-1275 (conc. opn. of Smith, J.).

[3] All further statutory references are to the Penal Code unless otherwise noted.

and DNA collected at booking is "the unparalleled accuracy DNA provides." (*Id.* at pp. 1971-1972, 1979-1980, emphasis added; see *Haskell v. Brown* (N.D.Cal. 2009) 677 F.Supp.2d 1187, 1198-1199 [finding Pen. Code, § 296, subd. (a)(2) DNA collection from arrestees constitutional and denying plaintiff's request for a preliminary injunction enjoining the State's collection and use of arrestee DNA samples]; *Haskell v. Harris, supra*, 745 F.3d 1269, 1271-1275 (conc. opn. of Smith, J.) [finding California's arrestee DNA Act constitutional on its face with respect to the broad class of arrestees seeking relief in section 1983 law suit].[4])

As to Buza himself, who was arrested for the felony crime of arson, booked into jail where he remained throughout his criminal proceedings and

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[4] See also numerous state and federal decisions finding arrestee DNA databases constitutional, e.g. *King v. State* (Md.Ct.App. 2013) 434 Md. 472 [76 A.3d 1035] [on remand finding Maryland DNA Act does not violate the Maryland state constitution]; *Anderson v. Commonwealth* (2007) 274 Va. 469, 472 [650 S.E.2d 702] [Virginia arrestee DNA Act constitutional]; *United States v. Mitchell* (3rd Cir. 2011) 652 F.3d 387, 399-401 (en banc) DNA database sample collection from federal arrestees constitutional. Buza does repeatedly cite to one out of state case, *State v. Medina* (2014) 197 Vt. 63 [102 A.3d 661, 663] (see e.g., AAB at pp. 91-92), finding arrestee collection unconstitutional but somehow Buza also fails to mention that the Vermont constitution's search and seizure provision uniquely has a "warrants" clause, but no "reasonableness" clause. Therefore the Vermont decision is not relevant to the question whether an arrestee database law is constitutionally reasonable under the California or federal constitution. (Compare *Ingersoll v. Palmer* (1987) 43 Cal.3d 1321, 1329 ["The touchstone for all issues under the Fourth Amendment and article I, section 13 of the California Constitution is reasonableness. [Citations.]"].)

ultimately convicted for a felony offense, the statute is clearly constitutional. Under *King*, Buza also fails to meet his facial challenge of establishing "that no set of circumstances exists under which the Act would be valid." (*United States v. Salerno* (1987) 481 U.S. 739, 745 [107 S.Ct. 2095, 95 L.Ed.2d 697]; *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084 [defendant cannot prevail in a facial challenge by ""suggesting that in some future hypothetical situation constitutional problems may possibly arise as to the particular application of the statute ...."' [Citations.]"].)

ARGUMENT

I. RECOGNIZING THE "URGENT NEED" FOR BETTER IDENTIFICATION OF ARRESTEES AT THE EARLIEST STAGE OF PROCEEDINGS, CALIFORNIA VOTERS ENACTED PROPOSITION 69 AS A BLUEPRINT FOR A CRIMINAL JUSTICE SYSTEM TO USE THE BEST SCIENTIFIC TECHNOLOGIES TO ACCURATELY AND EXPEDITIOUSLY IDENTIFY CRIMINAL OFFENDERS AND EXONERATE THE INNOCENT

On November 2, 2004, California voters, weighing the privacy interests of adult felony arrestees and the compelling interest of the state in both safer communities and accurate law enforcement, overwhelmingly passed Proposition 69, amending and clarifying the State's DNA database law. (See Ballot Pamp., Gen. Elec. (Nov. 2, 2004), Text of Prop. 69, § II, Findings and Declarations of Purpose, p. 135; see also *Haskell v. Brown, supra,*

677 F.Supp.2d 1187, 1203.) Voters found an "urgent need," for better identification of arrestees at the "earliest stages" of proceedings, and recognized that an objective expectation of privacy does not include a right to refuse "to provide forensic DNA samples for the limited identification purposes set forth in this chapter." (See Ballot Pamp., Gen. Elec. (Nov. 2, 2004), Text of Prop. 69, § II Findings and Declarations of Purpose, p. 135; see Pen. Code, §§ 295, subd. (c), 298.1.)

Voters recognized that the *booking* process – not arraignment or charging – is the most critical juncture in the criminal justice system for collection and processing of accurate identification information from felony arrestees. Having this form of identifying information *at booking* enables courts and local agencies to better use the State's incarceration powers sparingly yet accurately to distinguish felony arrestees who can safely be released pending further investigation from those who are too dangerous to remain on the streets, and effectively reduces the number of innocent persons needlessly investigated for crimes they did not commit.

Beginning 2009, California's DNA Act required all "adult person(s) arrested or charged with any felony offense" to provide a forensic identification DNA database sample. (Pen. Code, §§ 296, subd. (a)(2)(C), 296.1, subd. (a)(1)(A).) The samples are collected by buccal swabs, which are

"quick and painless" and require just a touch inside an arrestee's mouth. (*Maryland v. King, supra*, 133 S.Ct. 1958, 1967-1968.) The People in Proposition 69 expressly recognized the similarity between DNA and fingerprint collection:

> Like the collection of fingerprints, the collection of DNA samples, pursuant to this chapter is an administrative requirement to assist in the accurate identification of criminal offenders.

(Pen. Code, § 295, subd. (d).) Thus, sample collection from arrestees occurs as part of the "booking" process (Pen. Code, §§ 295, subd. (i)(1)(A), 296.1, subd. (a)(1)(A)) along with fingerprints and photographs, or

> [A]s soon as administratively practicable after arrest, but, in any case, prior to release on bail, or pending trial or any physical release from confinement or custody.

(Pen. Code, § 296.1, subd. (a)(1)(A).)

Proposition 69 has become a linchpin of the State's criminal justice system as the voters intended. (See Ballot Pamp., Gen. Elec. (Nov. 2, 2004), text of Prop. 69, § II, Findings and Declarations of Purpose, p. 135; see Pen. Code, § 295, subd. (c).) Consistent also with voter intent, collecting forensic identification samples from criminal offenders as early as possible in the criminal justice process – at booking after felony arrest on probable cause – instead of after conviction has exponentially increased California's ability to identify its adult felony arrestee population and accurately assess their

dangerousness to the community consistent with many statutory and constitutional mandates aimed at public safety.[5]

In the 30-year history of the State's database program, over 32,000 of California's 40,000 total identification hits between offender DNA database samples and DNA profiles from unsolved crimes have occurred since 2009 when California began collecting DNA database samples at booking from all adult felony arrestees pursuant to Proposition 69. Prior to that, in 2008, when DNA database samples were collected from *both convicted felony offenders and after arrest for a handful of violent sex and murder crimes*, the State averaged 183 identification hits a month. ***Today, the State averages over 600 identification hits per month.*** (See Cal. DOJ, DNA Laboratory Monthly Statistics <http://oag.ca.gov/sites/all/files/gweb/pdfs/bfs/monthly-statistics-september-2015.pdf?> [as of Nov. 18, 2015].) Department of Justice statistics also show that the majority of identification hits to rape,

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[5] See e.g., Penal Code section 1275, subdivision (a); California Constitution, article I, section 28; Penal Code section 17.5; Assembly Bill No. 109, Statutes 2011, chapter 15; see also Assembly Bill No. 117, Statutes 2011, chapter 39, and Assembly Bill No. 1X 17, Statutes 2011, chapter 12 (eff. Oct.1, 2011) ("AB 109") [providing alternative "custody" options that permit arrestees and felony offenders to be released into their communities earlier based in part on an evaluation of their potential dangerousness-an assessment aided by DNA database samples]; cf. *Loder v. Municipal Court, supra*, 17 Cal.3d 859, 865-866 [recognizing significant functions of record of arrests not resulting in conviction as including determinations to prosecute and suitability for diversion].

robbery, and murder offenses do not come from DNA samples collected at arrest for other rapes, robberies or murders, but from samples taken at booking for low level crimes, such as drug, fraud, and property crimes. (See Cal. DOJ, *DNA Database Hits to Murder, Rape, and Robbery: Two Studies of the Correlations Between Crime of Arrest and DNA Database Hits to Murder, Rape, Robbery Offenses* <https://www.oag.ca.gov/bfs/prop69> [as of Nov. 18, 2015].) Orange County statistics support the same conclusion. (See <http://www.orangecountyda.org/civicax/filebank/blobdload.aspx?BlobID=23405> [as of Nov. 18, 2015] .)

II. THE PURPOSE OF CALIFORNIA'S DNA DATABASE IS IDENTIFICATION AND THE COLLECTION OF DNA DATABASE SAMPLES AT BOOKING PROVIDES VITAL IDENTIFICATION INFORMATION ON AN ARRESTEE'S DANGEROUSNESS AND SUITABILITY FOR RELEASE

The purpose of the state DNA database is identification. (See e.g. *People v. Robinson*, supra, 47 Cal.4th 1104, 1120-1121; *Alfaro v. Terhune* (2002) 98 Cal.App.4th 492, 507-508 ["The Act does not permit defendants to do more than standard and usual scientifically appropriate identification analyses with specimens, samples, and print impressions."].)

When an individual is arrested for a crime, the task of accurately identifying him begins. Booking officers routinely search police, state and

fingerprint records attempting to verify the identifying information provided by the arrestee. Not surprisingly, many arrestees provide a false name and multiple records must be checked to confirm his or her true identity. *King* recognized the unequaled ability of DNA to accurately establish an individual's identity and it properly distinguished a search for evidence from the collection and comparison of neutral identification markers processed in a standard, precise and limited analytical format. The Court stated as follows:

> The DNA collected from arrestees is an irrefutable identification of the person from whom it was taken. Like a fingerprint, the 13 CODIS loci are not themselves evidence of any particular crime, in the way that a drug test can by itself be evidence of illegal narcotics use. A DNA profile is useful to the police because it gives them a form of identification to search the records already in their valid possession. In this respect the use of DNA for identification is no different than matching an arrestee's face to a wanted poster of a previously unidentified suspect; or matching tattoos to known gang symbols to reveal a criminal affiliation; or matching the arrestee's fingerprints to those recovered from a crime scene. [Citation.]

(*Maryland v. King, supra*, 133 S.Ct. 1958, 1972.)

Consistent with *King*, this Court has recognized that forensic identification DNA profiles stand in place of a name or other identifiers as a more accurate metric for describing an offender and linking him or her to other offenses. (See *People v. Robinson, supra*, 47 Cal.4th 1104, 1134-1135 [finding that an arrest warrant which describes a defendant by his 13-loci DNA profile (in lieu of a name) satisfies the particularity requirement of both

the Fourth Amendment and article I, section 13 of the State Constitution].) As this Court has observed, for purposes of identifying "a particular person" a DNA profile is "as close to an infallible measure of identity as science can presently obtain." (*Id.* at p. 1141.) Based upon *Robinson*, the Orange County District Attorney's Office routinely files John Doe warrants describing "John Doe" by his unique DNA profile and stating the rarity of that DNA profile in the felony complaint and arrest warrant. The majority of the cases filed are burglaries and robberies. One case involved a home invasion robbery where a victim's feet were bound together with duct tape and a DNA profile was developed from two of the pieces of duct tape. A John Doe warrant was filed identifying the defendant with the DNA profile developed from the tape. Five months after the case was filed, a CODIS search found a match between the DNA profile left on the duct tape and the DNA profile of the defendant which was obtained when he was arrested for a felony. Using the database to identify individuals is illustrated in the practice of filing John Doe warrants.

With respect to identification, DNA profiles in California also can and do resolve conflicts in fingerprint and criminal history data, allowing the state to recognize incorrect entries. (See Cal. DOJ, FAQ: *Effects of the All Adult Arrestee Provision, Qs 1-3* <http://www.oag.ca.gov/bfs/prop69/faqs> [as of Nov. 18, 2015]; 28 C.F.R. § 28.12 (2009), 73 Fed.Reg. 74932, 74934-36,

74942 (Dec. 10, 2008) ["The collection of a DNA sample may also provide an alternative means of directly ascertaining or verifying an arrestee's identity, where fingerprint records are unavailable, incomplete, or inconclusive."].)

Despite Buza's contention otherwise (AAB at pp. 19, 61), in California, when a DNA sample profile from an arrestee or convicted offender is added to the arrestee or convicted offender database, the new sample profile is routinely and automatically cross-checked against existing profiles for a match, and also against existing or associated identification records, such as an arrestee's or offender's Criminal Identification Index (CII) number. This cross check of fingerprint and other identifiers with DNA profiles resolves discrepancies in identification records caused by weaknesses in the fingerprint identification system, or because of human error during the input of records. (See Cal. DOJ, FAQ: *Effects of the All Adult Arrestee Provision, Qs 1, 3* <http://www.oag.ca.gov/bfs/prop69/faqs> [as of Nov. 18, 2015]; see also National Research Council of the National Academies, *Strengthening Forensic Science in the United States: A Path Forward* <https://www.ncjrs.gov/pdffiles1/nij/grants/228091.pdf> at p. 144 (NAS Report) [as of Nov. 18, 2015] ["Uniqueness does not guarantee that prints from two different people are always sufficiently different that they cannot be confused, or that two impressions made by the same finger will also be sufficiently similar to be

discerned as coming from the same source."].) CAL-DNA calculated that from 2009 to 2011, nearly 5000 submissions required resolution because they were submitted to the DOJ laboratory under the same name and Criminal Identification Index (CII) number, but were determined by the lab to have different DNA profiles when analyzed. (See Cal. DOJ, FAQ: *Effects of the All Adult Arrestee Provision, Qs 1-3* <http://www.oag.ca.gov/bfs/prop69/faqs > [as of Nov. 18, 2015].) As do other agencies, when CAL-DNA recognizes this situation, the laboratory makes a request to have these CII numbers consolidated. DNA database samples at arrest help to more quickly recognize incorrect entries and improve the quality of the State's identifications of offenders, including a clear link to the proper criminal history information and outstanding arrest warrants. (See Cal. DOJ, FAQ: *Effects of the All Adult Arrestee Provision, Q 3* <http://www.oag.ca.gov/bfs/prop69/faqs> [as of Nov. 18, 2015].) The collection of new prints and DNA samples from arrestees and cross-checking information databases thus maximizes the likelihood that a person can be identified reliably to assess dangerousness and suitability for release or continued release after arrest. (See *Haskell v. Brown, supra*, 677 F.Supp.2d 1187, 1199-1200 ["The more ways the government has to identify who someone is, the better chance it has of doing so accurately. [Citation.]"]; *People v. Robinson, supra*, 47 Cal.4th 1104, 1141-1142 [""""A genetic code

describes a person with far greater precision than a physical description or name[,]"' as physical characteristics can be altered in an attempt to avoid criminal accountability, but a DNA profile cannot. [Citations.][Fn. omitted.]"].)[6] Moreover, as both a factual and legal matter, Buza is simply incorrect that California's collection of DNA identification samples immediately upon arrest, prior to either prosecutorial charging or judicial arraignment, does not serve any legitimate non-investigative purpose. (AAB at p. 72.) As set forth below, the collection of DNA database profiles at booking and analysis of results generated in an average of thirty days or less, serves multiple, legitimate, non-investigative purposes including accurately assessing an arrestee's dangerousness and suitability for release.

DNA results, whether available before or after arraignment, inform the court on an arrestee's dangerousness, on bail determinations and modifications

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[6] In addition, it is significant that when only fingerprints are used at booking for identification purposes, in many cases the matching identification record is solely that of an unsolved offense. About 30 percent of all arrested individuals do not have prior fingerprints in the system and cannot be identified in relation to a past State Identification Number (SID). If there is no identification confirmation of the arrestee to prior prints, the fingerprint images are automatically added to the State's ALPS (Automated Latent Prints System) division of the AFIS for identification of the arrestee through search/comparisons to latent prints from unsolved crimes. Criminal History Identification and Information number. (See Cal. Cal. DOJ, FAQ: *Effects of the All Adult Arrestee Provision, Qs 1-3* <http://www.oag.ca.gov/bfs/prop69/faqs> [as of Nov. 18, 2015].)

and assist the jail in security and safety classifications. As such, Buza's central premise to allegedly negate the utility of the State's DNA database program for identifying arrestees is an unsubstantiated generalization that ignores the law and the reality of criminal trial practice concerning both the actual time to arraignment and the conditions under which bail may be increased or revoked. Buza is simply incorrect when he persistently argues there is "no good reason" (AAB at p. 77) to collect samples at booking and that the effectiveness of the database program would be maintained if the State waited a mere "two to four" more days when arraignment and charging are (allegedly) complete to collect identification samples from arrestees. (See, e.g., AAB at pp. 14, 43, 73-77.) There is also no legal or factual support for Buza's claim that:

> "[B]ecause of the length of time necessary for processing a DNA sample, the DNA information will not be available for any of the purposes discussed in *King* before the arrestee is either released or arraigned. For individuals who are formally charged with a qualifying offense, the information will rarely be available materially sooner as a result of collection immediately upon arrest than it would be if collected upon arraignment." [Citation.]

(AAB at p. 75, first modification in original.)

Buza grossly misrepresents how the arraignment process works in practice by misstating: (a) criminal procedure with respect to when felony arrestees are actually arraigned relative to their arrest; and (b) the arraignment rights of in custody and out- of- custody criminal defendants. First, Buza cites

Penal Code section 825 and *People v. Powell* (1967) 67 Cal.2d. 32, 58-59, to support his mistaken assumption that all felony arrestees are arraigned within two to four days of arrest.

> An arrestee must be "taken before the magistrate without unnecessary delay, and, in any event, within 48 hours after his or her arrest, excluding Sundays and holidays." [Citations.]

(AAB at p. 73.) However, Buza inexplicably pools together all felony arrestees when the arraignment provisions he discusses only apply to in-custody arrestees. The right to be arraigned within 48 hours of arrest only applies to those who are arraigned in custody. Many felony arrestees are released from custody prior to arraignment.

Depending on the seriousness of the offense and the suspect's known criminal background, police often release felony arrestees on a notice to appear following booking at the police station. Realignment (AB 109), supra, which resulted in thousands of inmates being housed in local custody instead of state prison, has exacerbated jail crowding conditions and thereby increased the trend of local law enforcement releasing arrestees from custody on a notice to appear. Other arrestees are released from custody at the initial scheduled arraignment if the prosecutor has not yet filed a criminal complaint. This frequently happens when the prosecuting agency decides to delay filing criminal charges pending further investigation.

Second, many felony arrestees bail out of custody after booking and before arraignment. (Pen. Code, § 1269b, subd. (a).) Regardless of the sequence of events, all arrestees provide a DNA sample pursuant to Penal Code section 296, subdivision (a)(2)(C), prior to their release from custody. Additionally, in all these cases, once criminal charges are filed, the prosecuting agency will typically send the defendant an arraignment letter with a date to appear which is usually several weeks or even possibly months after the date of arrest and collection of DNA sample. The idea then that there is only a two to four day window following arrest for DNA results to be available at arraignment is a fallacy with respect to out-of-custody defendants. Further, unlike the situation of an in-custody defendant, where charges must be filed by the time of arraignment or the arrestee must be released from custody, when a prosecutor files charges against someone out of custody, the filing may happen anytime up to the end of the statute of limitations for the offense charged. That statute could be as long as indefinite in a homicide prosecution but in any event would be no less than three years from the date of the offense in the case of any ordinary felony. More importantly, the entire two to four day window discussed ad nauseam by Buza is simply irrelevant to the tremendous utility DNA results provide, irrespective of when they are available.

Orange County's data sheds light on how far Buza's argument misses the mark. In Orange County, over 40% of felony arrestees are arraigned out of custody, thirty-five to forty-two days after filing of criminal charges. (See <http://www.orangecountyda.org/civicax/filebank/blobdload.aspx?BlobID=23405> Tables 2 and 3 [as of Nov. 18, 2015].) Contrary to the erroneous implication Buza would like the court to draw that all felony arrestees are arraigned in custody, within two to four days of arrest, the reality is quite different. Data compiled by the Orange County District Attorney's Office ("OCDA") over the period 2009-2014 specifically shows that 96,198 felons had an initial arraignment following filing of criminal charges. Of this total, only 57.5% (55,270) of those felony arrestees were arraigned in custody, and 42.5% (40,928) of those felony arrestees were arraigned out of custody. (<http://www.orangecountyda.org/civicax/filebank/blobdload.aspx?BlobID=23405> Table 2 [as of Nov. 18, 2015].)

Moreover, the average time between the date of filing of felony criminal charges and the date of arraignment was seven to ten days for in custody defendants and thirty-five to forty-two days for out of custody defendants. (<http://www.orangecountyda.org/civicax/filebank/blobdload.aspx?BlobID=23405> [as of Nov. 18, 2015].) However, the statistic that is unavailable is how much time passes between a felony arrest

and the filing of criminal charges. While sometimes charges are filed immediately, other times cases are initially rejected by prosecutors for further investigation and charges may not be filed for weeks, months, or in some cases, even years following arrest. This unknown time period between arrest and filing only lengthens the time period between arrest and arraignment. Thus, Buza's assertion, "All the state 'gives up' by a deferral of DNA testing until arraignment, as in Maryland, is a two-to-four day head start on analysis of the sample" (AAB at p. 74) is simply incorrect. Worse yet, as elaborated below, the argument even if it were correct, is not relevant because DNA results will always be important in identifying the defendant's criminal history regardless of when the results become available, so long as the criminal case has not yet concluded.

Buza misdirects the court by focusing exclusively on the date of initial arraignment – a date that matters not in terms of the relevance of DNA test results. DNA results no matter when received on active cases provides critical identification information to the court and the jail on the arrestee's suitability for release and placement. By the time the average out-of-custody felony defendant is arraigned thirty-five to forty-two days after the filing of criminal charges in Orange County, DNA results will be available. (See <http://www.orangecountyda.org/civicax/filebank/blobdload.aspx?BlobID=

23405> Table 3 [as of Nov. 18, 2015].) If these results reveal links to formerly unknown criminal conduct, they will inform the court in its bail determination.

If the setting of bail results in the defendant going into custody, the new criminal history information will also inform jail staff who must classify the inmate to assure staff and inmate safety. For those out-of-custody and in-custody defendants arraigned before DNA results are known, the court will make a bail determination which may be modified once the DNA results are known. Even after initially setting bail, the court properly reconsiders bail if there is a change of circumstances relating to the defendant such as defendant's DNA profile hitting to previously unsolved crimes. Conspicuously absent from Buza's brief is any discussion of the facts that: (1) public safety is the primary consideration upon which the court should set bail (Pen. Code, § 1275, subd. (a)); and (2) the court may increase or revoke bail based on a change in circumstances related to the defendant (Pen. Code, § 1289). Although the bail and change in circumstances matters were discussed by the court in *King*, neither issue is ever addressed by Buza for each is fatal to his argument that DNA results are not available in time to facilitate "'informed decisions concerning pretrial custody.' [Citations.]" (AAB at p. 59.) *King* stated

> Even if an arrestee is released on bail, development of DNA identification revealing the defendant's unknown violent past can and should lead to the revocation of his conditional release. [Citations.]

(*Maryland v. King, supra*, 133 S.Ct. 1958, 1974).

California statutory and case law is in accord. When setting bail,

> [A] judge or magistrate shall take into consideration the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at trial or at a hearing of the case. The public safety shall be the primary consideration.

(Pen. Code, § 1275, subd. (a)(1).) Therefore, in order for the court to make a proper bail determination it is imperative the court have a clear picture of the dangerousness of the defendant before the court. In most felony cases given that the arraignment will take place after California's DNA database has generated a DNA profile, the prosecutor will, on average, have the results of DNA identification matching from DOJ records. This will inform the court to make a proper bail decision for the protection of the public.

Section 1289 expressly provides for subsequent motions to increase bail upon a showing of good cause. However, the good cause must be founded on changed circumstances relating to the defendant or the proceedings. (*In re Alberto* (2002) 102 Cal.App.4th 421.) DNA results linking the defendant to a previously unsolved serious or violent criminal offense would definitely

constitute a change in circumstances, related to the defendant, which would warrant an increase or possibly revocation of bail. (Pen. Code, § 1289.)

Other than the initial arrest and arraignment, none of the multiple steps in a criminal prosecution are ever addressed by Buza. Once an individual is arrested, the prosecutor must first file a criminal complaint. Next follows the arraignment in or out of custody. The court sets bail and the accused, if in custody, is entitled to a preliminary hearing within 10 court days or 60 calendar days unless the defendant waives the right to a speedy preliminary hearing. (Pen. Code, § 859b.) At the arraignment, the court will usually schedule both a pre-trial hearing and a preliminary examination hearing unless the defendant waives his right to a speedy preliminary examination in which case the case will be scheduled for a pre-trial and/or a preliminary examination after 10 court days and/or 60 calendar days. It is common that there are multiple pre-trial hearings before there is ever a preliminary examination. The defense may also file any number of motions in the case including but not limited to motions to suppress evidence and *Miranda* motions.

Thus, the process from arrest through arraignment, pre-trials, motions, preliminary examination, arraignment on Information, more pre-trials and motions until jury trial, plea, or dismissal is quite involved and can take a substantial amount of time. Data compiled by OCDA over the period

2009-2014 show that the average felony from the time of arraignment – which we must remember is any number of days, weeks, months, or even years following arrest and DNA collection – is six months after the date of initial arraignment. (See <http://www.orangecountyda.org/civicax/filebank/blobdload.aspx?BlobID=23405> Table 4 [as of Nov. 18, 2015].)

Whether in any given case it takes one month to complete DNA testing in California, or even longer, this only affects the efficacy of the process.

> The question of how long it takes to process identifying information obtained from a valid search goes only to the efficacy of the search for its purpose of prompt identification, not the constitutionality of the search. [Citations.]

(*Maryland v. King, supra*, 133 S.Ct. 1958, 1976).

Despite Buza claims, it is clear that the timing of sample collection may mean the difference of life or death, whether a victim can be found alive, and whether crucial evidence may be destroyed. For example, Antolin Garcia Torres was linked to the kidnapping of 15-year-old Sierra LaMar, by a DNA database sample taken at Torres' felony arrest on a case dismissed in favor of extending his then existing misdemeanor probation. At the time, Torres had no felony convictions of record. DOJ returned a match between roadside crime scene evidence and Torres' felony arrest sample in less than two hours. Because of the match the most important evidence linking Torres to LaMar's disappearance was recovered in Torres' car – evidence that no doubt would

have otherwise been destroyed, and law enforcement had its first lead in the case. This and other similar cases are set forth on the DOJ website. (See Cal. DOJ, FAQ: *Effects of the All Adult Arrestee Provision, Q 2* <http://www.oag.ca.gov/bfs/prop69/faqs> [as of Nov. 18, 2015].)

Although Buza may want California to "become Maryland" more or less with respect to timing of sample collection and analysis, and thereby limit California to Maryland's unacceptable level of effectiveness (only *19 persons arrested after an identification hit in 2011*),[7] California voters wisely chose a more effective approach that sees an average of *over 600 identification hits* per *month*. For public safety purposes, an arrestee's bail status OR release is properly changed if his forensic DNA identification sample links him to other offenses through the State's database program.

III. *KING*'S BROAD RULING SUPPORTS THE COLLECTION OF USE-RESTRICTED DNA DATABASE SAMPLES FROM CALIFORNIA'S ADULT FELONY ARRESTEES AND SHOULD RESOLVE THIS CASE

Despite Buza's contentions otherwise, (AAB at pp. 34-64), *King*'s Fourth Amendment balancing analysis and legal determinations are directly applicable and should resolve this case as a matter of law. *King* employs the

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[7] (See *Maryland v. King* (2012) ___ U.S. ___ [133 S.Ct. 1, 3, 183 L.Ed.2d 667] [Roberts, J., as Circuit Justice, granting stay of pending appeal].)

same standards that this Court uses in evaluating the constitutionality of a search under both the federal and state constitutions. (*Ingersoll v. Palmer, supra*, 43 Cal.3d 1321, 1329 ["[t]he touchstone for all issues under the Fourth Amendment and article I, section 13 of the California Constitution is reasonableness. [Citations.]"]; *In re York* (1995) 9 Cal.4th 1133, 1148-1149 [coextensive interpretation of Fourth Amendment and article I, section 13 of the California Constitution]; *Alfaro v. Terhune, supra*, 98 Cal.App.4th 492, 508-509 [finding that "the balancing process required by our state constitutional right of privacy is precisely the same process that other jurisdictions have applied in upholding the validity of DNA data bases and data bank acts. [Citations.]"]; cf. *People v. Robinson, supra*, 47 Cal.4th 1104, 1134-1135 [same constitutional analysis satisfies particularity clause of the Fourth Amendment and article I, section 13 of the State Constitution].)

Though Buza seeks to clutter the balancing analysis with a patchwork of speculative assumptions about future misuse of the database, his speculations are not part of the constitutional test. (See e.g., *United States v. Kincade* (9th Cir. 2004) 379 F.3d 813, 837-838 ["[B]eyond the fact that the DNA Act itself provides protections against such misuse [fn. omitted.], our job is limited to resolving the constitutionality of the program before us, as it is designed and as it has been implemented. [Fn. omitted.]"]; *Vernonia School*

Dist. 47J v. Acton (1995) 515 U.S. 646, 652 [115 S.Ct. 2386, 132 L.Ed.2d 564]; cf. *Tobe v. City of Santa Ana, supra*, 9 Cal.4th 1069, 1084 [defendant cannot prevail in facial challenge by """suggesting that in some future hypothetical situation constitutional problems may possibly arise as to the particular *application* of the statute ...."' [Citations.]"].) Under the balancing test, this Court has upheld the state's convicted offender DNA database, that is subject to the same statutory and regulatory use and confidentiality restrictions that protect arrestee DNA database samples. (*People v. Robinson, supra*, 47 Cal.4th 1104, 1120-1123.) Our state courts, like the federal courts, have properly ensured that the database is not judged for its hypothetical uses that have not come to *pass and are expressly outlawed*, but that the collection of DNA identification samples is properly judged for its actual use: to accurately identify criminal offenders. (See, e.g., *Alfaro v. Terhune, supra*, 98 Cal.App.4th 492, 506-510; Pen. Code, §§ 295.2, 299.5, 299.7 [strict use and confidentiality restrictions, and civil and criminal penalties for DNA sample misuse]; cf. *United States v. Mitchell, supra*, 652 F.3d 387, 407-414 [citing cases and statutes].)[8]

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[8] Our courts have recognized that not only does State law, itself, strictly limit the State Database law's operation, the federal law does so as well by: defining the STR loci tested; limiting disclosure of data bank information to law enforcement; restricting testing of data bank samples to law enforcement (continued...)

King likewise emphasized the statutory and regulatory safeguards built

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[8] (...continued)
identification purposes; and providing penalties for not following the directives that safeguard the anonymity of forensic DNA identification information and protect against its wrongful use. (*Alfaro v. Terhune, supra*, 98 Cal.App.4th 492, 508) ["The Act does not permit defendants to do more than standard and usual scientifically appropriate identification analyses with specimens, samples, and print impressions."]; *United States v. Mitchell, supra*, 652 F.3d 387, 399-401.)

Moreover, there is no evidence of any malfeasance in the 30-year history of California's database program. As the district court in *Haskell v. Brown* found:

> To date, there has not been one instance in which charges were brought against an employee of the DOJ for violating the DNA Act. [Citations.] In addition, no audit has ever cited a California CODIS lab for any violation of confidentiality or use restrictions. [Citation.]

(*Haskell v. Brown, supra*, 677 F.Supp.2d 1187, 1191; see also 155 Cong.Rec. S12904-S12907 (daily ed. Dec. 10, 2009) (statement of Sen. Kyl) [noting substantial legal and practical obstacles to sample misuse]; 73 Fed.Reg. 74932 (Dec. 10, 2008).)

Use restrictions of the type the Buza discounts eschews also have figured prominently in this Court's assessment of arrestee records in other contexts. In *Loder v. Municipal Court, supra*, 17 Cal.3d 859, the plaintiff sought erasure or return of his record of arrest which did not result in conviction, claiming retention and use of his record violates his right to privacy under the California Constitution and other constitutional provisions. This Court rejected plaintiff's claims in light of law enforcement's "substantial" interest in protecting the public from recidivist crime and the "legislative and administrative safeguards" (i.e., use restrictions) on the information. (*Loder v. Municipal Court, supra*, 17 Cal.3d 859, 864-877 [identifying possible dangers to an arrestee's privacy as "inaccurate or incomplete arrest records, dissemination of arrest records outside the criminal justice system, and reliance on such records as a basis for denying the former arrestee business or professional licensing, employment or similar opportunities for personal advancement. [Fn. omitted.]"].)

into DNA database programs (*Maryland v. King, supra*, 133 S.Ct. 1958, 1968, 1979-1980) in its analysis and concluded:

> *In light of the scientific and statutory safeguards*, once [Buza's] DNA was lawfully collected the STR analysis of [Buza's] DNA pursuant to CODIS procedures did not amount to a significant invasion of privacy that would render the DNA identification impermissible under the Fourth Amendment.

(*Maryland v. King, supra*, 133 S.Ct. 1958, 1980, emphasis added.) Accordingly, *King* properly upheld arrestee DNA collection by applying "traditional standards of reasonableness," balancing the promotion of legitimate governmental interests against the degree to which the search intrudes upon an individual's privacy. (*Id.* at pp. 1970, 1979-1980; see *People v. Robinson, supra*, 47 Cal.4th 1104, 1120-1123 [same balancing test used to evaluate constitutionality of convicted offender DNA database program].) *King* sets forth the relevant factors for the constitutional balancing test for DNA database programs: the state's legitimate interest in arrestee identification that adheres at booking; the minimal privacy interests of arrestees in their identification information processed at the jailhouse; the minimal intrusion of sample collection and analysis; and the placement of samples in use-restricted and confidential databases as required by a state and federal regulatory structure. (See *Maryland v. King, supra*, 133 S.Ct. 1958, 1979-1980; cf. *People v. Robinson, supra*, 47 Cal.4th 1104, 1120-1123

[applying similar state factors].)

Within the proper parameters, *King* discussed five State interests in adjudicating the constitutionality of DNA database samples from arrestees when they are booked at the stationhouse for serious offenses: (1) fully identifying arrestees in the most accurate manner by comparing their DNA profiles with the DNA database profiles from unsolved crime; (2) reducing security risks at the facility to staff and other prisoners; (3) deterring arrestees from fleeing after release because they want to avoid DNA collection later in the criminal process which can link them to unsolved crimes; (4) assessing an arrestee's dangerousness to the community prior or during a grant of release; and (5) enhancing the integrity of the criminal justice system through accurate identification that can "prevent suspicion against or prosecution of the innocent." (*Maryland v. King, supra*, 133 S.Ct. 1958, 1974, 1977.) Each of these five interests is applicable in California, along with two additional interests: (6) checking California criminal databases for outstanding DNA DOE warrants and (7) enabling the state to maintain a robust system of cross-checking databases that ensures the accuracy of its criminal identification records. (See *People v. Robinson, supra*, 47 Cal.4th 1104, 1140-1141; see Argument II, *supra*.)

King's balancing analysis is fully and directly applicable to California. Moreover, as a matter of law, Buza cannot obtain relief on Fourth Amendment grounds that this Court should interpose a judicial finding of probable cause or the requirement of a charging decision prior to sample analysis, or require state-initiated expungement procedures as part of the constitutional calculus simply because the Maryland law at issue included elements that go beyond what is required by the Fourth Amendment. As the United States Supreme Court repeatedly has made clear,

> We have never intimated, ... that whether or not a search is reasonable within the meaning of the Fourth Amendment depends on the law of the particular state in which the search occurs.

(*California v. Greenwood* (1988) 486 U.S. 35, 43, 44 [108 S.Ct. 1625, 100 L.Ed.2d 30] [no reasonable expectation of privacy in garbage under federal law].) Otherwise, as the Court explained, "concepts of privacy under the laws of each State [would] determine the reach of the Fourth Amendment," a result that the Court rejects. (*Id.* at p. 44; see also *Virginia v. Moore* (2008) 553 U.S. 164, 170-172 [128 S.Ct. 1598, 170 L.Ed.2d 559]; accord *People v. Robinson, supra*, 47 Cal.4th 1104, 1122-1123.)

In any event, Buza's attempt to cast *King* as a narrow opinion relegated to Maryland law with no application to California also is plainly at odds with any reasonable reading of *King*. *King* leaves no room to allege that the Court's

opinion is confined to the four corners of Maryland's law. Noting that "[t]wenty-eight States and the Federal Government have adopted laws similar to the Maryland Act[,]" the *King* court explained that

> [A]lthough those statutes *vary in their particulars*, such as what charges require a DNA sample, their similarity means that this case *implicates more than the specific Maryland law*.

(*Maryland v. King, supra*, 133 S.Ct. 1958, 1968, emphasis added.)

King's holding that DNA collection and analysis at *booking* is constitutional makes clear that timing of sample analysis is not a constitutional question (*Maryland v. King, supra*, 133 S.Ct. 1958, 1976-1977) and rejects the claim that DNA identification must be delayed until after a judicial probable cause determination.[9]

The fact that California – like many other jurisdictions including the federal government – has petitioner-initiated, rather than government-initiated, expungement procedures, also does not give rise to a valid Fourth Amendment

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[9] Maryland's DNA Act differs from California's Act in the list of crimes covered by the law, timing of sample analysis and processes for expunging samples: (1) California requires all adult felony arrestees to provide a forensic identification DNA sample unlike Maryland which limits collection to individuals arrested for certain misdemeanor and felony crimes; (2) California, like Maryland, collects forensic identification DNA samples from arrestees at booking, but California starts the process of analyzing samples immediately for prompt identification, rather than delaying until after the arrestee is charged and arraigned; and (3) California has petitioner-initiated rather than state-initiated expungement of samples from arrestees who are not convicted.

distinction under *King*. *King* did not single out or rely upon Maryland's expungement process as a factor in its balancing analysis. *King* recognizes that a DNA identification sample is analogous to a fingerprint (*Maryland v. King, supra*, 133 S.Ct. 1958, 1976), which does not require expungement when charges are dismissed. California also has an expedited and streamlined process for expunging samples and profiles, which simply requires an arrestee fill out a two-page form available on the state website. California's DOJ DNA Laboratory can process such requests quickly when the petitioner supplies the basic identifying information requested on the form. (See Cal. DOJ, FAQ: *Getting Expunged or Removed from the Cal-DNA Data Bank* <http://www.oag.ca.gov/bfs/prop69/faqs> [as of Nov. 17, 2015].) Sample expungement generally takes place within two to four weeks after receipt of a valid request. (*Ibid.*) An individual can ask the court for a hearing if he or she not satisfied with the result.[10]

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[10] While in the vast majority of instances application of the expungement provisions will be clear, the statute provides discretion so that the judge can act in accordance with the underlying goals and intent of the drafters to avoid a sample destruction when a sample is required for a separate reason and it would be a senseless act to expunge one sample, only to require another. For example, an arrestee may have been convicted of a separate felony crime since the arrest, or be required to provide a sample in conjunction with his or her sex offender or arson registration. DOJ also maintains a system of flags so that DNA samples are not retaken on a subsequent felony conviction. In this way, the state can minimize duplicate collections. Though (continued...)

California's statutory provisions also address privacy concerns related to sample retention prior to expungement. California law contains some of the stiffest penalties of any state for unauthorized use of a sample. In California, misuse of a sample, including testing for any unauthorized purpose, is punishable as a felony, and disclosure of a sample profile for financial gain is subject to a criminal fine in an amount three times that of any financial gain or $10,000, whichever is greater, and civil fines in the amount of $5,000 for each violation up to $50,000 along with the potential for awarding attorneys' fees and costs. (Pen. Code, § 299.5.)

Nor does *King* limit DNA collection to an arrest for a violent offense as Buza alleges (AAB at p. 87). Maryland's requirement that law enforcement officials collect a DNA identification sample from individuals arrested for enumerated "serious crimes" (*Maryland v. King, supra*, 133 S.Ct. 1958, 1967), is not materially different from California's requirement that law enforcement officials collect DNA identification samples from adult felony arrestees. (See Pen. Code, §§ 296, subd. (a)(1), 296.1, subd. (a).) A felony is, by definition, a serious crime. (See Black's Law Dictionary (10th ed. 2014) [defining

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[10] (...continued)
a discretionary decision to deny expungement on one of these grounds is not reviewable by appeal or writ (see Pen. Code, § 299, subd. (c)(1)), nonetheless if Court makes a mistake of law in denying a sample expungement request, an individual would be able to file a petition for writ as in any other situation.

"felony" as "[a] serious crime, usually punishable by imprisonment for more than one year or by death."]; accord, *Carachuri-Rosendo v. Holder* (2010) 560 U.S. 563, 574 [130 S.Ct. 2577, 177 L.Ed.2d 68] [citing Black's Law Dictionary definition of felony]; *People v. Lauria* (1967) 251 Cal.App.2d 471, 481-482 [noting "well understood" distinction between felonies as "more serious" crimes and misdemeanors as "less serious"].)

King's reasoning makes clear that serious offenses include, at a minimum, felonies or crimes for which an individual could be taken to the stationhouse and booked into custody. (*Maryland v. King, supra*, 133 S.Ct. 1958, 1971-1972.)[11] This is consistent with the Supreme Court's use of the

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[11] Maryland's law differs from California's law in the list of crimes covered, timing of sample analysis, and processes for expunging samples. For example, under Maryland law, if a defendant is held to answer but ultimately is acquitted of the crime qualifying him for DNA database sample collection at arrest, but is convicted of other crimes that were charged and tried in the same transaction, the sample will not be expunged. (See Md. Code, , Public Safety, § 2-504, subd. (d)(2).) This is the case even if the crime of conviction is not one for which the sample could have been collected at arrest, even if the crime of conviction is a misdemeanor, and even if the crime is not one that could be collected after conviction under Maryland law.

Moreover, under Maryland's DNA law and its automatic expungement provision, a defendant can be subject to multiple physical intrusions. If the sample is collected for one of the qualifying crimes at arrest, but the particular crime of violence is thrown out at or before arraignment for lack of probable cause, the arrestee's DNA sample will be destroyed, only to be collected once again after the defendant is convicted of a different qualifying felony. (See Md. Public Safety, § 2-504, subd. (a)(2).) In addition, Maryland's list of qualifying offenses for collection of DNA forensic identification samples from

(continued...)

term in other contexts. In *Codispoti v. Pennsylvania* (1974) 418 U.S. 506 [94 S.Ct. 2687, 41 L.Ed.2d 912], the Court recognized that in the Sixth Amendment (jury trial) context the dividing line between serious and non-serious crimes is whether the crimes permit a sentence of more than six months.

King's analysis also requires the term "serious crime" be construed broadly, not narrowly. The Court noted that states authorize collection of DNA identification samples from arrestees for different kinds of crimes, and it identified this fact as a statutory "particular" – not as a tipping factor of constitutional dimension. (*Maryland v. King, supra*, 133 S.Ct. 1958, 1968.) More importantly, the Supreme Court's analysis does not hinge on any alleged distinction between "felony crimes" and "serious crimes." California has the same interest in determining an arrestee's identity-including his link to unsolved criminal offenses-regardless of the type of felony underlying his arrest. When a felony suspect is arrested on probable cause for a criminal offense, formally processed into police custody, and detained at the jail, the State has a substantial interest in identifying him comprehensively through his

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[11] (...continued)
arrestees includes crimes that are misdemeanors in Maryland. (*Wyatt v. State* (Md.Ct.Spec.App. 2006) 169 Md.App. 394, 399 [901 A.2d 271]; *State v. North* (Md.Ct.App. 1999) 356 Md. 308, 312 [739 A.2d 33] [designation of attempted crimes as misdemeanors].)

forensic identification DNA profile. (*Id.* at pp. 1970-1977.)

Finally, because DNA collection at booking is not aimed at solving the crime for which the suspect is arrested, but rather, at other factors such as identification and enabling better custody and pretrial release decisions, the degree of seriousness of the felony offense underlying arrest is not a significant factor in a constitutional analysis. The Supreme Court expressly recognized that "'[p]eople detained for minor offenses can turn out to be the most devious and dangerous criminals....' [Citations.]" (*Maryland v. King, supra*, 133 S.Ct. 1958, 1971.) In support, *King* cited examples of California cases "where bail and diversion determinations were reversed after DNA identified the arrestee's violent history ...." (*Id.* at p. 1974.) The Court was not focused on which California crime precipitated the arrestee's sample collection precisely because its opinion is not intended to limit DNA collection at booking to any particular subset of felony offenses. Under *King's* analysis, "serious crime" is a broad category that encompasses all felony offenses.

Accordingly, the analysis in King should resolve this case.

IV. STATISTICS SUPPORT BOOKING AS THE MOST CRITICAL JUNCTURE IN THE CRIMINAL JUSTICE SYSTEM FOR COLLECTING AND PROCESSING ACCURATE IDENTIFICATION INFORMATION FROM ADULT FELONY ARRESTEES

Buza devotes a large portion of his brief trying to persuade this Court that Proposition 69 burdens too many adult felony arrestees and that the State needs to show "uncontroverted evidence establishing that those arrested for non-violent crimes are likely to have committed the types of violent crimes that typically yield DNA evidence, particularly murder and sex offenses." (See, e.g., AAB at pp. 12-14, 65-72.)

Buza's claims are at odds with the facts and the law. First, it is not the State's burden to provide any "uncontroverted evidence" to uphold Proposition 69. With Proposition 69, the electorate enacted important public safety legislation that is presumptively valid. The initiative reflects the "compelling interest in protecting [California communities] from crime" (Ballot Pamp., Gen. Elec. (Nov. 2, 2004), Text of Prop. 69, § II, Findings and Declarations of Purpose, subd. (a), p. 135); it reaffirms the "urgent need" for using "the latest scientific technology" to accurately and expeditiously identify all adult felony arrestees (Ballot Pamp., Gen. Elec. (Nov. 2, 2004), Text of Prop. 69, § II, Findings and Declarations of Purpose, subd. (b), p. 135); and authorizes use of DNA identification testing at the "earliest stages of criminal

proceedings for felony offenses" to help prevent time-consuming and expensive investigations of innocent persons (Ballot Pamp., Gen. Elec. (Nov. 2, 2004), Text of Prop. 69, § II, Findings and Declarations of Purpose, subd. (e), p. 135). The voters also explicitly set forth their view that "*it is reasonable to expect qualifying offenders to provide forensic DNA samples for the limited identification purposes set forth in this chapter.*" (Ballot Pamp., Gen. Elec. (Nov. 2, 2004), Text of Prop. 69, § II, Findings and Declarations of Purpose, subd. (f), p. 135.)

To the extent Buza asks this Court to override the People's judgment in Proposition 69 by invalidating the law, or substituting Buza's Maryland-based model because it would burden fewer numbers of arrestees, this request is legally inappropriate. (See, e.g., *Whalen v. Roe* (1977) 429 U.S. 589, 597 [97 S.Ct. 869, 51 L.Ed.2d 64] ["State legislation which has some effect on individual liberty or privacy may not be held unconstitutional because a court finds it unnecessary, in whole in or part. [Fn. omitted]"]; *Minnesota v. Clover Leaf Creamery Co.* (1981) 449 U.S. 456, 464 [101S.Ct. 715, 66 L.Ed.2d 659] ["[S]tates are not required to convince the courts of the correctness of their legislative judgments[]"]; *Loder v. Municipal Court, supra*, 17 Cal.3d 859, 875-876; *Alfaro v. Terhune, supra*, 98 Cal.App.4th 492, 507, 510-511 ["'It is not the judiciary's function ... to reweigh the "legislative

facts" underlying a legislative enactment."' [Citation.]"]; cf. *People v. McInnis* (1972) 6 Cal.3d 821, 826 [noting that as a result being arrested "thousands of persons ultimately found to be entirely innocent undoubtedly have their photographs, as well as fingerprints on record with law enforcement agencies. [Citations.]" yet their photographs and fingerprints can be used in identifying the perpetrator of a subsequent crime][12].)

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[12] Buza's misunderstanding of procedures also affects his statistical calculations. Not only is Buza's calculation of alleged overcollections irrelevant, it is factually incorrect based upon his misinterpretation of the State's categories of felony dispositions and the statistical data related to it. (See AAB at pp. 13,67, 76, 97, citing California Department of Justice, Crime in California 2014.) Buza incorrectly assumes Table 38A counts the number of felony arrests in a year. It does not. It is the number of reported dispositions in 2014, regardless of what year an arrest occurred, the extent of any lag time between arrest and disposition, or whether the disposition is an interim or a final disposition in the case. (See, e.g., *People v. Martinez* (2009) 47 Cal.4th 399, 406, 415 [defendant arrested in 1990, jury trial commenced in 1997].) It is not a case-by-case final accounting in any sense. Buza apparently also considers law enforcement releases or complaints denied as synonymous with "acquittal" restoring an arrestee to the status of an ordinary citizen. But Buza is not correct. An interim decision not to charge or file a case is not the same thing as an acquittal. Table 38A does not account for later filed complaints, or refiled cases-which are common. As set forth, *supra*, the reasons why a prosecutor may at first decline to prosecute a case, or request dismissal after it goes to court only to later refile it, are varied and complex. A prosecutor may also decline to prosecute a case for many other reasons including referral of the arrestee to another county where there is a warrant for defendant's arrest on a more serious crime, which should be prosecuted first. Also, when adults who are on probation are rearrested, they may have their probation revoked, rather than be prosecuted on a new offense. For example, in 2012, there were 294,993 adults reported on active probation for felony and misdemeanor crimes. [Table 41]. In 2012, 59,649 persons on probation had

(continued...)

Second, statistical validation is not necessary to establish the constitutional reasonableness of DNA database statutes.[13] Nevertheless, the large number arrestees accurately identified as a result of these programs firmly supports the government's compelling interest in collecting DNA identification samples at booking. The data from both Orange County and the State is illustrative.

Data compiled from Orange County illustrates that over the 5-year-period from 2009 to 2014, fifty-five percent of people charged with a serious or violent offense, had previously been charged with the commission

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[12] (...continued)
their probation revoked [Table 42]. (See California Department of Justice, Crime in California 2012, Adults Placed on/ Revoked from Probation, p. 55.) *Individuals in these cases may be charged at a later time*. Buza's statistical claims are not accurate and should not be relied upon.

[13] See *Michigan Department of State Police v. Sitz* (1990) 496 U.S. 444, 453-455 [110 S.Ct. 2481, 110 L.Ed.2d 412] [rejecting the extensive "effectiveness" review conducted by the Michigan court in evaluating sobriety checkpoints and in any event finding 1.5 percent success rate was sufficient to justify the checkpoint intrusion on all drivers]; cf. *National Treasury Employees Union v. Von Raab* (1989) 489 U.S. 656, 674 [109 S.Ct. 1384, 103 L.Ed.2d 685] [noting "[t]he mere circumstance that all but a few of the employees tested are entirely innocent of wrongdoing does not impugn the program's validity."]; *Bell v. Wolfish* (1979) 441 U.S. 520, 532, 548-549 [99 S.Ct. 1861, 60 L.Ed.2d 447] [upholding body cavity searches of pre-trial detainees although petitioners proved only "one instance" where contraband was found during such search]; *Whalen v. Roe, supra*, 429 U.S. 589, 598, fn. 21 ["'Nothing in the Constitution prohibits a State from reaching ... a conclusion and acting on it legislatively simply because there is no conclusive evidence or empirical data.' [Citation.]"].)

of a lower level misdemeanor or non-serious felony offense. (See <http://www.orangecountyda.org/civicax/filebank/blobdload.aspx?BlobID=23405> Table 1 [as of Nov. 18, 2015].)

In Orange County, the majority of CODIS DNA hits to serious and/or violent felonies were based on DNA collections from non-serious/non-violent offenses. For example, between 2009-2015, there were a total of 73 CODIS hits in Orange County for various sex crimes including Rape by Force, Sexual Penetration with Force, and Lewd or Lascivious Acts with a Child under14 years. Out of the 73 hits, 68% (50 out of 73) of the suspects had their DNA collected for a non-serious/non-violent qualifying offenses. (See <http://www.orangecountyda.org/civicax/filebank/blobdload.aspx?BlobID=23405> [as of Nov. 18, 2015] [where in *People v. Mejia*, a serial rapist who targeted prostitutes received 75 years to life when he was identified through a CODIS match after the he was arrested for a low level felony arrest and his DNA was collected and uploaded into CODIS.].)

Similarly, there were 101 CODIS hits for Robbery/Carjacking cases in Orange County. Out of the 101 hits, 61% (62 out of 101) of the suspects had their DNA collected for a non-serious/non-violent qualifying offenses. There were 163 CODIS hits in Orange County for residential burglary cases. Out of those 163 hits, 69% (112 out of 163) of the suspects had their DNA collected

for a non-serious/non-violent qualifying offenses. Lastly, for all homicide crimes including attempted murder, there were 20 CODIS hits in Orange County from 2009-2015. Out of those 20 hits, 55% (11 out of 20) of the suspects had their DNA collected for a non-serious/non-violent qualifying offenses. (See *supra*.)

With respect to the State, Department of Justice statistics show that the majority of identification hits to rape, robbery, and murder offenses do not come from DNA samples collected at arrest for other rapes, robberies or murders, but from samples taken at booking for low level crimes, such as drug, fraud, and property crimes. (See Cal. DOJ, *DNA Database Hits to Murder, Rape, and Robbery: Two Studies of the Correlations Between Crime of Arrest and DNA Database Hits to Murder, Rape, Robbery Offenses* <http://www.oag.doj.ca.gov/sites/all/files/agweb/pdfs/bfs/arrestee_2013.pdf> [as of Nov. 15, 2015].) Study 1 focused on 100 adult felony arrestees with no prior felony convictions. It found the majority of DNA database hits between these persons and murder, rape, and robbery crimes, come from DNA database samples collected at their arrest for drug, DUI, fraud, and property offenses. In 82 percent of the cases, the previously unsolved murder, rape or robbery was committed prior to the crime of arrest. Study 2 was broader and looked at 3,778 adult felony arrestees. It found only eight percent of DNA database hits

to murder, rape and robbery crimes come from DNA database samples collected from persons who have their DNA collected at arrest for another murder, rape, or robbery crime. This data demonstrates that there is a strong correlation between the commission of both serious/violent crime and lower level criminal offenses. Contrary to Buza's claim, the collection of DNA from those arrested for non-violent felonies does, in fact, effectively serve the state's interest in "*expeditious* assessment of a pre-trial detainee's dangerousness." (AAB at p. 70, emphasis in original.) Given the fact that those who commit serious and violent offenses also commit lower level offenses, collection and testing of lower level felony arrestees' DNA enhances public safety as well as the safety of jail staff and inmates. The DNA results allows more accurate identification of an arrestee's dangerousness. This is essential information needed by the court to make proper bail determinations and when necessary, post-arraignment, bail modification orders based on new information about a defendant's criminal background.

V. AFTER *MARYLAND V. KING*, BUZA CANNOT MEET HIS BURDEN OF PROOF TO SHOW THAT PROPOSITION 69 IS CLEARLY, POSITIVELY AND UNMISTAKABLY UNCONSTITUTIONAL IN THE CONTEXT OF HIS FACIAL CHALLENGE TO PENAL CODE SECTION 298.1 AND HIS MISDEMEANOR CONVICTION FOR REFUSING TO PROVIDE A DNA SAMPLE UPON ARREST

After *King*, Buza cannot meet his burden of proof to show that Proposition 69 is "clearly, positively, and unmistakably" unconstitutional (*Legislature v. Eu*, supra, 54 Cal.3d 492, 500-501) in the context of his *facial challenge* to Penal Code section 298.1 and his misdemeanor conviction for refusing to provide a DNA database sample at arrest. *King* held "DNA identification of arrestees is a reasonable search *that can be considered part of a routine booking procedure*," and that the only difference between fingerprint, photographs, and DNA collected at booking is "the unparalleled accuracy DNA provides." (*Maryland v. King, supra*, 133 S.Ct. 1958, 1971-1972, 1979-1980.)

Nor after *King*, can Buza also meet the burden in his facial challenge of establishing "that no set of circumstances exists under which the Act would be valid." (*United States v. Salerno, supra*, 481 U.S. 739, 745; *Tobe v. City of Santa Ana, supra*, 9 Cal.4th 1069, 1084.) Under *King* the statute is clearly constitutional as to Buza, himself, who was arrested for arson, brought to the jail house, booked there on a felony crime, remained in custody throughout

proceedings, and ultimately was convicted of a felony offense. (See, e.g., *Haskell v. Harris, supra*, 745 F.3d 1269, 1271-1275 (conc. opn. of Smith, J.).)

Though Buza asks this Court to overlook procedural thresholds he cannot overcome, renounce *King* and its own legal precedents, override Proposition 69, and augment the state constitution to fashion a new remedy permitting adult felony arrestees to refuse to provide identification samples at booking, this Court should reject Buza's invitation on every level.

The United States Supreme Court's broad holdings in *King* and its many attendant legal determinations are directly on point vis-à-vis constitutional issues. Additionally, King's numerous legal determinations leave no room for Buza's claims that *King* is a narrow opinion, revolving around only Maryland's "statutory particulars." The Court's determinations, among others, can be summed up as follows:

> Forensic identification DNA database samples taken at booking are the functional equivalent of fingerprints, except that DNA is more accurate. (*Maryland v. King, supra*, 133 S.Ct. 1958, 1971-1972)
>
> The state interest in collecting identification information from arrestees, whether fingerprints, photographs, or DNA buccal swab samples, adheres at booking after the arrestee is taken into police custody at the stationhouse. (*Maryland v. King, supra*, 133 S.Ct. 1958, 1971-1972, 1980.)
>
> Collection and analysis of DNA database samples from arrestees is not an investigative search for evidence; rather it is the collection of a neutral identification metric that can be

processed in a standard, precise, and limited analytical format that allows comparison with identification information from unsolved crimes. (*Maryland v. King, supra*, 133 S.Ct. 1958, 1971-1972, 1980.)

The collection and analysis of fingerprints and forensic identification DNA database samples are similar components of a constitutional booking process, and both involve "making a computerized comparison" of the arrestee's identification information to identification information contained in electronic databases of unsolved crimes. (*Maryland v. King, supra*, 133 S.Ct. 1958, 1971-1972, 1980.)

The length of time it takes to process identifying information such as DNA, "goes only to the efficacy of the search for its purpose of prompt identification, not the constitutionality of the search. [Citation.]" (*Maryland v. King, supra*, 133 S.Ct. 1958, 1976-1977.)

Existing statutory and regulatory restrictions on DNA samples safeguard privacy concerns by limiting permissible testing to identification non-coding loci approved by CODIS, and by strictly confining the use and disclosure of DNA information to law enforcement for identification purposes only. (*Maryland v. King, supra*, 133 S.Ct. 1958, 1971-1972, 1980.)

The collection of an arrestee's DNA database sample at booking for the purpose of analyzing the sample for standard identification markers and searching those markers in use-restricted and confidential law enforcement databases is not an unconstitutional intrusion on an arrestee's privacy interests. (*Maryland v. King, supra*, 133 S.Ct. 1958, 1979-1980.)

The degree of seriousness of the felony offense underlying arrest is not a significant factor in a constitutional analysis because "'[p]eople detained for minor offenses can turn out to be the most devious and dangerous criminals.'" (*Maryland v. King, supra*, 133 S.Ct. 1958, 1971, modification in original.)

> Given the importance of DNA in the identification of criminal offenders, initial decisions made regarding the arrestee's release into the community can be revisited once DNA identification results are available. (*Maryland v. King, supra*, 133 S.Ct. 1958, 1973-1974, 1976-1977.)
>
> Use of DNA identification samples to accurately identify an arrestee is also important to the criminal justice system because it can "prevent suspicion against or prosecution of the innocent." (*Maryland v. King, supra*, 133 S.Ct. 1958, 1974, 1977.)

This Court's precedents soundly uphold the collection and use of identification information at booking from felony arrestees, and interpret the State Constitution article 1, section 13 "co-extensively" with the Fourth Amendment. (See, e.g., *Loder v. Municipal Court, supra*, 17 Cal.3d 859, 864-877 [recognizing that arrestee fingerprint and photograph information taken at booking are properly retained by the State and may be used in identifying arrestee for another crime]; *People v. Crowson* (1983) 33 Cal.3d 623, 629; *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1; *In re York, supra*, 9 Cal.4th 1133,1148-1149 [observing that, ""[i]n the search and seizure context, the article I, section 1 "privacy" clause [of the California Constitution] has never been held to establish a broader protection than that

provided by the Fourth Amendment of the United States Constitution or article I, section 13 of the California Constitution.' [Citation.]"].)[14]

There is also no support for Buza's claims that require this Court to adopt his mistaken and incorrect understanding of arrest, bail and arraignment procedures in our criminal justice system and discount and ignore the compelling state interests that are advanced by Proposition 69. Buza ultimately asks this Court to judicially reconfigure the State's search and seizure clause set forth in article I, section 13 (AAB at p. 33) by fusing it with article 1, section 1, informational privacy – except that Buza also requires this

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[14] Although Buza does reference a number of *pre-Proposition 8*, Truth in Evidence cases that are not on point, each of the search and seizure cases Buza does cites, invokes the California Constitution only as a means of *enforcing* an existing *California statute* that circumscribed police procedures for minor infraction or misdemeanor traffic-type offenses. (See, e.g., *People v. Brisendine* (1975) 13 Cal.3d 528; *People v. Superior Court of Los Angeles County (Simon)* (1972) 7 Cal.3d 186, 208-209.) The other pre-Proposition 8 cases involved search of a car, not a person, at a time when federal law on the subject was unsettled (*People v. Ruggles* (1985) 39 Cal.3d 1), or approved booking searches conducted at the jail, but found that the police practice of conducting an "accelerated booking search" in the field which might permit a strip-search in public, violated the California Constitution's warrant requirement. (*People v. Laiwa* (1983) 34 Cal.3d 711.) Not one of these search and seizure cases used the California Constitution to invalidate a presumptively valid state statutory program, as Buza requests here. Nor did any of Buza's cases involve a felony arrestee booked at the stationhouse and held in custody for identification processing. Indeed, *Brisendine* specifically excepted from its analysis the kinds of cases where individuals "are arrested for felonies and booked according to the general Penal Code provisions on felony arrests [citations]." (*People v. Brisendine, supra*, 13 Cal.3d 528, 536-537.)

Court to leave out the recognized exceptions to article I, section I for legitimate government information kept in confidential and use-restricted databases. (See *Hill v. National Collegiate Athletic Assn., supra*, 7 Cal.4th 1, 21-22, 37-38.) *Hill* specifically recognizes the legislative history of the State's constitutional provisions as not preventing the government "'from collecting any information it legitimately needs[,]'" but disallowing "'misuse of this information for unauthorized purposes ....' [Citation.]" (*Id.* at pp. 21-22; see also *Loder v. Municipal Court, supra*, 17 Cal.3d 859, 872-876; cf. *National Aeronautics and Space Admin. v. Nelson* (2011) 562 U.S. 134 [131 S.Ct. 746, 750, 761-763, 178 L.Ed.2d 667] [observing a "statutory or regulatory duty to avoid unwarranted disclosures" generally allays privacy concerns created by government "accumulation" of "personal information" for "public purposes"]; *Whalen v. Roe, supra*, 429 U.S. 589, 599-600; see also *In re York, supra*, 9 Cal.4th 1133, 1148-1149.) Buza also simply overlooks the fact that nothing in the State' s DNA database program itself permits a broad dissemination of private information which would be required for bringing a separate "informational privacy" claim.

Moreover, Buza's claims are ill-conceived and require this Court to substitute Buza's concept of privacy for those of the People as expressed in both Proposition 69 and in Proposition 8, a crime victims' initiative that aligns

article I, section 13 with the Fourth Amendment by limiting the remedy of suppression to Fourth Amendment grounds. (See *In re Lance W.* (1985) 37 Cal.3d 873, 881 ["The Fourth Amendment to the United States Constitution and article I, section 13 of the California Constitution extend similar protection against 'unreasonable searches and seizures.'"] Buza's

> [E]xpectation "that certain facts will not come to the attention of authorities" is not the same as an interest in "privacy that society is prepared to consider reasonable." [Citation.]

(*Illinois v. Caballes* (2005) 543 U.S. 405, 408-409 [125 S.Ct. 834, 160 L.Ed.2d 842]; cf. *United States v. Diaz-Castenada* (9th Cir. 2007) 494 F.3d 1146, 1153.) Legitimate expectations of privacy are rooted in society's customs and viewpoints, such as those expressed in Proposition 69. (See, e.g., *Hill v. National Collegiate Athletic Assn., supra*, 7 Cal.4th 1, 26, 36-37 ["A 'reasonable' expectation of privacy is an objective entitlement founded on broadly based and widely accepted community norms. [Citation.]"].)

Proposition 69 specifically expresses California community values about the intrusiveness of the collection and subsequent use of a forensic identification buccal swab sample from an adult felony arrestee when the arrest

is made pursuant to a warrant or upon a probable cause determination by a trained officer. Despite Buza's numerous complaints to the contrary (AAB at pp. 50-64), voters correctly recognized the categorical difference between a search for evidence and comparison of neutral identification markers authorized by Proposition 69: There is critical legal distinction between rummaging around in an arrestee's private possessions in search of tangible evidence such as drugs or guns without a warrant, and the comparison of identification markers, whether fingerprints or DNA, that have no evidentiary value per se, but can particularly describe an arrestee in terms of neutral *identification* criteria other than a name. (*Maryland v. King, supra*, 133 S.Ct. 1958, 1972, emphasis added ["Like a fingerprint, the 13 CODIS loci *are not themselves evidence of any particular crime*, in the way that a drug test can by itself be evidence of illegal narcotics use." [Citation.]].)

That Proposition 69 widely reflects society's viewpoint regarding a reasonable expectation of privacy is bolstered by the fact that, likewise, 28

states and the federal government[15] have enacted legislation requiring forensic identification DNA samples from some category of felony arrestee. (See DNA Saves <http://www.dnasaves.org/states.php> [as of Nov. 18, 2015].) The United States Supreme Court opinion in *Maryland v. King* likewise reflects the opinion of the federal judiciary's highest court that an arrestee booked at the stationhouse does not have a reasonable expectation of privacy that would preclude matching his DNA identification profile taken at booking to a database of DNA profiles from unsolved crime.

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[15] In enacting the DNA Fingerprint Act [42 U.S.C. § 14135a(a)(1)(A)], Congress enabled the creation of all-arrestee DNA database via implementing regulation requiring federal agencies shall "collect DNA samples from individuals who are arrested, facing charges, or convicted ... under the authority of the United States." (See 28 C.F.R. § 28.12(b) (2009); 151 Cong.Rec. S13756-S13758 (daily ed. Dec. 16, 2005) (statement of Sen. Kyl).)

CONCLUSION

Proposition 69 is constitutional. Amicus respectfully requests that this Court uphold Proposition 69 so that the State can continue to use this important tool as the People envisioned to make the criminal justice system more accurate and just.

Dated this 20th day of November, 2015.

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

[California Rules of Court, Rule 8.204(c)]

The text of the Amicus Curiae Brief consists of 12,849 words as counted by the word-processing program used to generate this brief.

Dated this 20th day of November, 2015.

Respectfully submitted,

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RE: THE PEOPLE OF THE STATE OF CALIFORNIA V. MARK BUZA
SUPREME COURT CASE NO. S223698; DCA CASE NO. A125542;
SAN FRANCISCO COUNTY SUPERIOR COURT CASE NO. SCN207818

I am a citizen of the United States; I am over the age of eighteen years and not a party to the within entitled action; my business address is: Office of the District Attorney, County of Orange, 401 Civic Center Drive West, Santa Ana, CA 92701.

On November 20, 2015, I served the AMICUS CURIAE BRIEF on the interested parties in said action by placing a true copy thereof enclosed in a sealed envelope, in the United States mail at Santa Ana, California, that same day, in the ordinary course of business, postage thereon fully prepaid, addressed as follows:

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

Executed on November 20, 2015, at Santa Ana, California.

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