had the statutory right to disclosure of the tapes under section 1054.1.

Further, Ms. Van Houten has the right to disclosure of the tapes as part of her *Franklin* evidence. A hearing under *Franklin* allows the defendant access to any evidence pursuant to the procedures set forth in section 1204 and rule 4.437 of the California Rules of Court limited only by the evidence code. The subject of the *Franklin* hearing is allowed to "place on the record any documents, evaluations, or testimony (subject to cross-examination) that may be relevant at his eventual youth offender parole hearing, and the prosecution likewise may put on the record any evidence that demonstrates the juvenile offender's culpability or cognitive maturity, or otherwise bears on the influence of youth-related factors." (*People v. Franklin, supra,* 63 Cal.4th at p. 284.) Therefore, any admissible, relevant evidence, including but not limited to evidence subject to disclosure under *Brady v. Maryland* (1963) 373 U.S. 83 material, should be given to the defendant for purposes of establishing the youthful offender evidence for use in obtaining parole. Ms. Van Houten has repeatedly been denied this opportunity. This is a direct violation of right under state statutory law, and Constitutional rights of confrontation under the Sixth Amendment.

B. <u>The Constitutional Right to Discovery Under *Brady v. Maryland*</u>.

There are three components of *Brady*: the evidence at issue must be favorable to the accused; that evidence must have been

suppressed by the State, either willfully or inadvertently; and prejudice must have resulted. (*Strickler v. Greene* (1999) 527 U.S. 263, 281-282 (*Strickler*); *Edwards v. Ayers* (9th Cir. 2008) 542 F.3d 759, 768.) The terms "suppression," "withholding," and "failure to disclose" have the same meaning for *Brady* purposes. (See *Benn v. Lambert*, 283 F.3d 1040, 1053 (9th Cir.2002).) It does not matter that *Brady* material involves "the good faith or bad faith of the prosecution." (*Brady v. Maryland* (1963) 373 U.S. at p. 87.) *Brady* does not distinguish between pre and post conviction evidence held by the government. (*Ibid.*) Ms. Van Houten renews her request that the Court apply *Brady* in this case.

It cannot be disputed that the first component of *Brady* requiring that the evidence is favorable to the defendant exists in this case. The Court conducting the *Franklin* hearing found that Ms. Van Houten was mentioned eight times on the Watson Tapes, and that Watson repeatedly talked about Manson's control over the Manson cult members. (Exh. 7, at p. 330.) In Supreme Court case number S230851, the Attorney General conceded Manson's control over his cult members who acted on his behalf, as stated by Watson in the tapes. Therefore, the tapes unquestionably contain exculpatory evidence involving Ms. Van Houten. They also directly dispute the Governor's finding that Ms. Van Houten is attempting to shift blame to Manson.

The second element of *Brady* requires the evidence to be in the possession of the government who refuses to share it with the defense. (*Strickler v. Greene, supra,* 527 U.S. at pp. 281-282.) Again, there is no dispute about the government's possession of

the Watson Tapes, and that it is withholding this evidence from Ms. Van Houten.

The final element of *Brady* is prejudice. Because the tapes contain evidence that Manson controlled his followers, Ms. Van Houten's participation in the LaBianca murders is mitigated by that control. The Governor's 2020 reversal dismissed Manson's control as a factor diminishing Ms. Van Houten's culpability. Evidence of this control in the words of Manson's "first lieutenant" directly contradicts the Governor's contrary findings.

"The *Brady* rule . . . is over 50 years old. It is alive, well, and, as we explain, it is self executing. There need be no motion, request, or objection to trigger disclosure. The prosecution has a sua sponte duty to provide *Brady* information." (*People v. Harrison* (2017) 16 Cal.App.5th 704, 706.) Ms. Van Houten has a right to the disclosure of the Watson Tapes. Alternatively, should the Court persist in refusing to order the disclosure of this evidence, the District Attorney and Governor should be precluded from arguing against Manson's violent control of Ms. Van Houten as a factor favoring parole.

Ms. Van Houten concedes that no case has held that *Brady* applies to a parole hearing. However, there is no authority whatsoever that states it does not apply to a parole hearing. Because Ms. Van Houten remains incarcerated, and the *Brady* material in this case could promote her release, fundamental fairness and due process require the tapes be released.

IX.

ALLOWING THE GOVERNOR, AS AN ELECTED OFFICIAL, TO MAKE THE FINAL PAROLE DECISION IN MURDER CASES VIOLATES EQUAL PROTECTION BY CREATING A DIFFERENT STANDARD FOR PERSONS, LIKE MS. VAN HOUTEN, SERVING INDETERMINATE SENTENCES FOR INFAMOUS OR NOTORIOUS MURDERS.

A. Summary of the Argument.

Under the California Constitution, the Governor is given the authority to reverse grants of parole in murder cases. (Cal. Const., art. V, § 8, subd.(b).) The Governor, as an elected official, has an inherent conflict against approving parole for high profile defendants, such as Ms. Van Houten, whose grant of parole may be unpopular with the voting public. This results in an equal protection violation by creating a different parole standard for inmates whose murder convictions arise from celebrated or notorious crimes.

Governor Newsom's two parole reversals prove he did not act as an impartial factfinder who applied the same legal standard in Ms. Van Houten's case. In 2019, the Governor stated in his written parole reversal,

> Ms. Van Houten and the Manson Family committed some of the most notorious and brutal killings in California's history. The gruesome crimes perpetrated by Ms. Van Houten and other Manson

> Family members in an attempt to incite social chaos continue to inspire fear to this day. As acknowledged by the Board in Ms. Van Houten's parole hearing, the crimes were "heinous, cruel, and inexplicably disturbing and dispassionate. Almost 50 years later, the magnitude of these crimes and their impact on society endure.

(Exh. 6; at p. 322.)

In his 2020 reversal Governor Newsom similarly states,

> I remain concerned by Ms. Van Houten's characterization of her participation in this gruesome double murder, part of a series of crimes that rank among the most infamous and fear-inducing in California history.

(Exh. 2, at p. 26.) The Governor continues,

> Given the extreme nature of the crime in which she was involved, I do not believe she has sufficiently demonstrated that she has come to terms with the totality of the factors that led her to participate in the vicious Manson Family killings. Before she can be safely released, Ms. Van Houten must do more to develop her understanding of the factors that caused her to seek acceptance from such a negative, violent influence, and perpetrate extreme acts of wanton violence.

(Exh. 2, at p. 27.)

The Governor's characterization of the LaBianca murders

as "the most infamous and fear-inducing in California history," coupled with his finding that "Before she can be safely released, Ms. Van Houten must do more to develop her understanding of the factors that caused her to seek acceptance from such a negative, violent influence, and perpetrate extreme acts of wanton violence" without citing what more she must do before the Governor will find her suitable for parole shows there is nothing Ms. Van Houten can do to obtain parole from this Governor. Accordingly, Ms. Van Houten and similarly situated inmates serving indeterminate life sentences for infamous murders are evaluated by a different parole legal standard than other inmates convicted of murder.

B. <u>The Governor Violated Equal Protection by Evaluating Ms. Van Houten Under a Different, Harsher, Standard for Granting Parole</u>.

Article V, section 8, subdivision (b) of the California Constitution states,

> No decision of the parole authority of this State with respect to the granting, denial, revocation, or suspension of parole of a person sentenced to an indeterminate term upon conviction of murder shall become effective for a period of 30 days, during which the Governor may review the decision subject to procedures provided by statute. The Governor may only affirm, modify, or reverse the decision of the parole authority on the basis of the same factors which the parole authority is required to consider.

> The Governor shall report to the Legislature each parole decision affirmed, modified, or reversed, stating the pertinent facts and reasons for the action.

The statutory procedures for the Governor's review of a parole decision are set forth in section 3041.2, which states:

> (a) During the 30 days following the granting, denial, revocation, or suspension by a parole authority of the parole of a person sentenced to an indeterminate prison term based upon a conviction of murder, the Governor, when reviewing the authority's decision pursuant to subdivision (b) of Section 8 of Article V of the Constitution, shall review materials provided by the parole authority.
>
> (b) If the Governor decides to reverse or modify a parole decision of a parole authority pursuant to subdivision (b) of Section 8 of Article V of the Constitution, he or she shall send a written statement to the inmate specifying the reasons for his or her decision."

Prior to the addition of subdivision (b) to section 8 of article V, the power to grant or deny parole was statutory and committed exclusively to the judgment and discretion of the Board. (*In re Rosenkrantz, supra,* 29 Cal.4th at pp. 658–659; *In re Fain* (1983) 145 Cal.App.3d 540, 548–550.) The Governor had no direct role in deciding whether to grant or deny parole to an incarcerated individual, other than to request that the full Board sitting in bank review a parole decision (§ 3041.1) or revoke parole (§ 3062).

The constitutional authority of the Governor to reverse a grant of parole by the Board was limited to the fundamentally distinct power to grant a reprieve, pardon, or commutation. (*In re Fain, supra,* 145 Cal.App.3d at p. 548; see Cal. Const., art. V., § 8, subd. (a).) By adding subdivision (b) to section 8 of article V, the California voters conferred upon the Governor constitutional authority to review the Board's decisions concerning the parole of individuals who have been convicted of murder and serving indeterminate sentences for that offense.

Prior to the addition of subdivision (b), the American Civil Liberties Union ("ACLU") opposed this expansion of the Governor's role in parole decisions because it raised "serious questions of due process and equal protection by attempting to create a different standard for persons convicted of celebrated or notorious crimes." (Exh. 8, [arguments in opposition to SCA 9].)

The ACLU further opposed the proposal as adding a supplemental level of executive authority not in existence at the time the individual committed and subsequently convicted of a criminal offense and argued against expanding the Governor's role in this way because it "improperly attempts to override the neutrality and expertise of the parole authority." As relevant here, the ACLU further argued,

> Decisions made by the granting authority would be provisional for the 30-day term during which the state executive may find it expedient to unilaterally disregard or disaffirm the initial decision. Such revisions by a Governor could easily result from political or popular influences that, properly, are not

> considered by the parole authority. This factor alone would allow subjective and often irrelevant or irrational concerns to override carefully considered factual judgments.

(Exh. 8, [arguments in opposition to SCA].)

This prescient concern has materialized in Ms. Van Houten's case. The Governor's four parole reversals in Ms. Van Houten's case that were based on a lack of evidence and improper application of the relevant law, violated equal protection by creating a class of inmates convicted of infamous murders who are judged more harshly by the Governor.

The Fourteenth Amendment to the United States Constitution and article I, section 7 of the California Constitution guarantee all persons the equal protection of the laws. (*In re Williams* (2020) 57 Cal.App.5th 427, 433.) Persons who are similarly situated with respect to a law's legitimate purposes must be treated equally. (*People v. Brown* (2012) 54 Cal.4th 314, 328.) Equal protection of the law is denied only where no rational relationship exists between the disparity of treatment and a legitimate governmental purpose. (*People v. Turnage* (2012) 55 Cal.4th 62, 74.)

In evaluating a claimed equal protection violation, courts undertake de novo review in answering two questions to decide whether a statutory distinction is so devoid of even minimal rationality that it violates equal protection. (See *People v. Laird* (2018) 27 Cal.App.5th 458, 469.) First, it must be determined if the state has adopted a classification affecting two or more groups that are similarly situated in an unequal manner. (*People v.*

Chatman (2018) 4 Cal.5th 277, 289.) Here, article V, section 8, subdivision (b) of the California Constitution has resulted in the creation of a class of inmates convicted of high profile, notorious murders whose grants of parole by the Board are reversed by the Governor as a result of political or popular influences that, properly, are not considered by the parole authority. This allows subjective and often irrelevant or irrational concerns to override carefully considered factual judgments by the Board. The first step of an equal protection argument is satisfied in this case.

Second, an equal protection claim is successfully stated if the challenged classification of a similarly situated group bears no relationship to a legitimate state purpose under "rational basis" scrutiny. (*People v. Love* (2020) 55 Cal.App.5th 273, 287–288.) This second element is met because there can be no legitimate purpose to disregard the applicable standard for assessing parole suitability based on the subjective and irrelevant concern over currying public favor by an elected official. Although "'rational basis scrutiny" is exceedingly deferential, it is met in this case because it is not possible to conceive of a rational reason for the resulting differential treatment between rehabilitated inmates who qualify for release to parole under the governing legal standard, but who are denied parole because a contrary finding would be unpopular with the voting citizenry.

At the parole suitability hearing, Debra Tate described the petition she initiated to "to keep Ms. Van Houten in prison until she dies." She claimed the petition garnered 170,000 signatures

with 28,000 adding written comments. (Exh. 3, at p. 102.)[14] It is reasonable to infer that this great number of voters opposing parole influenced Governor Newsom's decision to reverse Ms. Van Houten's parole despite no evidence of a current risk to public safety.

Governor Newsom's reversal of parole in this case must be reversed for the additional reason that it violated Ms. Van Houten's rights of equal protection under the law.

CONCLUSION

The real reason for the Governor's reversal is the name Charles Manson. Although Manson has since passed away, Ms. Van Houten continues to carry the brand of a despicable criminal who deceived her and so many others.

Because all of the evidence indicates Ms. Van Houten is not currently an unreasonable risk to public safety if placed on supervised parole, no matter what standard is applied, it is respectfully requested this Honorable Court grant the requested relief.

Dated: May 6, 2022

Respectfully submitted,

_____

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[14] The record contains a transcription error stating the petition has "170" signatures.

CERTIFICATE OF WORD COUNT

The text of this brief consists of 30,147 words as counted by the Corel WordPerfect version 10 word processing program used to generate this brief.

Dated: May 6, 2022

By: _____

Nancy Tetreault
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DECLARATION OF SERVICE

I, the undersigned, declare: I am over the age of eighteen years and not a party to the cause; I am employed in the County of Los Angeles, California, and my business address is 346 N. Larchmont Boulevard, Los Angeles, . I caused to be served the **PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS** by placing copies thereof in a separate envelope addressed to each addressee in the attached service list.

I then sealed each envelope and with the postage thereon fully prepaid, I placed each for deposit in the United States mail, at Los Angeles, California, on May 6, 2022.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 6, 2022, at Los Angeles, California.

_____
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