No. S269691

In the Supreme Court of California

JON B. EISENBERG,

Petitioner,

v.

COURT OF APPEAL FOR THE THIRD APPELLATE DISTRICT, JUSTICE VANCE W. RAYE in His Official Capacity as Administrative Presiding Justice of the Court of Appeal for the Third Appellate District, AND JUDICIAL COUNCIL OF CALIFORNIA,

Respondents.

PRELIMINARY INFORMAL RESPONSE OF THIRD APPELLATE DISTRICT AND PRESIDING JUSTICE RAYE TO PETITION FOR WRIT OF MANDATE

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APP-008

COURT OF APPEAL APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER: S269691
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: 173263 NAME: Raymond A. Cardozo FIRM NAME: REED SMITH LLP STREET ADDRESS: 101 Second Street, Suite 1800 CITY: San Francisco STATE: CA ZIP CODE: 94105 TELEPHONE NO.: 415.543.8700 FAX NO.: 415.391.8269 E-MAIL ADDRESS: rcardozo@reedsmith.com ATTORNEY FOR (*name*): Respondents Court of Appeal for the Third Appellate District, et al.	SUPERIOR COURT CASE NUMBER:
APPELLANT/ PETITIONER: Jon B. Eisenberg RESPONDENT/ REAL PARTY IN INTEREST: Court of Appeal for the Third Appellate District, et al.	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS (*Check one*): [X] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE	

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Date: August 9, 2021

Raymond A. Cardozo
(TYPE OR PRINT NAME)

(SIGNATURE OF APPELLANT OR ATTORNEY)

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I.
INTRODUCTION

The petition for writ of mandate rests on the claim that Code of Civil Procedure section 44 ("section 44") imposes a mandatory ministerial duty on the Court of Appeal to put all "fully briefed criminal appeals on the next available calendar" (Petition at p. 26). This claim fails as a matter of law. As this Court's precedents confirm, and as separation of powers constitutional limits mandate, section 44's provisions are directory, not mandatory. Moreover, the statute does not even direct the actions that petitioner seeks to compel.

Accordingly, this Court should summarily deny the petition. First, petitioner must demonstrate standing to seek relief. In support, he argues that section 44 imposes a "public duty" on the Third District and hence gives rise to a "public right," enjoyed by petitioner and others, to enforce that "public duty" via mandate. But section 44 is directory only. As such, it imposes no such "public duty."

In addition to having to demonstrate standing, petitioner must also demonstrate eligibility for relief. In support, he argues that section 44 imposes a "ministerial duty" on the Third District. But again, the statute is directory only, so it does not impose the ministerial duty petitioner alleges.

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Similarly, petitioner also lacks standing to bring the due process claims that he asserts. Those individualized claims are case-specific, and those record-specific contentions may be raised only by the appellant in each proceeding, each of whom presumably is represented by other counsel. Moreover, petitioner not only lacks standing to bring those claims, but he misinterprets the relevant due process inquiry in any event.[1]

II.
REASONS TO SUMMARILY DENY THE PETITION

A. Section 44 Is Directory Not Mandatory

From 1887, when the Legislature first enacted section 44's oldest predecessor, until 1982, when the Legislature amended the statute into its current form, section 44 has granted "preference" on appeal to an increasing number of classes of civil cases, beginning with "probate proceedings," then adding "contested election cases," and finally adding specified "actions for libel or

---

[1] Petitioner asserts, "[c]urrently, the Court of Appeal for the Third Appellate District has yet to calendar at least 66 appeals that have been fully briefed for 12 to 41 months." (Petn. at p. 7.) His assertion is irrelevant, and his petition should be summarily denied based on the points of law discussed below. Nevertheless, the petition is incorrect. Currently, out of 2,539 criminal appeals that have been fully briefed since 2018, out of the 66 cases petitioner references, many have been decided or an oral argument waiver letter has been sent. (Schooley Decl., ¶¶ 4-5 & Ex. A.) Each one of those cases has its own record, its own legal issues, and other case-specific circumstances that bear on its calendaring for oral argument.

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slander" by a holder of or candidate for elective public office. But section 44 has never directed the court of appeal to place criminal cases on an oral argument calendar in the manner petitioner demands. Instead, section 44 has apparently assumed that appeals in "cases in which the people of the state are parties" will generally be placed on calendar before other cases and then provides that "probate proceedings," "contested election cases," and specified "actions for libel or slander" by a holder of or candidate for elective public office will be placed on calendar "next after cases in which the people of the state are parties."

The predecessor of section 44 was former Code of Civil Procedure section 57 (former section 57), which the Legislature added by the Statutes of 1887, chapter 73, section 1, and provided: "Appeals in probate proceedings shall be given preference in hearing in the Supreme Court, and be placed on the calendar in the order of their date of issue, next after cases in which the people of the State are parties."

The Legislature amended former section 57 by the Statutes of 1903, chapter 62, section 1, to provide: "Appeals in probate proceedings *and contested election cases* shall be given preference in hearing in the *s*upreme *c*ourt, and be placed on the calendar in the order of their date of issue, next after cases in which the people of the State are parties." (Italics indicating amendment.)

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The Legislature amended former section 57 further by the Statutes of 1933, chapter 743, section 7, to provide: "Appeals in probate proceedings shall be given preference in hearing in the Supreme Court, *and in the District Courts of Appeal when transferred thereto. Appeals in contested election cases shall be given like preference in the District Courts of Appeal, and in the Supreme Court when transferred thereto. All such cases shall* be placed on the calendar in the order of their date of issue, next after cases in which the people of the state are parties." (Italics indicating amendment.)

Then, in 1967, the Legislature renumbered former section 57 as section 44 and amended it by the Statutes of 1967, chapter 17, section 6, to provide: "*Appeals in probate proceedings and in contested election cases shall be given preference in the courts of appeal, and in the Supreme Court when transferred thereto.* All such cases shall be placed on the calendar in the order of their date of issue, next after cases in which the people of the state are parties." (Italics indicating amendment.)

Finally, the Legislature amended section 44 into its current form by the Statutes of 1982, chapter 1642, section 1, to provide: "Appeals in probate proceedings, in contested election cases, *and in actions for libel or slander by a person who holds any elective public office or a candidate for any such office alleged to have occurred during the course of an election campaign* shall be given preference in hearing in the courts of appeal, and in the Supreme

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Court when transferred thereto. All these cases shall be placed on the calendar in the order of their date of issue, next after cases in which the people of the state are parties." (Italics indicating amendment.)

Under section 44, the granting of any "preference" on appeal to criminal cases does not impose any time or similar limitation on the Court of Appeal in selecting cases for placement on calendar. That is because section 44, like all statutes purportedly requiring calendar preference, is directory only.

In 2010, this Court, in *People v. Engram* (2010) 50 Cal.4th 1131, 1146-1148, explained that the separation-of-powers doctrine compels that conclusion. *Engram* rejected a claim that Penal Code section 1050 (providing, "criminal cases shall be given precedence over ... any civil matters or proceedings") compelled the Riverside County Superior Court to set for trial all criminal cases prior to the trial of civil cases. (*Id.* at p. 1137.) *Engram* explained that although the Legislature has authority to regulate appeals, the separation of powers precludes the Legislature from promulgating rules affecting matters fully within the courts' inherent authority, such as former section 57 of the Code of Civil Procedure (now section 44). (*Id.* at pp. 1146-1148.)

In so concluding, this Court relied in part on *Brydonjack v. State Bar* (1929) 208 Cal. 439, noting: "As this court observed in *Brydonjack v. State Bar* (1929) 208 Cal. 439, 442 [281 P. 1018]

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(*Brydonjack*): 'Our courts are set up by the Constitution without any special limitations; hence the courts have and should maintain vigorously all the inherent and implied powers necessary to properly and effectively function as a separate department in the scheme of our state government.'" (*People v. Engram, supra*, 50 Cal.4th at p. 1147.) In this Court's words:

> A few years after the *Brydonjack* decision, this court, in *Lorraine v. McComb* (1934) 220 Cal. 753 [32 P.2d 960] (*Lorraine*), had occasion to address the interplay of legislative and judicial authority with respect to the calendaring and processing of pending judicial proceedings in considering the validity and proper interpretation of a recently enacted statutory provision ....
>
> [¶] ... In response to the parties' claim that the newly enacted statute ... eliminated the trial court's authority and discretion in this regard, the court in *Lorraine*, after citing *Brydonjack*, explained that if the statute in question were interpreted as imposing an inflexible and obligatory restriction upon a court's authority, the constitutionality of the statute would be questionable. (*Lorraine*, at p. 756.) ...

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> [¶] In light of the inherent, constitutionally grounded authority conferred upon the courts to control the order of business before them, the court in *Lorraine* concluded that '[w]e cannot ascribe to the legislature the intent to make the action of the parties compulsory upon the court in each instance. *[The statute's] provisions must be held directory* and on a par with such statutes as section 632 of the Code of Civil Procedure, which requires the court, on trial of a question of fact, to make and file its written decision within thirty days after submission of the cause to it; or section 634 of the Code of Civil Procedure which purports to require the trial judge to delay signing findings for five days after service of proposed findings . . . . [¶] *In further illustration of the trend of the courts respecting statutes of this class could be cited a long list . . . such as section 57 of the Code of Civil Procedure, providing for preference on the calendars of appellate courts*, of appeals in probate proceedings and contested election cases, or section 1264 of the Code of Civil Procedure, providing for preference on the calendar for trial of eminent domain cases.' (*Lorraine, supra*, 220 Cal. at p. 757.)

(*People v. Engram, supra*, 50 Cal.4th at pp. 1147-1148, italics added, fn. omitted. See also *Verio Healthcare, Inc. v. Superior*

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Court (2016) 3 Cal.App.5th 1315, 1328-1330 [statutes purporting to compel courts to grant continuances in specified circumstances would be unconstitutional unless construed to be directory rather than ministerial]; *In re Shafter-Wasco Irr. Dist.* (1942) 55 Cal.App.2d 484, 485-486, 488-489 [statute requiring certain appeals to be "heard and determined within three months after the taking of such appeal" held to be directory, not mandatory].)

In *Briggs v. Brown* (2017) 3 Cal.5th 808, this Court restated and adhered to this line of authority, including *Brydonjack*, *Garrison v. Rourke* (1948) 32 Cal.2d 430, and *Lorraine v. McComb* (1934) 220 Cal. 753. *Briggs* observed that a statute imposing " '[a] time limitation for the court's action in a matter subject to its determination is not mandatory (regardless of the mandatory nature of the language), unless a consequence or penalty is provided for failure to do the act within the time commanded.' " (*Briggs*, *supra*, 3 Cal.5th at p. 849 [quoting *Garrison*, *supra*, 32 Cal.2d at pp. 435-436].) Such a directive "is properly construed as an exhortation to the parties and the courts to handle cases as expeditiously as is consistent with the fair and principled administration of justice." (*Id.* at pp. 858-859.) That is because " 'a court has both the inherent authority and responsibility to fairly and efficiently administer all of the judicial proceedings that are pending before it, and that one important element of a court's inherent judicial authority in this regard is "the power … to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel,

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and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance." ' " (*Briggs*, *supra*, 3 Cal.5th at p. 852 [quoting *Engram*, *supra*, 50 Cal.4th at p. 1146, quoting in turn *Landis v. North American Co.* (1936) 299 U.S. 248, 254-255].)

Thus, in granting any "preference" on appeal to criminal cases, section 44 is not mandatory, but is directive only. And because it is directive only, section 44 is merely an exhortation to the Court of Appeal to handle criminal cases as expeditiously as is consistent with the fair and principled administration of justice. The absence of any such mandate in the statute preserves the Court of Appeal's inherent authority and responsibility to fairly and efficiently administer the proceedings before it, including its power to control its docket, and allows the Court of Appeal to exercise its judgment by weighing competing interests and maintaining an even balance.[2]

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[2] It is true, as Petitioner states (Petn. at p. 15), that, in *Abdullah B. v. Superior Court* (1982) 135 Cal.App.3d 838, 844 (1982), the Court of Appeal stated that, under section 44, "[a]dult criminal appeals receive priority because they are cases 'in which the people of the state are parties.' " But that statement was dictum. The issue addressed in that decision—and resolved in the negative—was whether a "juvenile is ... entitled to pretrial review of a suppression ruling made by the juvenile court." (*Id.* at p. 839.) In addition, the statement was not supported by reason or authority, and did not hold that the court of appeal must calendar argument as petitioner demands.

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To borrow a word from petitioner (Petn. at p. 22), this Court "presaged" the conclusion that, in granting any "preference" on appeal to criminal cases, section 44 is not mandatory but is directive only, almost 90 years ago in *Lorraine.* There, the Court concluded that section 595 of the Code of Civil Procedure, which then provided that, "[i]n all cases, the court shall postpone a trial, or the hearing of any motion or demurrer, for a period not to exceed thirty days, when all attorneys of record of parties who have appeared in the action agree in writing to such postponement," was directive only. (220 Cal. at p. 757.) In so concluding, the Court noted the existence of other statutory provisions that were not mandatory but directive only, including "[former] section 57 of the Code of Civil Procedure, providing for preference on the calendars of appellate courts" (*ibid.*). Former section 57, of course, was the predecessor of section 44.

B. This Court Should Summarily Deny The Petition Because Petitioner Lacks Standing And His Petition Lacks Merit

To be eligible to seek relief, a petitioner must show that he or she has standing—i.e., a " 'beneficial interest' in the outcome of [the] case." (*Municipal Court v. Superior Court* (1993) 5 Cal.4th 1126, 1130; *see also id.* at p. 1132 ("*Municipal Court*").) In the absence of that showing, the petitioner must show that he or she can at least assert a cognizable "public interest" in the vindication and enforcement of a "public duty" and a "public

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right." (*Id.* at p. 1132.) The petitioner bears the burden to make these showings. (See *ibid.*)

Petitioner does not and cannot claim any "special interest to be served or ... particular right to be preserved or protected over and above the interest held in common with the public at large" (*Carsten v. Psychology Examining Com.* (1980) 27 Cal.3d 793, 796) in the Third District's administration of appeals.

Instead, petitioner claims he has a "public interest" in the enforcement of the Third District's and Presiding Justice Raye's supposed "public duty" under section 44, and his supposed correlative "public right" under that statute (Petn. at 8-9), to accord "calendar preference to *every* criminal appeal" and put all "fully briefed criminal appeals on the next available calendar" (*id.* at p. 26 [italics added]). This claim fails because, as shown section 44 is directory, not mandatory. Thus, it does not impose any such "public duty" and hence does not grant petitioner any such correlative "public right."

When a petitioner "lacks standing to bring [a] petition," a court should summarily deny the petition without "address[ing] the merits .... 'In general, California courts have no power in mandamus ... to render advisory opinions ....' " (*Municipal Court, supra,* 5 Cal.4th at p. 1132.) Accordingly, this Court should summarily deny his petition.

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Independently and alternatively, the Court should summarily deny the petition based on its lack of merit. "To obtain relief, a petitioner must demonstrate," among other things, "a clear, present ... ministerial duty on the part of the respondent" and "a correlative clear, present and right in the petitioner to the performance of that duty." (*People v. Picklesimer* (2010) 48 Cal.4th 330, 340 [ellipsis original, internal quotation marks omitted].) "A ministerial duty is an obligation to perform a specific act in a manner prescribed by law whenever a given state of facts exists, without regard to any personal judgment as to the propriety of the act." (*Ibid.*) "It is settled that mandamus will not lie to control the discretion of a court or judicial officer or to compel its exercise in a particular manner, except in those rare instances when under the facts it can be legally exercised in but one way [citations]." (*City of Torrance v. Superior Court* (1976) 16 Cal.3d 195, 201-202.) "This limitation is fundamental, and implicit in the provisions of our state Constitution governing writ jurisdiction." (*Briggs v. Brown, supra,* 3 Cal.5th at pp. 856-857 (citing *Modern Barber Col. v. Cal. Emp. Stab. Com.* (1948) 31 Cal.2d 720, 731).)

As noted, section 44 does not impose a "clear, present ministerial duty" on the Third District and Presiding Justice Raye to grant preference to every criminal appeal and place all fully briefed criminal appeals on the "next available calendar." (Petn. at pp. 15, 26.) As shown, section 44 simply directs the court of appeal to handle criminal cases as expeditiously as is

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consistent with the fair and principled administration of justice. Since the courts of appeal retain discretion under the statute, mandate will not lie to compel the Third District and Justice Raye to exercise that discretion in the manner that petitioner demands. Accordingly, the petition fails on the merits.

C. Petitioner's Due Process And "Presaging" Arguments Do Not Make Up For His Lack Of Standing And His Petition's Lack Of Merit

Petitioner raises two additional arguments in an attempt to stave off a summary denial of his petition.

1. Petitioner's Due Process Argument Fails

Petitioner argues that, under *Harris v. Champion* (10th Cir. 1994) 15 F.3d 1538 (*"Harris II"*), a subsequent appeal in federal habeas corpus litigation, "delay in adjudicating a noncapital criminal appeal for more than two years after filing of the notice of appeal ... 'gives rise to a presumption that the state appellate process is ineffective.' " (Petn. at p. 16.) (The petition also cites, without discussion, *U.S. ex rel. Green v. Washington* (N.D. Ill. 1996) 917 F.Supp. 1238, 1277, which follows *Harris II*. (Petn. at p. 16).)

But *Harris II* applies a case and fact-specific analysis, and petitioner lacks standing to make this due process claim.

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For purposes of whether a federal habeas corpus petitioner has exhausted state remedies, *Harris II* does "conclude that delay in adjudicating a direct criminal appeal beyond two years from the filing of the notice of appeal gives rise to a presumption that the state appellate process is ineffective." (15 F.3d at 1556.) Therefore, held the *Harris II* court, the requirement that a habeas corpus petitioner must exhaust state remedies should presumptively be excused, when a petitioner's direct criminal appeal has been pending for two years without resolution absent a constitutionally sufficient justification by the State." (*Ibid.*)

Harris II then goes on to articulate a case-specific balancing test for determining whether delay in adjudicating a noncapital criminal appeal violates the appellant's due process rights. A court "must balance the following factors: [¶] a. the length of the delay; [¶] b. the reason for the delay and whether that reason is justified; [¶] c. whether the [appellant] asserted his right to a timely appeal; and [¶] d. whether the delay prejudiced the [appellant] by [¶] i. causing the [appellant] to suffer oppressive incarceration pending appeal; or [¶] ii. causing the [appellant] to suffer constitutionally cognizable anxiety and concern awaiting the outcome of his or her appeal; or [¶] iii. impairing the [appellant's] grounds for appeal or his or her defenses in the event of a reversal and retrial." (15 F.3d at p. 1559.) Under *Harris II*, the appellant "must make some showing" of "prejudice ...to establish a due process violation." (*Ibid.*)

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Subsequently, in *Harris v. Champion* (10th Cir. 1995) 48 F.3d 1127, 1132 ("*Harris III*")—a later opinion arising out of the same federal habeas litigation—the Tenth Circuit explained its earlier decision as follows:

> We also established a rebuttable presumption that the state appellate process will be deemed ineffective if the state has been responsible for a delay of more than two years in adjudicating the petitioner's direct criminal appeal. *Id.* at 1556. Thus, we held that a federal court ordinarily can excuse exhaustion and hear the merits of the petitioner's federal claims if the petitioner's direct appeal has been delayed more than two years by the state. *Id.* at 1556-57. We also held that if the delay is sufficiently excessive, it may give rise to a presumption of prejudice that will establish a separate due process violation for the delay in resolving the petitioner's direct appeal, but that otherwise, the petitioner must make a particularized showing of actual prejudice. *Id.* at 1564-65. We did not, however, establish at what point prejudice because of appellate delay will be presumed. Our experience since *Harris II* now leads us to hold that a presumption of such prejudice will arise when delay in adjudicating the appeal attributable to the state exceeds two years. As in the exhaustion context, this

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> presumption is a rebuttable one. *See id.* at 1556. Under appropriate circumstances, the district court may apply the more fact specific analysis set forth in *Harris II*, 15 F.3d at 1554-56, either to find prejudice at an earlier stage or to find the absence of prejudice even under circumstances of substantially greater appellate delay.

Harris III, *supra*, 48 F.3d at p. 1132.

Accordingly, the due process claim is a fact-specific claim available to an appellant in a criminal case to be made upon the record applicable in that individual case. It is unclear from the above whether or under what circumstances this Court would apply a rebuttable presumption of prejudice in a proper case brought by such an appellant in a criminal case. For example in *People v. Horton* (1995) 11 Cal.4th 1068, a death penalty appeal, this Court declined to apply a presumption of prejudice from appellate delay, stating:

> Defendant contends the fact that certification and preparation of the record spanned eight years (the certified record was filed on July 16, 1993) violated his right to due process of law under the federal and state Constitutions, among other rights. In some circumstances, excessive delays in the appellate process may give rise to a denial of due

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> process. (*United States v. Loud Hawk* (1986) 474 U.S. 302, 313-314; *Coe v. Thurman* (9th Cir. 1990) 922 F.2d 528, 530.) Defendant fails, however, to demonstrate any actual prejudice as a result of the delay, such as an impairment of grounds on appeal, but simply alleges the possibility or potential for harm. Thus, his constitutional claim must fail. (*Coe v. Thurman*, supra, 922 F.2d at p. 530; see *United States v. Loud Hawk*, supra, 474 U.S. at p. 31]."

People v. Horton, supra, 11 Cal.4th at p. 1141.

This Court need not decide whether or under what circumstances a rebuttable presumption of prejudice might arise because petitioner lacks standing to make this argument and does not even attempt to show otherwise. The defendants in the cases petitioner cites presumably are represented by other counsel, not petitioner. Petitioner claims no "beneficial interest" and asserts no cognizable "public interest" in the vindication and enforcement of a "public duty" and a "public right." The legal standard in *Harris II* and *Harris III*, by its terms, is case-specific and record-specific. Accordingly, only those individuals in a proper case who can raise a colorable claim under that standard have standing to raise such an individualized due process claim. Each appellant must seek relief him- or herself, and each appellant must make the requisite showing to obtain it.

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2. The "Presaging" Argument Also Fails

Petitioner also argues that, forty years ago—when Presiding Justice Raye was Senior Assistant Attorney General for Legislative Affairs—he "presaged" what petitioner claims is the Third District's "systematic" failure to accord "preference" on appeal to criminal cases. (Petn. at pp. 18-22.) Allegedly, then-Senior Assistant Attorney General Raye did so by urging the Legislature to support the Attorney General's proposal to curb the unconditional right to appeal in criminal cases and/or to provide a mechanism for summary affirmance. (*Id.* at pp. 22-25.)

Putting aside the lack of any showing that the Third District has "systematically" denied "preference" to criminal appeals in violation of section 44, petitioner's claim that Presiding Justice Raye "presaged" that supposed "systematic" denial is meritless. Forty years ago, Senior Assistant Attorney General Raye did for the Attorney General what every lawyer does daily for his or her clients—advocate for a position he was engaged to further. Acting in that capacity and advocating a position did not "presage" any action or intent four decades later in a distinct, non-advocacy, judicial role. Presiding Justice Raye has not denied any criminal appellant the right to appeal or summarily affirmed the judgment from which any criminal appellant appealed. The petition fails to demonstrate otherwise.

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III.
CONCLUSION

This Court should summarily deny the petition for writ of mandate.

DATED: August 6, 2021.

Respectfully submitted,

REED SMITH LLP

By /s/ Raymond A. Cardozo
Raymond A. Cardozo

Attorneys for Respondents Court of Appeal for the Third Appellate District and Presiding Justice Vance W. Raye in His Official Capacity as Administrative Presiding Justice of the Court of Appeal for the Third Appellate District

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WORD COUNT CERTIFICATE

The foregoing Preliminary Response of Third Appellate District and Presiding Justice Raye to Petition for Writ of Mandate contains 4,183 words (including footnotes, but excluding the certificate, tables, and signature block).

In preparing this certificate, I have relied on the word count generated by Microsoft Word for Microsoft Office Professional Plus 2016, the computer program used to prepare the document.

Dated: August 9, 2021.

/s/ Raymond A. Cardozo
Raymond A. Cardozo

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PROOF OF SERVICE

Jon B. Eisenberg v. Court of Appeal for the Third Appellate District, et al.;
California Supreme Court No. S269691.

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. I am employed in the office of a member of the bar of this court at whose direction the service was made. My business address is REED SMITH LLP, 101 Second Street, Suite 1800, San Francisco, CA 94105-3659. On August 9, 2021, I served the following document(s) by the method indicated below:

PRELIMINARY INFORMAL RESPONSE OF THIRD APPELLATE DISTRICT AND PRESIDING JUSTICE RAYE TO PETITION FOR WRIT OF MANDATE

DECLARATION OF TIMOTHY M. SCHOOLEY; EXHIBITS

☐	by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in this Declaration.
☑	by causing e-service through TrueFiling to the parties listed below

Jon B. Eisenberg, 509 Tucker Street Healdsburg, CA 95448	Petitioner, In Pro Per Tel: 707.395.0111 jon@eisenbergappeals.com

I declare under penalty of perjury under the laws of the United States that the above is true and correct. Executed on August 9, 2021, at Richmond, California.

/s/ Eileen Kroll
Eileen Kroll

Document received by the CA Supreme Court.