EXPLANATORY STATEMENT – PROPOSED DEATH PENALTY CLEMENCY ACTION

Governor Gavin Newson has decided to exercise his constitutional authority to commute all California death sentences to sentences of life imprisonment without the possibility of parole. The Governor requests the Court's recommendation as required by article V, section 8, subdivision (a), of the California Constitution for the 382 condemned persons convicted of more than one felony.

This statement provides information regarding the nature and scope of the proposed clemency action, the authority under which the Governor proceeds, and a description of the records and information he reviewed and relied upon.

The Proposed Clemency Action

The proposed clemency action will confer the same unconditional commutation on every condemned person: a sentence of life imprisonment without the possibility of parole. Following a grant of clemency, the proposed recipients will remain in prison and ineligible for parole.[1] The commutation will apply only to the death sentence imposed. It will not change any other aspect of the underlying conviction or sentence and will leave in place all restitution orders.

The Governor's Constitutional Clemency Authority

California's clemency authority is firmly rooted in America's history and traditions. An executive's authority to grant clemency in criminal cases has been exercised from "time immemorial." (*United States v. Wilson* (1833) 32 U.S. 150, 160 [maj. opn. of Marshall, C.J.].) In 1833, Chief Justice John Marshall described executive clemency as "an act of grace, proceeding from the power entrusted with the execution of the laws." (*Ibid.*) The "power of the Governor to grant pardons and commutations" under article V, section 8, of the California Constitution "is absolute" (*Ex parte Kelly* (1908) 155 Cal. 39, 41) and may be "withheld entirely or granted upon such reasonable conditions, restrictions and limitations as the governor may think proper" (*Ex parte Collie* (1952) 38 Cal.2d 396, 398). The Governor's clemency authority is therefore "plenary" and "exclusive"; it "may be granted for any reason without reference to any standards." (*Santos v. Brown* (2015) 238 Cal.App.4th 398, 418–419.)

[1] The intended recipients will be ineligible for commutation review pursuant to California Code of Regulations, title 15, division 2, section 2843, subdivision (b)(6), because they will have previously "received a commutation of sentence during their current term of incarceration."

The Constitutional Authority for Universal Clemency

The Governor's proposed act of universal clemency—to commute all California death sentences to sentences of life imprisonment without the possibility of parole—fits comfortably within California's executive clemency authority. (See *People v. Blocker* (2010) 190 Cal.App.4th 438, 443 & fn. 3 [discussing the pardon power and recognizing that a "single pardon can extend to a group"]; see also *Way v. Superior Court* (1977) 74 Cal.App.3d 165, 177 [the power to grant a general pardon or commutation belongs exclusively to the Governor].)

The proposed action follows a long tradition, in California and other jurisdictions, of universal clemency. United States presidents have issued universal clemency since "very quickly after the founding of the nation," when President George Washington issued clemency on a universal basis to participants in the Whiskey Rebellion. (See *Marteeny v. Brown* (2022) 321 Or. App. 250, 264–265.) Five years later, President Adams issued universal clemency to participants in a rebellion against a federal tax. (*Id.* at p. 265.) And in 1858, President Buchanan broadly pardoned "the Mormon residents of Utah for crimes committed over the previous year in an escalating series of incidents that came to be known as the Utah War." (*Ibid.*) In total, presidents have issued at least 13 universal clemency grants to groups of condemned people. State governors have utilized similar authority. For example, following the repeal of statutes prohibiting possession of alcohol, then-California Governor James Rolph issued a general clemency grant applicable to hundreds of Californians sentenced under those statutes. (See Governor's Acts of Executive Clemency of California, 1932, p. 173; Governor's Acts of Executive Clemency of California, 1933–1935, pp. 16–17.) Governors in multiple states have issued at least 24 grants that universally commuted all, or nearly all, death sentences in their jurisdictions. (Notable Grants of Clemency | Death Penalty Information Center [as of Nov. 4, 2026].)

The Governor's authority to grant clemency does not depend on the existence of an application. Although article V, section 8, describes clemency as "[s]ubject to application procedures prescribed by statute," the procedures set forth in Penal Code section 4800 et seq. prescribe the process individuals must follow if they apply for clemency. They do not restrict how the Governor may exercise his broad constitutional authority to grant clemency. (See *Santos*, *supra*, 238 Cal.App.4th at p. 414 ["The legislative branch cannot curtail the executive branch's constitutional clemency power but can regulate the application and investigation process" for those submitting applications]; 33 Ops.Cal.Atty.Gen. 64, 65 (1959) [statutory application procedures "should not be construed as limitations on the Governor's pardoning power since to do so

would render them unconstitutional"].) Accordingly, the Governor has not reviewed, and will not review, any clemency applications submitted by or on behalf of the intended recipients of this proposed action.

The Governor's independent authority to grant clemency on his own prerogative and without an application was recognized in debates from California's constitutional convention that shaped the current provision on executive clemency. The framers of California's original executive clemency provision rejected language that would have "permitted rules and regulations on the Acts of the Governor" and would have allowed the Legislature to "regulate the manner of applying for pardons, *and the manner in which they shall be granted*." (See E.B. Willis and P.K. Stockton, *Debates and Proceedings of the Constitutional Convention of the State of California*, 1878–1879, Vol. 1, p. 355, italics added.) Instead, the clemency provision they adopted permits the Legislature only to "regulate the manner of *applying for* pardons." (*Ibid.,* italics added.) In the 1960s, when California's Constitutional Review Commission amended this clemency provision to its current language, it clarified that it "desired to make no substantive change affecting the balance of power between the Governor and the Legislature in this area." (Const. Rev. Comm'n, Barry D. Keene Memorandum regarding Article V revisions, Apr. 27, 1966.)

This Court's Clemency Review

Article V, section 8, of the California Constitution requires the Governor to obtain a recommendation of this Court, with at least four Justices concurring, before granting a pardon or commutation to any person with more than one felony conviction. The delegates from California's constitutional convention of 1878 and 1879 included this provision to "provide some check on the arbitrary use of the pardon power," such as issuing an improvident clemency grant to family, friends, or business associates, or basing a clemency decision on any other corrupt motive. (*Procedures for Considering Requests for Recommendations Concerning Applications for Pardon or Commutation* (2018) 4 Cal.5th 897, 899–900 [*Procedures*].) This Court has described its role under this provision as determining whether the act of clemency would constitute "an abuse of that power." (*Id.* at p. 897.)

This Court's recommendation under article V, section 8(a), does not reflect its "substantive view on the merit" of an act of clemency. (*Procedures*, *supra*, 4 Cal.5th at p. 897.) Its clemency recommendation is "not a recommendation that the Governor grant" clemency but rather an "acknowledgment that the Governor may legitimately consider granting the application in the exercise of the power conferred on him by article V." (*Id.* at p. 902.)

As the Governor has explained in an open letter to Californians, which is submitted with this statement, he is taking this action because he believes that "state-sanctioned killing is incompatible with California's values [and] undermines the foundations of our legal system." As such, the Governor believes that this action will "ultimately affirm the strength and integrity of our state and its justice system." These reasons for the Governor's actions, which apply equally to all death-sentenced persons, is neither arbitrary nor an abuse of power.

Clemency Records Submitted for the Court's Consideration

As part of this submission, the Governor provides a list of every condemned person convicted of more than one felony for whom the Governor seeks this Court's recommendation pursuant to article V, section 8.

The Governor is forwarding under separate cover the confidential state and federal summary criminal history information for the individuals in the above list. The Governor consulted these records for the limited purpose of determining which condemned persons have been "twice convicted" of a felony and therefore require the Court's recommendation under article V, section 8. The Governor requests that this summary criminal history information be lodged under seal.

To determine which condemned persons require the Court's recommendation, staff reviewed the summary criminal history records maintained by the California Department of Justice for every condemned person and identified those who sustained more than one felony conviction under California law, whether before or after imposition of their death sentence. Every condemned person with more than one felony conviction under California law is included on the accompanying list of intended clemency recipients who have been "twice convicted" under article V, section 8.

As for condemned persons with one only felony conviction under California law, staff reviewed their federal summary criminal history records to identify any felony convictions from other jurisdictions. Every condemned person who sustained a felony conviction outside of California is included on the accompanying list of intended recipients who have been "twice convicted" under article V, section 8.

This request for this Court's recommendation, unlike most of the Governor's past requests to this Court, includes no clemency applications for the reasons discussed above. The Governor did not consider information about their individual circumstances, apart from the facts that a death sentence was imposed in their cases and they have more than one felony conviction. For individualized clemency actions, the Governor usually reviews and submits to

this Court records about the recipient's rehabilitative gains and current public safety risk. Such records are not relevant to this universal clemency decision, particularly because the intended recipients will remain in prison following commutation and will be ineligible for release. Accordingly, the Governor has not reviewed such records.

Finally, the forwarded records do not include any recommendations or corresponding materials from the Board of Parole Hearings. While the Penal Code provisions governing individual applications require the involvement of the Board in specified circumstances (see Pen. Code, §§ 4802.5, 4812, 4813), there is no statute requiring Board review when the Governor proposes to act on his own initiative without an application. And because none of the intended recipients will be released from custody as a result of this proposed clemency action, the Board's expertise in assessing current public safety risk for possible release is not implicated by this action. (See Pen. Code, § 3040.)

Notice of Proposed Clemency Action

With support from the California Department of Corrections and Rehabilitation's Office of Victim and Survivor Rights and Services (Victim Services), the Governor's Office has made and continues to make efforts to identify all victims, survivors, and next of kin who would be directly impacted by this proposed action. Victim Services will provide all registered victims with notice of this proposed action and, upon issuance of the commutations, with information, support, and services.

When an individual seeking clemency submits an application to the Governor's Office, Penal Code section 4805 requires that the applicant provide notice of the application to the district attorney of the county of conviction. As noted previously, section 4805 does not apply when the Governor acts on his own initiative to grant clemency absent an application. Nevertheless, the Governor's Office will, upon submission of this request to the Court, voluntarily notify all California district attorneys and the Office of the Attorney General of the proposed action. The notice requests that prosecutors assist with notifying victims and providing instructions on how to register with the Office of Victim and Survivor Rights and Services to receive additional information and services.

The Governor is also providing a copy of this submission to the other agencies who represent people under sentence of death in California, including the Habeas Corpus Resource Center, the Office of the State Public Defender, the California Appellate Project, and California Offices of the Federal Public Defender.