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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

COMMISSION ON JUDICIAL PERFORMANCE,

Petitioner/Plaintiff,

vs.

ELAINE M. HOWLE, in her official capacity as CALIFORNIA STATE AUDITOR, and the CALIFORNIA STATE AUDITOR'S OFFICE,

Respondents/Defendants.

Case No. CPF-16-515308

STATE AUDITOR'S SUPPLEMENTAL BRIEF

Accompanying documents:

SUPPLEMENTAL DECLARATION OF STATE AUDITOR

DECLARATION OF SHERRI KAISER

REQUEST FOR JUDICIAL NOTICE

PROOF OF SERVICE

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I. CJP'S "ABSOLUTE" POSITION

In its Order Requesting Supplemental Briefing of August 24, 2017, this Court posed a question that goes to the heart of this dispute: what is the meaning of the word "confidential" in Article 6, §18(i) of the California Constitution?

At page 1 of its brief, CJP proclaims that " 'confidential' means absolutely confidential". This tautology does not help determine the meaning of "confidential". One does not use a word to define the same word. "A 'rose' is absolutely a rose" tells us nothing about the nature of a rose.

And what does "absolute" mean? CJP cites (three times) a cryptic sentence from a single case to support its claim of "absolute" confidentiality. In *Commission on Judicial Performance v. Superior Court* (2007) 156 Cal.App.4th 617, the court stated that "[t]he Commission's rule 102 provides that, except as stated in that rule, all nonpublic papers and proceedings are absolutely confidential." 156 Cal.App.4th at 622. This sentence was a comment on CJP's Rule, not on the meaning of "confidential" in Article 6, §18(i) of the California Constitution. And the court did not explain what it meant by "absolutely".

Nor does CJP does explain what it means by "absolute". Does "absolute" mean "no one except CJP may view these files"? No, because CJP's Rule 102 contains – by CJP's count – "sixteen limited exceptions". These exceptions allow a multitude of non-CJP government officials (including 49 out-of-state Governors) to examine CJP's supposedly confidential files. And to our knowledge, none of these officials are barred by law from releasing those files to the public and the media. Saying that Rule 102 provides for "absolute confidentiality" is akin to a school principal saying, "We have an absolutely zero-tolerance policy for all mind-altering drugs, subject to sixteen limited exceptions (for marijuana, painkillers, alcohol [etc.])".

It appears that CJP freely shares its files with other government officials, but wants this Court to define "confidential" in any way that allows CJP to keep its files away from the only government official assigned to question CJP's performance: the State Auditor. "Absolute" is simply CJP's way of saying that "CJP, and only CJP, is empowered to determine what the word 'confidential' in Article 6, §18(i) means". This assertion flies in the face of one of the most important principles underlying our democracy: our courts interpret the constitution. See *Marbury v. Madison* (1803) 1 Cranch 137.

In any event, the word "absolute" does not appear in Article 6, §18(i). The word "confidential" does appear, and that is the word we will focus upon, pursuant to this Court's request.

II. "CONFIDENTIALITY" IS INTENDED TO PREVENT DISSEMINATION OF DOCUMENTS TO THE PUBLIC, RATHER THAN EXAMINATION BY ANOTHER GOVERNMENT OFFICIAL PERFORMING HER STATUTORY DUTIES.

A. "Confidential" Means "Not Published".

California cases establish that "confidentiality" is intended to protect the identity of complainants and witnesses who might fear retaliation, and to protect the reputations of judges from meritless complaints. The cases hold that these purposes are served by barring the "publication" (or "announcement") of investigative files.

In *Mosk v. Superior Court* (1979) 25 Cal.3d 474, the Supreme Court stated: "Confidentiality protects judges from injury which might result from *publication* of unexamined and unwarranted complaints by disgruntled litigants or their attorneys or by political adversaries". *Id.* at 505-506; emphasis added; internal citation omitted.

More recently, in *Commission on Judicial Performance v. Superior Court*, *supra*, the court summarized "the rationale for the Commission's confidentiality rules" as follows:

> to encourage willing participation by witnesses, candor by judges, and to protect judges from the injury that might result from *the publication* of unexamined and unwarranted complaints by disgruntled litigants or their attorneys, all of which are essential to the Commission's success.
> [156 Cal.App.4th at 624; emphasis added.]

And again, the court stated:

> Confidentiality . . . protects judges from injury which might result from the *publication* of unexamined and unwarranted complaints by disgruntled litigants or their attorneys, or by political adversaries, and preserves confidence in the judiciary as an institution by avoiding premature *announcement* of groundless claims of judicial misconduct or disability.
> [156 Cal.App.4th at 622; emphasis added.]

What is "publication"? According to Black's Law Dictionary, "publication" means "necessarily a place devoted solely to the uses of the public, but a place which is in point of fact public

rather than private, a place visited by many persons and usually accessible to the public". Black's defines "publish" as "A way to communicate a document or information by way of media such as print, radio and television. A book or document that can be published for the benefit of readers or listeners." And Black's defines "public" as "Pertaining to a state, nation, or whole community; proceeding from, relating to, or affecting the whole body of people or an entire community. Open to all; notorious. Common to all or many; general; open to common use."

Thus, a breach of "confidentiality" occurs when documents are improperly released to "a place visited by many persons and usually accessible to the public".

B. The State Auditor Does Not "Publish" Confidential Files.

CJP has presented no evidence that the State Auditor plans to show CJP's confidential documents to the public, or to communicate those documents by way of any media. Indeed, despite their extensive experience with state agencies, CJP's counsel has presented no evidence that the State Auditor has *ever* "published" any confidential document held by *any* state agency.

At page 7 of its Response, CJP claims that "some risk exists" that the State Auditor will release CJP's confidential files as "public records". If this *could* happen, it probably *would have* happened, at least once, with some other agency, during the hundreds of audits conducted by the State Auditor's existence. But it never has – for reasons set out in the Declaration of State Auditor, at ¶¶ 45-57.

In any event, this claim is not ripe. The State Auditor holds an exit meeting with an audited agency before publishing her report. Declaration of State Auditor, at ¶¶ 77, 82. If CJP raises concerns about any intended release of confidential information that cannot be resolved at that meeting, that will be the time for CJP to sue.

C. "Publication" Does Not Include Examination By a Government Official Performing Her Statutory Duties.

The above definitions of "publication", "publish", and "public" cannot reasonably be read to encompass allowing another government official to examine a government agency's documents in the course of her duties. CJP has provided no authority holding that "confidentiality" means that a

government agency's file may not be examined by another government official performing her statutory duties. And we were unable to find such authority.

In *Commission on Judicial Performance v. Superior Court*, *supra*, after a judge denied defendant's motion to suppress evidence (which led to defendant's conviction), defendant moved for a new trial on the ground that the judge was biased. Defendant sought to subpoena all CJP records involving complaints against the judge. The trial court refused to quash the subpoena, and ordered the records produced for his *in camera* review. The court of appeal held that CJP's confidentiality rule barred such disclosure, because CPJ had not included the trial court in its exceptions to its confidentiality rule. The court held that "the superior court judge presiding over the proceedings in which the Commission's confidential records are requested has no more right to see the Commission's records than does any other member of the public." *Id.* at 625.

In that case, *no statute* directed or authorized the judge to see the Commission's confidential files. In the present case, however, *the Legislature has specifically directed* the State Auditor to review CJP's confidential files. Government Code § 8546.1, subd. (b), provides that "The California State Auditor *shall* conduct any audit of a state or local governmental agency or any other publicly created entity that is requested by the Joint Legislative Audit Committee." Emphasis added. And Government Code § 8545.2 *expressly allows* the State Auditor to review the confidential records of all agencies it audits. Subsection (a) provides that "Notwithstanding any other provision of law, the California State Auditor during regular business hours shall have access to and authority to examine and reproduce, any and all books, accounts, reports, vouchers, correspondence files, and all other records, bank accounts, and money or other property, of any agency of the state, whether created by the California Constitution or otherwise . . . ." And subdivision (b) provides that "No provision of law providing for the confidentiality of any records or property shall prevent disclosure pursuant to subdivision (a), unless the provision specifically refers to and precludes access and examination and reproduction pursuant to subdivision (a)."

CJP's Petition alleges that these statutes are "unconstitutional as applied to the State Auditor's attempts to review records which the CJP has made confidential in CJP Rule 102 pursuant to the express grant of authority in Cal. Const, Art. VI, § 18, subdivision (i) (1)."

But there is *no conflict* between CJP Rule 102 and the statutes. A breach of "confidentiality" occurs only when a document is "published". But the statutes do not authorize any breach of confidentiality, as they do not authorize the State Auditor to "publish" any CJP document to the public or via any media.

In addition, standard rules of interpretation prevent a construction that would bar the Legislature from enacting these statutes or applying them to CJP.

CJP relies on a single sentence in the State Constitution: "The commission may provide for the confidentiality of complaints to and investigations by the commission." Cal. Constitution, art. VI, subdivision (i)(l). CJP argues that this sentence empowers *only CJP* to deal with confidentiality, and prevents the Legislature from any involvement in the confidentiality issue. But no rule of interpretation deprives the Legislature of authority to act merely because the Constitution allows some agency to act in the same area. The law is just the opposite: the Legislature may act unless the Constitution "expressly or by necessary implication" prevents it from acting.

Constitutional limitations on the Legislature's powers "'*are to be construed strictly, and are not to be extended to include matters not covered by the language used'.*" *Ibid*; italics in original.[1] And all doubts must be resolved in favor of the Legislature's power to act. *Pacific Legal Foundation v. Brown* (1981) 29 Cal.3d 168, 180.[2]

The California Legislature has broad authority to exercise the entire legislative power of the State - *unless* the State Constitution "expressly or by necessary implication" *prohibits* it from doing so. *Pacific Legal Foundation v. Brown*, *supra*, 29 Cal.3d at 180.

No language in the Constitution "expressly" prohibits the Legislature from enacting statutes that address the confidentiality of CJP's files. The Constitution does *not* say "Only CJP may provide for confidentiality of its files" or "the Legislature may not enact statutes involving the confidentiality

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[1] See also *Schabarum v. California Legislature* (1998) 60 Cal.App.4th 1205, 1217 (the Legislature "may exercise any and all legislative powers which are not expressly or by necessary implication denied to it by the Constitution; *Methodist Hosp. of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 691 (same).

[2] See also *Tolman v. Underhill* (1950) 39 Cal.2d 708, 712 ("any doubt as to its paramount authority . . . will be resolved in favor of its action").

of CJP's files."

And there is no "necessary implication" for such a prohibition. Just the opposite. The Legislature has enacted a series of statutes designed to balance its need to assess the performance of state agencies with those agencies' need to keep certain files confidential. It is necessary to imply the Legislature's authority to apply these statutes to CJP, so the Legislature may intelligently decide whether to fund CJP or propose Constitutional changes to CJP's structure, while protecting the confidentiality of CJP's files.

In sum, the Legislature's statutes authorizing the State Auditor to review CJP's confidential files are constitutional, and the Auditor will not breach the confidentiality of those files.

D. Article 1, Section 3(a) of the Constitution Supports the Public's Right to an Audit of CJP.

In the present case, the *general* rules of interpretation discussed above must be supplemented by a more *specific* rule that applies to any reading that would limit the public's right to access CJP's records.

Article 1, Section 3(a) of the California Constitution was enacted in 1974. It provides: "The people have the right of access to information concerning the conduct of the people's business. . . ." And Article 1, Section 3(b) of the Constitution is more specific:

> A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

CJP argues that Art. VI, § 18, subdivision (i) (1), bestows on CJP the unbridled discretion to define "confidential" any way it likes and to keep any document it chooses from examination for any public purpose. This broad claim conflicts with "the people's right of access" to information about CJP's performance.

We do not contend that the people have the right of direct access to the contents of CJP's

confidential files, but they do have a right of access to a state audit of CJP's performance that is based, in part, on those files.

Also, the above provision allows limitations on the public's right of access only if the limitation is "adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest." When CJP adopted its Rule 102 in 1996, it failed to include any findings regarding any legitimate interest that would be served by barring the State Auditor from examining CJP's confidential files during an audit.

E. Legislative History.

At pages 3-6 of its brief, CJP summarizes its legislative history. While CJP insists – over and over – that this history shows a legislative intent to make confidentiality "absolute", CJP cites no legislative use of that word. And none of the history CJP recounts purports to define "confidentiality" as used in Article 6, §18(i). Indeed, none of that history states or suggests that Article 6, §18(i) was intended to permit CJP to withhold documents the State Auditor must examine in order to fulfill her duty to furnish an accurate report to the Legislature and the people.

We conducted extensive research into the legislative history of CJP. See accompanying Declaration of Sherri Kaiser. We found nothing in this history that provided any explicit definition of the word "confidential" in Article 6, §18(i)(1). However, there is some evidence that "confidentiality" was intended to keep certain documents from being "publicized" to the "public".

CJP was created in 1960 via Proposition 10. The argument in favor of the Senate bill that became Proposition 10 stated: "To avoid the unfairness of *publicizing* complaints of merely disgruntled litigants, proceedings before the commission will not be *public*, unless and until it recommends to the Supreme Court the removal or retirement of the judge." See p. 15 of Exhibit C to the concurrently filed Declaration of Sherri Kaiser; emphasis added.[3]

And there has been an ongoing legislative and judicial concern about CJP's longstanding penchant for misusing its "confidentiality" power to evade accountability. This concern sheds some

[3] Arguments in favor of ballot measures are relevant in determining the meaning of measures. *Legislature v. Eu* (1991) 54 Cal.3d 492, 504.

light on how our Legislature and courts have viewed CJP's claims that it has the exclusive right to define this word however it likes.

In 1988, the voters enacted Proposition 92, which required certain CJP proceedings to be open to the public. The ballot argument in favor of Proposition 92 stated: "Trouble is, the nine-member commission, including five judges and two attorneys, does its work in complete secrecy." The ballot argument also stated: "[E]very public official, no matter how high the office, must ultimately be accountable to the public. When the integrity of our courts comes under question, we can ill afford to be bound by a rule which concludes in every case that the public and the press are better off in the dark. Such absolute secrecy is the antithesis of democracy." See p. 58 to Exhibit F to the concurrently filed Declaration of Sherri Kaiser.

In 1994, Assembly Speaker Willie Brown sponsored Assembly Constitutional Amendment 46 ("ACA 46", which became Proposition 190, enacted by the voters in 1994). On June 15, 1994, the Assembly Committee on Judiciary issued its report on ACA 46, noting that proponents of the measure considered CJP's processes "impenetrably secret", and that this secrecy "permits judges to retaliate against complaining and cooperating witnesses." See pp. 4-5 of Exhibit I to the concurrently filed Declaration of Sherri Kaiser. Proponents believed that "The endemic secrecy at CJP reaches nearly pathological depths." *Ibid.*

Another analysis of ACA 46, prepared for the Assembly Floor, stated "In recent months the commission has come under fire in a number of newspaper articles. The main line of attack has been the secret nature of the commission proceedings." See Exhibit __ to the concurrently filed Declaration of Sherri Kaiser.

Attorney General Daniel E. Lundgren wrote a letter to the Assembly Judiciary Committee supporting ACA 46. See p. 3 Exhibit G to the concurrently filed Declaration of Sherri Kaiser. He noted that even though CJP was "an important client of this department", he was very troubled by CJP's "current system of secrecy". *Id.* at p. 2. He observed that by enacting Proposition 92 in1988, the voters had "unequivocally spoke in favor of open judicial disciplinary hearings" in cases involving serious charges, "That constitutional command has however proven to be illusory", because "an open hearing has yet to be conducted in this state some six years later." *Id.* at p. 3. The Attorney General

was also concerned that some accused judges had "sought and received some sort of secret writ relief from other courts", raising "a disturbing appearance of impropriety: the spectre of judges throughout this state exercising their extraordinary writ jurisdiction in sealed proceedings to intervene and mandate secrecy in disciplinary proceedings involving their judicial brethren." *Id.* at p. 3. He cited several cases where accused judges had retaliated against complainants, and he opined that "complete openness during formal proceedings would serve to better protect our complaining witnesses from harassment or retaliation by the accused judge." *Id.* at p. 5.

CJP's legislative history was reviewed in *The Recorder v. Commission on Judicial Performance* (1994) 72 Cal.App.4th 258, another effort by CJP to keep its activities hidden from the public. CJP had invoked its "confidentiality" power in refusing to release to a legal newspaper how each Commissioner had voted on a measure to discipline a particular judge. The court ruled that CJP must release this information. The court noted that "the history of the constitutional provisions governing judicial discipline in California shows a trend toward *greater openness and less secrecy*." *Id.* at 273; emphasis added. The court stated: "The 1988 and 1994 amendments also reflect the growing desire of the voters of California to limit the discretion of those in charge of the machinery of judicial discipline to determine which aspects of the process may be conducted behind closed doors." *Id.* at 273.

The court also stated that "the primary purposes of Proposition 190 were to *eliminate secrecy* in the commission's formal disciplinary proceedings and to ensure *public accountability* of the commission for its disciplinary determinations." *Ibid.*; emphasis added. The court rejected the Commission's "dire warnings" about the supposed dangers of public disclosure. *Id.* at 279.

F. Agency Practice.

When interpreting enabling legislation, courts consider how an agency has applied that legislation. *Yamaha Corporation of America v. State Board of Equalization* (1998) 19 Cal.4th 1, 7–8, the Supreme Court held: 'Where the meaning and legal effect of a statute is the issue, an agency's interpretation is one among several tools available to the court."

At page 3, CJP invokes this principle, urging acceptance of the definition of "confidential" that

CJP has adopted for this litigation. But an agency's interpretation deserves little weight when it is "merely its litigating position in this particular matter." *Culligan Water Conditioning of Bellflower, Inc. v. State Board of Equalization* (1976) 17 Cal.3d 86, 93. What counts is how the agency has *actually used* the word outside the courtroom, in the real world.

In the present case, CJP's *application* of the word "confidential" belies its assertion that its files are subject to "absolute confidentiality". At page 2, CJP asserts that its Rule 102 "provides for absolute confidentiality subject to enumerated exceptions." "Absolute" would seem to mean *no* exceptions, but CJP provides "sixteen exceptions". Under Rule 102[4], supposedly confidential files may be released to the following government officials when the files will help them perform their duties:

- To "law enforcement",
- to "prosecuting authorities",
- to any "public entity", if the judge (though not the complainant) consents,
- to "the President",
- to "the Governor of any State of the Union",
- to "the Commission on Judicial Appointments",
- to "the State Bar",
- to "a presiding judge",
- to "the Chief Justice of California",
- and to any "federal, state or local regulatory agency" investigating improper judicial conduct.[5]

There is a common thread that binds these CJP's exceptions: none involve dissemination to the public or the media, and all involve assisting other government agencies and officials, both state and federal, to fulfill their statutory duties.[6] Thus, CJP's *operative* definition of "confidential" is the one

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[4] A copy of Rule 102 appears at Exhibit B to the Declaration of Sherri Kaiser.

[5] At page 6, CJP cite a document indicating that the Legislature wanted CJP to release documents to the Governor, the President, and the Commission on Judicial Appointments. But the other thirteen exceptions emanated from CJP, not from the Legislature.

[6] There seems to be another thread. Unlike the State Auditor, none of these government officials are barred by law from releasing this supposedly "absolutely confidential" information to the public.

adopted in *Mosk v. Superior Court* and *Commission on Judicial Performance v. Superior Court*, *supra*: "confidential files are files that should be kept from the public, but not from other government officials seeking to fulfill their statutory duties."

Under CJP's operative definition of "confidential", allowing the State Auditor to examine these files in the course of an audit would not violate their confidentiality. Like the other government officials listed in Rule 102's exceptions, the State Auditor seeks to review CJP's files for only one purpose: to carry out the duties assigned to her by the California Legislature.

CJP will probably reply: "Ignore what we *do*. What matters is what we *say*. We *say* that the word 'confidential" in the Constitution gives us the unreviewable authority to determine what to keep secret, and neither the Legislature nor any court can tell us otherwise. By saying 'absolute' confidentiality, we did not mean that there can be no exceptions. We simply meant that we and only we can create them."

But CJP cites no legislative history or case law that supports this claim. As we have shown, those authorities support a quite different interpretation of "confidential".

And, in any event, the judiciary has the final word on the meaning of legislation. "The ultimate interpretation of a statute is an exercise of the judicial power . . . conferred upon the courts by the Constitution and, in the absence of a constitutional provision, cannot be exercised by any other body". *Yamaha Corporation of America v. State Board of Equalization*, *supra*, 19 Cal.4th at 7.

III. THE COURT SHOULD NOT APPLY ANY "BALANCING TEST" TO DETERMINE WHETHER THE STATE AUDITOR MAY EXAMINE CJP'S DOCUMENTS.

In its Order, the Court asks "is there a balancing test that must be undertaken before deciding whether some documents may be released?"

Yes, there is a balancing test that must be undertaken, and the Legislature has already undertaken that balancing test. The Legislature has balanced the agencies' need to keep certain files from being "published" to the public, against the Legislature's (and the public's) need to learn how each agency is performing its functions. In balancing these needs, the Legislature has decreed that every state agency (including CJP) must provide all its documents (including confidential documents) to the State Auditor, but the State Auditor and all of her staff are bound by a series of statutes to maintain the confidentiality of those documents.

The Legislature requires the agencies to cooperate with the Auditor. Gov. Code § 8545.2 requires all officers and employees of public agencies - "whether created by the California Constitution or otherwise" - to grant the Auditor access to all agency documents for purposes of an audit or investigation, including documents that "may lawfully be kept confidential as a result of a statutory or common law privilege or any other provision of law." Failing or refusing to provide access to the Auditor is a misdemeanor. *Ibid.*

But every staff member of the Auditor's Office must comply with the confidentiality standards of the agency it is auditing. Gov. Code § 8545.2, the law granting access to the Auditor, does so by deeming an authorized representative of the Auditor to be an officer or employee of the audited agency, with the same right of access to confidential materials and, concomitantly, the same duty of confidentiality. Gov. Code § 8545.2(b) [access is "subject to any limitations on release of the information as may apply to an employee or officer" of the audited entity]. The Legislature has also made it a misdemeanor for the Auditor, any current or former employee of the Auditor's Office, any contractor or contractor's employee, and any person assisting the audited entity with the audit to divulge any information from any document in any manner except as "expressly permitted by law." Gov. Code § 8545.1. Thus, to the extent the Commission's Rule 102 prohibits its own staff from releasing confidential information, so too is the Auditor prohibited - including its response to a Public

Records Act request. Howle Dec., ¶ 55.

Thus, the balancing of interests has already been performed by the institution we generally entrust to balance the needs of the taxpaying public with the concerns of various state agencies: the Legislature.

This court's order cites *Sander v. State Bar* (2013) 58 Cal.4th 300, in which the court did apply a balancing test. In *Sander,* the plaintiff sought bar admission records from the State Bar. The Court noted that "no statute or rule resolves the question before us." Therefore, the Court applied the *common law* right of public access, which included establishes a presumptive right of access to the State Bar's admissions database "subject to balancing against the private interests implicated by disclosure". *Id.* at 313, 321. In the present case, however, a series of statutes *do* "resolve the question". The Legislature has performed the balancing of interests, so there is no need for this Court to do so. Indeed, it would be inappropriate for the judiciary to second-guess the Legislature with any sort of "re-balancing", because our courts do not sit as "super-Legislatures" that may challenge the wisdom of legislative choices. *Superior Court v. County of Mendocino* (1996) 13 Cal.4th 45, 53.

IV. REDACTING DOCUMENTS WOULD COMPROMISE THE INTEGRITY OF THE AUDIT.

The Court's order asks, "Can the documents be released in a redacted or 'de-identified' form, that is, without judges' names or other information that could be used to identify individual judges so as to preserve the confidentiality of investigations?"

No. As explained in the attached Supplemental Declaration of State Auditor Elaine Howle, any alteration of CJP documents would compromise the integrity of the audit. Auditing standards strictly bar any sort of tampering with any document that the auditor needs to review. She concludes that "we cannot fulfill the mandate that JLAC gave to us if we cannot vouch for the accuracy and reliability of the documents that form the basis for our report about CJP's performance."

CONCLUSION

CJP's claim that an audit by the State Auditor would violate CJP's right to determine who sees CJP's confidential documents should be rejected, for two independent reasons.

First, there is no evidence that allowing the State Auditor to examine those documents will breach their "confidentiality" as that term is used in the Constitution. A breach of "confidentiality" occurs only when a document is "published". The State Auditor has no intent to publish them, is not authorized to publish them, and has never published confidential documents she examined during the audits of hundreds of other government agencies.

If the Court agrees with this argument, there is no need to reach CJP's argument that the statutes giving the State Auditor the authority to view CJP's confidential documents are unconstitutional. Courts should harmonize laws whenever possible, in the interest of giving effect to both. *Pacific Legal Foundation v. Brown*, *supra*, 29 Cal.3d at p. 197.

In any event, CJP's claim that the Constitution gives it the exclusive right to make rules regarding "confidentiality" is mistaken. Under the law, the Constitution bars the Legislature from acting only when the Constitution so provides. In this case, the Constitution does not – "expressly or by necessary implication" - bar the Legislature from enacting statutes that enable the State Auditor to conduct an audit that complies with professional standards that ensure that the Legislature will obtain the truth about CJP's performance.

One final note. CJP's Petition asserts a broad claim that the State Auditor may not conduct *any* performance audit of CJP. CJP now appears to have shrunk that claim, and asserts only that the State Auditor may not view CJP's confidential files. But the effect is the same. As the State Auditor explains at ¶¶ 58-61 of her Declaration, her inability to review those files would produce an audit that would be "insufficient to substantiate whether the Commission actually adheres to the processes it claims to follow when addressing complaints." In other words, lack of access to those files means no proper audit.

Respectfully Submitted,
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DECLARATION OF SHERRI S. KAISER IN SUPPORT OF THE STATE AUDITOR'S SUPPLEMENTAL BRIEF

1. I am an attorney in good standing and admitted to practice law in the State of California. I am co-counsel Respondent California State Auditor in this case. If called to testify, I could and would competently attest to the following facts.

2. My office obtained the legislative history of Proposition 190 (1994) from the Legislative Intent Service, Inc.. Attached as **Exhibit A** is a true and correct copy of the Declaration of Anna Maria Bereczky-Anderson, attesting to the range of materials located and provided by the Legislative Intent Service, and that they each are true and correct copies of the original documents.

3. Attached hereto as **Exhibit B** is a true and correct copy of Rule 102 of the Commission on Judicial Performance (adopted 12/1/96; amended 10/8/98, 2/11/99; interim amendment 5/9/01; amended 1/29/03; amended and interim amendment 8/26/04; amended 10/25/05, 5/23/07, 1/28/09, 3/23/11, 5/13/15; interim amendment 6/29/16), available at: https://cjp.ca.gov/wp-content/uploads/sites/40/2017/08/CJP_Rules.pdf.

CONSTITUTIONAL PRECURSORS TO CURRENT ART. IV, § 18(i)

4. A true and correct copy of the ballot pamphlet for California Proposition 10 (1960) (Administration of Justice, Senate Constitutional Amendment No. 14), available at http://repository.uchastings.edu/ca_ballot_props/618, is attached hereto as **Exhibit C**. Proposition 10 created the Commission on Judicial Qualifications, now known as Petitioner Commission for Judicial Performance (hereafter, "Commission") and enumerated its duties. See Ex. C at pp. 9-10 (text of measure). Proposition 10 contained the original provisions governing confidentiality and rulemaking provisions, as follows:

> All papers filed with and proceedings before the Commission on Judicial Qualifications or masters appointed by the Supreme Court, pursuant to this section, shall be confidential, and the filing of papers with and the giving or testimony before the commission or the masters shall be privileged; but no other publication of such papers or proceedings shall be privileged in any action for defamation except that (a) the record filed by the commission in the Supreme Court continues privileged and upon such filing loses its confidential character and (b) a writing which was privileged prior to its filing with the commission or the masters does not lose such privilege by such filing. The Judicial Council shall by rule provide for procedure under this section before the Commission on Judicial Qualifications, the masters, and the Supreme Court.
> Ex. C at p. 10.

5. The Argument in Favor of Senate Constitutional Amendment No. 14 (Proposition 10) explained the purpose of the confidentiality provision:

> To avoid the unfairness of publicizing complaints of merely disgruntled litigants, proceedings before the commission will not be public, unless and until it recommends to the Supreme Court the removal or retirement of the judge. The record before the commission will then be a public record of the Supreme Court which will determine

whether the judge in question shall be removed or retired.

Ex. C at p. 15.

6. A true and correct copy of the ballot pamphlet for California Proposition 1-a (1966) (Constitutional Revision), available at http://repository.uchastings.edu/ca_ballot_props/694, is attached hereto as **Exhibit D**. Proposition 1-a removed the confidentiality passage from the constitutional text, instead providing that "[t]he Judicial Council shall make rules implementing this section and providing for confidentiality of proceedings." Ex. D at p. 25 (Art. VI, §18(e). This revision reflected the work of a blue-ribbon Constitutional Revision Commission to put the constitution "into modern, concise and easily understandable language," while shortening the first third of the Constitution from 22,000 to 6,000 words. Ex. D at p. 1. Neither the Legislative Counsel's Summary nor the Argument in Favor of Proposition 1-a bring this revision to the attention of the voters as a substantive change.

7. A true and correct copy of the ballot pamphlet for California Proposition 7 (1976) (Judges, Censure, Removal, Judicial Performance Commission), available at http://repository.uchastings.edu/ca_ballot_props/818, is attached hereto as **Exhibit E**. Proposition 7 did not affect the charge to the Judicial Council to make implementing rules and provide for confidential proceedings. It did, however, create a new power in the Commission to impose confidential discipline: "The commission may privately admonish a judge found to have engaged in an improper action or dereliction of duty." Ex. E. at p. 61. The purpose of this change is not explained in the ballot pamphlet.

8. A true and correct copy of the ballot pamphlet for California Proposition 92 (1988) (Commission on Judicial Performance), available at http://repository.uchastings.edu/ca_ballot_props/973, is attached hereto as **Exhibit F**. Like Proposition 7 before it, Proposition 92 did not alter the provision directing the Judicial Council to enact implementing rules and provide for the confidentiality of proceedings. It did, however, include several amendments providing for public disclosure: when the Commission brought formal proceedings, the respondent judge could ask to open them; the Commission could itself decide to conduct open hearings in cases of moral turpitude, dishonesty, or corruption; it could issue a public

reproval enumerating the charges; and the Commission could issue press releases and explanatory statements. Ex. F, at p. 3. The Argument in Favor of Proposition 92 explained that these changes were intended to provide "sufficient openness to assure continued public confidence" in the judiciary. Ex. F, at p. 58.

> The Supreme Court has the final word, but the commission does the real work. Trouble is, the nine-member commission, including five judges and two attorneys, does its work in complete secrecy. The press and the public are barred from proceedings and any knowledge of the charges or facts in the case.
>
> Between 1960 and 1987, only 25 of the 7,185 complaints lodged with the commission resulted in public punishment. [¶] Judges should not be subject to public suspicion based on a mere complaint but once formal charges are filed, perhaps the public should know. That is what happens in 24 other states. That is how cases are handled involving doctors, lawyers, and other professionals.
>
> Proposition 92 proposes to open disciplinary proceedings against judges in a limited but reasonable way. … It simply allows an accused judge or the commission to open proceedings subsequent to formal charges in appropriate cases. […]
>
> This proposition was drafted in part by the Commission on Judicial Performance itself, with the help of the Judicial Council and the California Judges Association. All agree that the primary job of the commission is to protect the public from judicial misconduct. All believe this amendment represents a sensible accommodation of the public interest.
>
> … [E]very public official, no matter how high the office, must ultimately be accountable to the public. When the integrity of our courts comes under question, we can ill afford to be bound by a rule which concludes in every case that the public and the press are better off in the dark. Such absolute secrecy is the antithesis of democracy.
>
> *Ibid.*

THE COMMISSION FAILS TO HOLD ANY OPEN HEARINGS DESPITE PROP 92, PROMPTING NEW LEGISLATIVE EFFORTS AT PUBLIC TRANSPARENCY

9. The next voter proposition to amend the constitutional provisions governing the Commission had its origins in three legislative constitutional amendments that were proposed in 1994: Senate Constitutional Amendment (SCA) 37 (Sen. Gary Hart), SCA 44 (Sen. Alfred Alquist), and Assembly Constitutional Amendment (ACA) 46 (Speaker of the Assembly Willie Brown). Ex. G at

p. 9. After multiple hearings in the Assembly and the Senate, and amendments to include considerations from the other two bills, the Legislature approved ACA 46 for submittal to the voters. Attached as **Exhibit G** is a true and correct copy of the California Senate Judiciary Committee Analysis of Assembly Constitutional Amendment No. 46, as amended August 9, 1994. ACA 46 appeared on the November 1994 General Election ballot as Proposition 190. Ex. R, *infra*.

10. In advance of its June 15, 1994 hearing on ACA 46, California Deputy Attorney General Raymond Brosterhous II sent a lengthy letter to the members of the Assembly Judiciary Committee to express and explain the position of Attorney General Daniel E. Lungren in strong support of the measure. A true and correct copy of the letter dated June 6, 1994 from Deputy Attorney General Raymond Brosterhous II to Hon. Phillip Isenberg, Chair of the Assembly Judiciary Committee ("AG Letter") is attached hereto as **Exhibit H**.

11. The Attorney General's Office had first-hand experience with the "system of secret judicial discipline in this state," because at any given time, eight to ten of its Criminal Division prosecutors were actively representing the Commission in preliminary investigations or serve as prosecutors in formal proceedings. This experience led the Attorney General to conclude that "the bill's proposed opening of all formal judicial proceedings, after the initial confidential investigatory stage to weed out groundless or unsupported allegations and to determine probable cause [citation], *is absolutely vital*." Ex. H at pp. 2-3 (emphasis added).

12. As the AG Letter explained, although the Commission had sought to open several formal proceedings to the public in the wake of Proposition 92, in each instance those efforts were thwarted. The judges charged with judicial misconduct successfully sought and received court orders from fellow judges that required the Commission to hold closed proceedings. Those judicial proceedings were likewise held in secret and their records sealed. In one case, two different judges granted this relief because "irreparable injury would be done to an accused judge's reputation and reelection prospects." Ex. H at p. 3.

13. Secret proceedings also routinely harmed complainants and witnesses. Because of the guarantee of Commission secrecy and the discovery attendant to formal proceedings, accused judges would learn the names of complainants, identity of witnesses, and the nature of the anticipated

testimony, while the complainants and witnesses would not learn about each other or even sometimes the nature of the charges, and certainly not the Commission's disciplinary decision or whether the special masters even found their testimony credible. Ex. H at p. 5 This information allowed judges to retaliate—and they often did—with adverse employment actions, in the case of court personnel, and unfavorable treatment of those appearing before them, in the case of parties and attorneys. And the impenetrable secrecy surrounding the judicial disciplinary process, other people have no way to know that the accused judge is involved in direct retaliation, and the complainants and witnesses cannot tell them. Ex. H at pp. 5-6. As the AG Letter put it,

> [A]ny argument that confidentiality during formal proceedings protects any interests other than those of the accused judge is simply absurd. … [B]ecause of the rules of confidentiality, witnesses are quite understandably often reluctant to get involved. Many witnesses simply have no trust in a secret proceeding and feel like a "coverup" in such circumstances is likely.
> Ex. H at p. 5.

14. The AG Letter also relayed the consensus of the prosecuting attorneys that opening disciplinary proceedings to public scrutiny would lead to "better, more complete, and more accurate fact-finding" than occurred in closed hearings. Ex. H at p. 6. In explanation, the letter quotes the U.S. Supreme Court's decision in *Richmond Newspapers, Inc. v. Virginia* (1979) 448, 555, 569, "[O]penness discourages perjury, the misconduct of participants, and decisions based on secret bias or personality, which in turn promotes actual fairness as well as public confidence." Ex. H at p. 6, fn.5. Speaking in its own words, the AG next observed, "there is a regrettable tendency for fact-finding that is conducted in secret to be somewhat skewed." Ex. H at p. 7. Accordingly, "it is our belief that opening up formal proceedings would actually cause more victims of or witnesses to judicial misconduct to come forward … and should result in more truth and accuracy in disciplinary proceedings." *Ibid.*

15. Finally, the AG Letter commends ACA 46 for its approach to confidentiality:

> Confidentiality, during the investigative stage, needs to be retained and at that stage will serve to protect the interests of judges, witnesses, and the public. This office understands that the overwhelming majority pof the complaints made about judges will not, and should not, lead to discipline. … Confidentiality at this early stage serves to protect all

> of the parties, and particularly the judge, from groundless, unsupported, or malicious charges. Similarly, this office believes that some form of private discipline should be available to the Commission at this stage for isolated instances of misconduct by a judge.
>
> The complete elimination of confidentiality at the stage of formal disciplinary proceedings, however, is long overdue. … Any reform short of making all formal proceedings public will likely be coopted in secret litigation as was Proposition 92. Openness in these proceedings will not only promote democratic values, but will better protect complaining witnesses and will promote more complete and accurate results. The Attorney General urges your support for the reforms contained in ACA 46.
> Ex. H at pp. 8-9.

16. The AG Letter provided much of the basis for Assembly Committee on Judiciary Analysis of Assembly Constitutional Amendment 46, as amended June 13, 1994, a true and correct copy of which is attached hereto as **Exhibit I**. That report noted that proponents of the measure considered CJP's processes "impenetrably secret," and that this secrecy "permits judges to retaliate against complaining and cooperating witnesses." Ex. I at pp. 4-5. Proponents argued that "[t]he endemic secrecy at CJP reaches nearly pathological depths. For example, all records relating to the investigation of judges who resign with charges pending remain sealed even after the judge's death." *Ibid*.

17. In addition to opening formal hearings and providing hearing documents to the public, ACA 46 proposed reforms to reduce judicial control of the Commission and its disciplinary process. As then composed, five of the nine Commission members were judges, two were lawyers, and two were private citizens. As reformed, a six-member majority of an expanded 11-member Commission would be private citizens, and only three seats would be reserved for judges, with the remaining members attorneys. Ex. I at p. 1.

18. In a similar vein, ACA 46 also removed the procedural rule-making authority from the Judicial Council, which had promulgated Rules of Court to govern the Commission, and reassigned that power to the Commission itself. Ex. I at p. 6. According to the staff report, ACA 46 included this reform in the belief that the Commission would liberalize the confidentiality requirements. "For example," the report explained,

> CJP's annual report states that CJP has asked the Judicial Council to amend CJP's rules to permit it to refer some additional discipline information to 'sister' agencies, such as the State Bar. Thus, information that relates to a judge who resigns with charges pending and applies to the State Bar for admission, may be forwarded to the Bar. Is it not logical and efficient to give CJP this type of direct authority?
> *Ibid.*

19. ACA 46 both reassigned procedural rule-making authority to the Commission and changed the wording of the confidentiality provision from mandatory to permissive. Whereas the controlling constitutional language then provided that "[t]he Judicial Council shall make rules implementing this section and providing for confidentiality of proceedings" (Art. VI, §18(e); see Ex. D at p. 25), ACA 46 replaced that provision with the current Art. VI, Section 18(i). That subdivision provides,

> (i) The Commission on Judicial Performance shall make rules implementing this section, including, but not limited to, the following:
>
> (1) The commission shall make rules for the investigation of judges. The commission *may* provide for the confidentiality of complaints to and investigations by the commission.
>
> (2) The commission shall make rules for formal proceedings against judges when there is cause to believe there is a disability or wrongdoing within the meaning of subdivision (d).
>
> (Art. VI, §18(i) (emphasis added).)

20. As the reform bills advanced from Spring to late Summer, the Legislature took note of media coverage. The staff report prepared for the Senate Judiciary Committee in advance of its hearing to consider ACA 46 reported that, "[i]n recent months the commission has come under fire in a number of newspaper articles. The main line of attack has been the secret nature of the commission proceedings." Ex. G at p.3. Attached hereto as **Exhibit J** are true and correct copies of newspaper clippings retrieved from legislative files regarding Assembly Constitutional Amendment No. 46 (1994) and Senate Constitutional Amendment No. 37 (1994). All of the articles attack Commission secrecy.

21. A front-page article in the April 20, 1994 edition of the San Francisco Chronicle,

headlined "Secret Justice for State's Judges, Panel hands out lenient punishment for acts of misconduct" is representative. Ex. J at p. 1. The article quotes various authoritative sources who offer pointed criticism, such as Boalt Hall law professor Stephen Barnett opining that "[the Commission's] name should be changed to the 'Commission for Judicial Protection'. … The commission bends over backward to protect judges. They operate behind a curtain, unwilling to take public responsibility." Ex. J at p. 2. In the same article, Gerald Stern, described as the head of New York's judicial discipline panel, is quoted as saying, "At our annual national meetings, we mock our California colleagues about some of the cases in their annual reports. … They have an excellent, hard-working staff, but I don't understand how their commission can let some of those cases go as private admonishments." (*Ibid.*

SCA 37 PROPOSES ELIMINATING PRIVATE DISCIPLINE OUT OF CONCERN THAT HAS BEEN MISUSED, BUT THE AUTHOR OF ACA 46 ASSERTS THAT A RECONSTITUTED COMMISSION WILL RESOLVE THAT PROBLEM ITSELF.

22. None of the committee reports on ACA 46 indicates to the respective committee members that the bill would still permit the Commission to keep the vast majority of its misconduct proceedings and determinations wholly confidential. ACA 46 focused on creating a public majority on the Commission, opening "formal" proceedings, and making associated documents available to the public. Even so, the Commission could still use all of its existing, confidential means of resolving misconduct charges, such as "informal" proceedings and settlements, even when ultimately imposing public discipline. The Commission could also—as it nearly always did—resolve misconduct charges with various forms of private discipline, which took place entirely in secrecy. Companion measure SCA 37, introduced by Senator Hart, for the first time raised the concern that the Commission's extensive use of confidential, private discipline extended to acts of serious misconduct that warranted public discipline.

23. Attached hereto as **Exhibit K** is a true and correct copy of the Senate Judiciary Committee Bill Analysis of Senate Constitutional Amendment No.37, as introduced. Initially, SCA was introduced as a measure to amend the Constitution to require the Commission to provide information to the judicial appointing authorities about a candidate's history of confidential judicial discipline. As the Bill Analysis explained:

> Although public disciplinary measures can be taken, most disciplinary actions are of a secret nature. These secret disciplinary actions cannot be disclosed to anyone under the confidentiality rules established by the Judicial Council. [...] [W]ithout the ability to learn whether any type of disciplinary action has been taken against a judge, the Governor, the President, or the Commission on Judicial Appointments do not have the information necessary to make an informed decision on whether the judge should be elevated.
>
> Exhibit K at p. 2.

24. Upon further consideration by the Senate, however, SCA 37 was amended to also eliminate the power to impose private admonishments and replace it with authority to issue public admonishments. Attached hereto as **Exhibit L** is a true and correct copy of Assembly Judiciary Committee Analysis of Senate Constitutional Amendment No.37, as amended June 14, 1994. The "Author's Statement" in the staff report explained the need for the measure:

> The author argues that the conduct for which the Commission routinely issues private admonishments, in fact, warrants public discipline. For example, in 1993, judges were issued private admonishments for the following conduct:
>
> - The judge took extended lunch hours and, upon his return, exhibited signs of alcohol consumption. His post-lunch courtroom performance deteriorated.
> - The judge appeared to fix a ticket he received from a police agency. He used official stationery to "exempt" a vehicle from a parking ordinance. He impeded appellate review of a case by refusing to sign an order for a transcript. He made rude remarks and engaged in other intemperate behavior.
> - The judge transferred a DUI case of a friend to his court. In separate matter, he tried the DUI case of his clerk.
> - The judge had an attorney taken into custody, without explanation, a hearing, or order, all in violation of law, for seeking clarification of an order. The attorney was released after 4 hours and an apology. In another case, the judge reduced a witness to tears by repeatedly and rudely interrupting her testimony.
> - The judge jailed a litigant for contempt without a hearing, findings, or order. The hearing was conducted 2 days later.
> - The judge avoided official duties by transferring cases out of his or her department and routinely granting extended continuances. The judge

routinely and improperly intervened in personnel matters, which were the responsibility of the court administrator. The judge took punitive action against political adversaries. The judge used court personnel to perform personal errands.

- A presiding judge failed to respond to citizen complaints about a court commissioner. An advisory letter was sent. Upon a subsequent, similar failure, a private admonishment was issued, to which the judge expressed indifference.

The author argues that this kind of conduct warrants public admonishment. Thus. he proposes that the Commission's authority to issue private admonishments be removed.
Ex. L at pp. 3-4.

25. The Commission opposed the removal of its private admonishment authority. Attached hereto as **Exhibit M** is a true and correct copy of the letter from Victoria B. Henley, Director-Chief Counsel of the Commission on Judicial Performance, to Hon. Phillip Isenberg, Chair of the Assembly Judiciary Committee, dated June 28, 1994. The Committee hearing on SCA 37 was scheduled to take place the next day. Ex. L at p. 1.

26. According to Director Henley, private admonishments serve the important function of permitting the Commission "to discipline efficiently for conduct that is improper but not egregiously so." Ex. M at p. 1. Further,

> The apparent intent behind its proposed elimination—to guard against overuse of private discipline—appears met by SCA 44 (Alquist) and ACA 46 (Brown). These bills call for major changes, including a majority of non-judge members and open hearings. The newly formed Commission should not be confined at the outset to public discipline, which inherently limits its flexibility. It deserves to an opportunity to address the full range of potential misconduct with an appropriate range of disciplinary options.
> Ex. M at p. 1.

27. Director Henley also objected that it was unclear how the power of "public admonishment" would fit into the existing disciplinary scheme or what procedures would be used to invoke it. Ex M. at p. 2. The letter does not mention the Commission's power to issue private advisory letters, which it would retain under SCA 37.

28. Attached hereto as **Exhibit N** is a true and correct copy of the Assembly Committee on Elections, Reapportionment, and Constitutional Amendments Bill Analysis of Senate Constitutional Amendment No. 37, as amended July 2, 1994. It incorporates and reports the Commission's objections, stating that they have been joined by the Judicial Council.

29. Attached hereto as **Exhibit O** is a true and correct copy of the Senate Judiciary Committee Analysis of Assembly Constitutional Amendment No. 46, as amended August 9, 1994. The Committee Analysis explains that, although the Commission rarely makes any of its disciplinary actions public, ACA 46 would retain the power of private admonishment, "relying for fairness on the new composition of the CJP." Ex. O at p. 4.

30. Attached hereto as **Exhibit P** is a true and correct copy of Assembly Analysis regarding Concurrence in Senate Amendments to Assembly Constitutional Amendment No. 46, as amended August 23, 1994. The final version of ACA 46 only incorporated the portion of SCA 37 directing the release of disciplinary information to appointing authorities. The Commission retained its power to issue private admonishments, having encouraged the Legislature to expect that the new public member-dominated Commission would make more of its disciplinary actions public.

THE BALLOT PAMPHLET AND OTHER VOTER MATERIALS DESCRIBE PROPOSITION 190 (ACA 46) AS ELIMINATING SECRECY ENTIRELY IN CASES OF SERIOUS MISCONDUCT

31. Attached hereto as **Exhibit Q** is a true and correct copy of the Supplemental Ballot Pamphlet, Analysis of State Propositions on the November 1994 Ballot, A Review of Propositions 181 Through 191, mailed to all California voters by the Secretary of State. Prepared by the Senate Office of Research, the pamphlet provided a simplified, easier to understand overview of the constitutional amendments proposed in Proposition 190. It began,

32. This proposed constitutional amendment would permit greater public oversight in disciplining corrupt, biased or incompetent judges. It would open disciplinary hearings by the Commission on Judicial Performance to the public and put a majority of public members on the Commission. The measure was put on the ballot by the Legislature as ACA 46, authored by Assembly Speaker Willie Brown, in response to criticism that California's methods of disciplining judges are

unduly governed by the judiciary, ineffective, and veiled in secrecy. Ex. Q at p. 9.

33. The Supplemental Ballot Pamphlet also said that "charges and proceedings against judges are secret," that the Commission had held only two public hearings in its entire history, and that it held only nine private hearings in 1993 despite receiving nearly 1,000 complaints. Ex. Q at pp. 9-10. Proposition 190 would change that by making "all papers and proceedings in formal actions against judges open to the public." *Id.* at p. 10. The brief summary of "Arguments in Support" provided by the pamphlet asserted proponents' view that "the public has a right to know about actions and charges against judges, which can include malfeasance, failure to perform duties, habitual use of intoxicants or drugs and prejudicial conduct. … [J]udicial misconduct should be held to the same standard of openness that criminal proceedings are." *Id.* at p. 11. Based on the information provided in the Supplemental Ballot Pamphlet, a reasonable voter would anticipate and intend that enacting Proposition 190 would replace secret discipline with public proceedings in cases involving charges of malfeasance, failure to perform duties, habitual use of intoxicants or drugs and prejudicial conduct.

34. Attached hereto as **Exhibit R** is a true and correct copy of the Voter Information Guide for 1994 General Election (Proposition 190, Commission on Judicial Performance. Legislative Constitutional Amendment.), available at http://repository.uchastings.edu/ca_ballot_props/1092. Unlike the simplified summary in the Supplemental Ballot Pamphlet, the Voter Information Guide contained a legislative analysis, the proponents' and opponents' arguments, and the text of the proposed law. But like the Supplemental Ballot Pamphlet, a reasonable voter would conclude that Proposition 190 would surely eliminate secret discipline, at least in cases of meaningful misconduct.

35. The official analysis by Legislative Analyst explains current practices and the changes that Proposition 190 would make. Currently,

> The commission receives complaints against judges each year (950 complaints in 1993). The complaints and investigations are handled on a confidential basis. For less serious cases of misconduct, the commission may privately reprimand a judge; the Supreme Court may review such a reprimand. The commission may also publicly reprimand a judge if the judge consents. In other cases, the commission makes formal charges and a hearing is held. In 1993, nine cases (out of 950 complaints) proceeded to a hearing.
>
> [¶]

> The amendment provides that, when the commission begins formal proceedings against a judge, the charges and all subsequent papers and proceedings shall be open to the public. … The measure also permits the commission to publicly reprimand a judge without the judge's consent.
>
> Ex. R at p. 11.

36. The Argument in Favor of Proposition 190 also tells voters that the Proposition will put a meaningful end to the Commission's excessive secrecy:

> The California commission, which is made up of a majority of judges, has held *only one public hearing in the last six years*. Clearly, it is inappropriate to have judges publicly disciplining their peers in a secret environment. […] THE PUBLIC HAS A RIGHT TO KNOW WHEN JUDGES ARE CHARGED WITH MISCONDUCT. Under Proposition 190, the commission would be required to open *all formal proceedings* against judges to the public. Currently, all hearings and commission documents, including the actual charges against the judge, are secret. WITHOUT KNOWLEDGE OF THE CHARGES OR PROCEEDINGS, THE PUBLIC CANNOT HAVE CONFIDENCE IN THE JUDICIAL SYSTEM. Just as we require criminal proceedings and attorney discipline proceedings to be open, we should also hold judges to the same standard where serious misconduct is at issue. […] CALIFORNIA MUST ELIMINATE SECRECY AND ENSURE INTEGRITY IN THE DISCIPLINARY PROCESS.
>
> Ex. R at p. 12.

37. The Argument Against Proposition 190 agrees that "[p]roceedings before the Commission should be opened to the public" in service of "the commendable, worthwhile goal of producing an accountable, open system of judicial discipline." It only takes issue with the proposal to restructure the Commission.

38. The Legislative Analyst also indicates that Proposition 190 requires the Commission to provide otherwise-confidential information to appointing authorities about the disciplinary actions that may have been taken against a judge applying for another judicial appointment. Ex. R at p. 11. The arguments for and against the proposition do not mention this provision as a subject of dispute. This portion of SCA 37, which was eventually incorporated into ACA 46 and Proposition 190 was also not the subject of dispute in the legislature. Rather, "[t]he Judicial Council of CA and the Commission on Judicial Performance support[ed] the original intent of SCA 37." Ex. N at p. 3. Their objections

extended only to the potential elimination of private admonishments. *Id.* Nor did any other party advocate in favor of withholding the Commission's confidential disciplinary information from government officials with a "self-evident" need to know it. *Id.* All agreed: "If Commission discipline is predominately private, appointing authorities must have access to such information before momentous and uninformed decisions are made." *Id.*

I declare under penalty of perjury under the laws of California that the foregoing is true and correct. Executed on September 22, 2017 in Berkeley, California.

Date: September 22, 2017

Sherri S. Kaiser

EXHIBIT A

LEGISLATIVE
INTENT SERVICE, INC.

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DECLARATION OF ANNA MARIA BERECZKY-ANDERSON

I, Anna Maria Bereczky-Anderson, declare:

I am an attorney licensed to practice in California, State Bar No. 227794, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service, Inc. undertook to locate and obtain all documents relevant to the enactment of Proposition 190 at the November 8, 1994, General Election.

The following list identifies all documents obtained by the staff of Legislative Intent Service, Inc. on Proposition 190 of the November 8, 1994, General Election. All listed documents have been forwarded with this Declaration except as otherwise noted in this Declaration. All documents gathered by Legislative Intent Service and all copies forwarded with this Declaration are true and correct copies of the originals located by Legislative Intent Service, Inc. In compiling this collection, the staff of Legislative Intent Service, Inc. operated under directions to locate and obtain all available material on the proposition.

EXHIBIT A - PROPOSITION 190, NOVEMBER 8, 1994:

1. Excerpt regarding Proposition 190 from California *Supplemental Ballot Pamphlet*, November 8, 1994, General Election;
2. Excerpt regarding Proposition 190 from *Statement of Vote*, November 8, 1994, General Election, compiled by the Secretary of State;
3. Excerpt regarding Proposition 190 from *Analysis of State Propositions on the November 1994 Ballot*, prepared by the California Senate Office of Research, September 1994;
4. Excerpt regarding Proposition 190 from *State Ballot Measures, Pros Cons*, prepared by the League of Women Voters of California, September 12, 1994;

5. Four news releases of the Administrative Office of the Courts as follows:
   a. Release #42, September 21, 1994,
   b. Release #43, September 24, 1994,
   c. Release #4, February 8, 1995,
   d. Release #69, December 21, 1995;
6. *Financing California's Statewide Ballot Measures, 1994 Primary and General Elections*, prepared by the Secretary of State, July 1995;
7. Attorney General Opinion No. 10-804, dated December 20, 2012.

EXHIBIT B - ASSEMBLY CONSTITUTIONAL AMENDMENT NO. 46 OF 1994:

1. All versions of Assembly Constitutional Amendment No. 46 (W. Brown-1994);
2. Procedural history of Assembly Constitutional Amendment No. 46 from the 1993-94 *Assembly Final History*;
3. Analysis of Assembly Constitutional Amendment No. 46 prepared for the Assembly Committee on Judiciary;
4. Material from the legislative bill file of the Assembly Committee on Judiciary on Assembly Constitutional Amendment No. 46 as follows:
   a. Previously Obtained Material,
      a.i. Correspondence, memoranda and drafts,
      a.ii. News articles,
      a.iii. Law Review articles,
      a.iv. Proposition 190 material,
      a.v. Order Granting Petition, *Carr v. Nevada Commission on Judicial Discipline*, September 9, 1994;
   + b. Updated Collection of Material;
5. Analysis of Assembly Constitutional Amendment No. 46 prepared for the Assembly Committee on Elections, Reapportionment and Constitutional Amendments;
6. Analysis of Assembly Constitutional Amendment No. 46 prepared for the Assembly Committee on Ways and Means;
7. Material from the legislative bill file of the Assembly Committee on Ways and Means on Assembly Constitutional Amendment No. 46;
8. Material from the legislative bill file of the Assembly Republican Caucus on Assembly Constitutional Amendment No. 46;
9. Analysis of Assembly Constitutional Amendment No. 46 prepared for the Senate Committee on Judiciary;

10. Material from the legislative bill file of the Senate Committee on Judiciary on Assembly Constitutional Amendment No. 46 as follows:
    a. Previously Obtained Material,
    b. Updated Collection of Material;
11. Analysis of Assembly Constitutional Amendment No. 46 prepared for the Senate Committee on Constitutional Amendments;
12. Material from the legislative bill file of the Senate Committee on Appropriations on Assembly Constitutional Amendment No. 46;
13. Two Third Reading analyses of Assembly Constitutional Amendment No. 46 prepared by the Office of Senate Floor Analyses;
14. Material from the legislative bill file of the Office of Senate Floor Analyses on Assembly Constitutional Amendment No. 46;
15. Concurrence in Senate Amendments analysis of Assembly Constitutional Amendment No. 46 prepared by the Assembly Committee on Judiciary;
16. Legislative Counsel's Rule 26.5 analysis of Assembly Constitutional Amendment No. 46;
17. Excerpt regarding Assembly Constitutional Amendment No. 46 from the 1994 *Summary Digest of Statutes Enacted and Resolutions Adopted*, prepared by Legislative Counsel;
18. Excerpt regarding Assembly Constitutional Amendment No. 46 from *Highlights of the Legislative Accomplishments of 1994*, prepared by the Senate Office of Research, October 1994.

EXHIBIT C - SENATE CONSTITUTIONAL AMENDMENT NO. 44 OF 1994:

1. All versions of Senate Constitutional Amendment No. 44 (Alquist-1994);
2. Procedural history of Senate Constitutional Amendment No. 44 from the 1993-94 *Senate Final History*;
3. Analysis of Senate Constitutional Amendment No. 44 prepared for the Senate Committee on Judiciary;
4. Analysis of Senate Constitutional Amendment No. 44 prepared for the Senate Committee on Constitutional Amendments;
5. Fiscal summary of Senate Constitutional Amendment No. 44 prepared for the Senate Committee on Appropriations;
6. Material from the legislative bill file of the Senate Committee on Appropriations on Senate Constitutional Amendment No. 44;
7. Third Reading analysis of Senate Constitutional Amendment No. 44 prepared by the Office of Senate Floor Analyses;

8. Material from the legislative bill file of the Office of Senate Floor Analyses on Senate Constitutional Amendment No. 44;
9. Two analyses of Senate Constitutional Amendment No. 44 prepared for the Assembly Committee on Judiciary;
10. Material from the legislative bill file of the Assembly Committee on Judiciary on Senate Constitutional Amendment No. 44;
11. Analysis of Senate Constitutional Amendment No. 44 prepared for the Assembly Committee on Elections, Reapportionment and Constitutional Amendments;
12. Analysis of Senate Constitutional Amendment No. 44 prepared for the Assembly Committee on Ways and Means;
13. Material from the legislative bill file of the Assembly Committee on Ways and Means on Senate Constitutional Amendment No. 44;
14. Third Reading analysis of Senate Constitutional Amendment No. 44 prepared by the Assembly Committee on Judiciary;
15. Material from the legislative bill file of the Assembly Republican Caucus on Senate Constitutional Amendment No. 44;
16. Material from the legislative bill file of Senator Alfred Alquist on Senate Constitutional Amendment No. 44;
17. Material from the legislative bill file of the Department of Finance on Senate Constitutional Amendment No. 44.

EXHIBIT D - SENATE CONSTITUTIONAL AMENDMENT NO. 37 OF 1994:

1. All versions of Senate Constitutional Amendment No. 37 (Hart-1994);
2. Procedural history of Senate Constitutional Amendment No. 37 from the 1993-94 *Senate Final History*;
3. Analysis of Senate Constitutional Amendment No. 37 prepared for the Senate Committee on Judiciary;
4. Material from the legislative bill file of the Senate Committee on Judiciary on Senate Constitutional Amendment No. 37;
5. Analysis of Senate Constitutional Amendment No. 37 prepared for the Senate Committee on Constitutional Amendments;
6. Material from the legislative bill file of the Senate Committee on Constitutional Amendments on Senate Constitutional Amendment No. 37;
7. Third Reading analysis of Senate Constitutional Amendment No. 37 prepared by the Office of Senate Floor Analyses;

8. Material from the legislative bill file of the Office of Senate Floor Analyses on Senate Constitutional Amendment No. 37;
9. Two analyses of Senate Constitutional Amendment No. 37 prepared by the Assembly Committee on Judiciary;
10. Material from the legislative bill file of the Assembly Committee on Judiciary on Senate Constitutional Amendment No. 37;
11. Analysis of Senate Constitutional Amendment No. 37 prepared for the Assembly Committee on Elections, Reapportionment and Constitutional Amendments;
12. Material from the legislative bill file of the Assembly Republican Caucus on Senate Constitutional Amendment No. 37;
13. Material from the legislative bill file of the Department of Finance on Senate Constitutional Amendment No. 37.

\+ Because it is not unusual for more materials to become publicly available after our earlier research of legislation, we re-gathered these file materials, denoting them as "updated collection of material."

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 20th day of September, 2017 at Woodland, California.

Anna Maria Bereczky-Anderson

ANNA MARIA BERECZKY-ANDERSON

SOCIOECONOMIC JUSTICE INSTITUTE
RESEARCH ◆ EDUCATION ◆ POLICY

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EXHIBIT B

RULES OF THE COMMISSION ON JUDICIAL PERFORMANCE

Adopted October 24, 1996, effective December 1, 1996. As last amended, effective June 28, 2017.

Rule 101. Interested Party

Judges who are members of the commission or of the Supreme Court may not participate as such in any commission proceedings involving themselves.

[Adopted 12/1/96.]

Rule 102. Confidentiality and Disclosure

(a) (Scope of rule) Except as provided in this rule, all papers filed with and proceedings before the commission shall be confidential. Nothing in this rule prohibits the respondent judge or anyone other than a commission member or member of commission staff from making statements regarding the judge's conduct underlying a complaint or proceeding.

(b) (Disclosure after institution of formal proceedings) When the commission institutes formal proceedings, the following shall not be confidential:

(1) The notice of formal proceedings and all subsequent papers filed with the commission and the special masters, all stipulations entered, all findings of fact and conclusions of law made by the special masters and by the commission, and all determinations of removal, censure and public admonishment made by the commission;

(2) The formal hearing before the special masters and the appearance before the commission.

(c) (Explanatory statements) The commission may issue explanatory statements under article VI, section 18(k) of the California Constitution.

(d) (Submission of proposed statement of clarification and correction regarding commission proceedings by judge) Notwithstanding rule 102(a), if public reports concerning a commission proceeding result in substantial unfairness to the judge involved in the proceeding, including unfairness resulting from reports which are false or materially misleading or inaccurate, the involved judge may submit a proposed statement of clarification and correction to the commission and request its issuance. The commission shall either issue the requested statement, advise the judge in writing that it declines to issue the requested statement, or issue a modified statement.

(e) (Disclosure to complainant) Upon completion of an investigation or proceeding, the commission shall disclose to the person complaining against the judge that the commission (1) has found no basis for action against the judge or determined not to proceed further in this matter, (2) has taken an appropriate corrective action, the nature of which shall not be disclosed, or (3) has publicly admonished, censured, removed, or retired the judge, or has found the person unfit to serve as a subordinate judicial officer. Where a matter is referred to the commission by a presiding judge or other public official in his or her official capacity, disclosure under this

subdivision concerning that matter shall be made to the individual serving in that office at the time the matter is concluded. The name of the judge shall not be used in any written communication to the complainant, unless formal proceedings have been instituted or unless the complainant is a presiding judge or other public official in his or her official capacity. Written communications in which the judge's name is not used shall include the date of the complaint as a cross-reference.

(f) (Public safety) When the commission receives information concerning a threat to the safety of any person or persons, information concerning such a threat may be provided to the person threatened, to persons or organizations responsible for the safety of the person threatened, and to law enforcement and/or any appropriate prosecutorial agency.

(g) (Disclosure of information to prosecuting authorities) The commission may release to prosecuting authorities at any time information which reveals possible criminal conduct by the judge or former judge or by any other individual or entity.

(h) (Disclosure of records to public entity upon request or consent of judge) If a judge or former judge requests or consents to release of commission records to a public entity, the commission may release that judge's records.

(i) (Disclosure of records of disciplinary action to appointing authorities) The commission shall, upon request, provide to the Governor of any State of the Union, the President of the United States, or the Commission on Judicial Appointments the text of any private admonishment or advisory letter issued after March 1, 1995 or any other disciplinary action together with any information that the commission deems necessary to a full understanding of the commission's action, with respect to any applicant under consideration for any judicial appointment, provided that:

(1) The request is in writing; and

(2) Any information released to the appointing authority is simultaneously provided to the applicant.

All information disclosed to appointing authorities under this subdivision remains privileged and confidential. Private admonishments and advisory letters issued before March 1, 1995 shall only be disclosed under this section with the judge's written consent.

(j) (Disclosure of information regarding pending proceedings to appointing authorities) The commission may, upon request, in the interest of justice or to maintain public confidence in the administration of justice, provide to the Governor of any State of the Union, the President of the United States, the Commission on Judicial Appointments, or any other state or federal authorities responsible for judicial appointments information concerning any pending investigation or proceeding with respect to any applicant under consideration for any judicial appointment, provided that:

(1) The request is in writing; and

(2) Any information released to the appointing authority is simultaneously provided to the applicant.

If a disclosure about a pending matter is made and that matter subsequently is closed by the commission without discipline being imposed, disclosure of the latter fact shall be made promptly to the appointing authority and the judge.

All information disclosed to appointing authorities under this subdivision remains privileged and confidential.

(k) (Disclosure of information to the State Bar upon retirement or resignation) If a judge retires or resigns from office or if a subordinate judicial officer retires, resigns or is terminated from employment after a complaint is filed with the commission, or if a complaint is filed with the commission after the retirement, resignation or termination, the commission may, in the interest of justice or to maintain public confidence in the administration of justice, release information concerning the complaint, investigation and proceedings to the State Bar, provided that the commission has commenced a preliminary investigation or other proceeding and the judge or subordinate judicial officer has had an opportunity to respond to the commission's inquiry or preliminary investigation letter.

(l) (Disclosure of information about subordinate judicial officers to presiding judges) The commission may release to a presiding judge or his or her designee information concerning a complaint, investigation or disposition involving a subordinate judicial officer, including the name of the subordinate judicial officer, consistent with the commission's jurisdiction under article VI, section 18.1 of the California Constitution.

(m) (Disclosure of information regarding disciplinary action and pending proceedings to the Chief Justice) With respect to any judge who is under consideration for judicial assignment following retirement or resignation, or is sitting on assignment, the commission may, upon the request of the Chief Justice of California and with the consent of that judge, in the interest of justice or to maintain public confidence in the administration of justice, provide the Chief Justice information concerning any record of disciplinary action or any pending investigation or proceeding with respect to that judge, provided that:

(1) The request and consent are in writing;

(2) If the disclosure involves a pending investigation or proceeding, the judge has had an opportunity to respond to the pending investigation or proceeding; and

(3) Any information released to the Chief Justice is simultaneously provided to the judge seeking assignment.

If the disclosure involves disciplinary action, the commission may include any information the commission deems necessary to a full understanding of its action.

If a disclosure about a pending matter is made and that matter subsequently is closed by the commission without discipline being imposed, disclosure of the latter fact shall be made promptly to the Chief Justice and the judge.

All information disclosed to the Chief Justice under this subdivision remains privileged and confidential.

(n) (Disclosure of information to presiding judges about possible lack of capacity or other inability to perform) The commission may release to a presiding judge or his or her designee information concerning an investigation involving possible lack of capacity or other inability to perform judicial duties on the part of a judge of that court, except that no confidential medical information concerning the judge may be released.

(o) (Disclosure of closing to judge who provides information to the commission) Upon completion of the commission's review of a complaint or an investigation, the commission may notify a judge who is the subject of a complaint and has voluntarily provided information to the commission concerning the complaint, that the commission has found no basis for action against the judge or determined not to proceed further in the matter. The notification shall be in writing.

(p) (Disclosure of information to regulatory agencies) The commission may in the interest of justice, to protect the public, or to maintain public confidence in the administration of justice, release to a federal, state or local regulatory agency information which reveals a possible violation of a law or regulation within the agency's jurisdiction by a judge, former judge, subordinate judicial officer or former subordinate judicial officer, provided the commission has commenced a preliminary investigation.

In the event information is revealed under this subsection, the agency must be admonished that the fact that the commission has undertaken an investigation of the judge must remain confidential unless formal proceedings have been instituted.

(q) (Disclosure of information to mentor judge) When a judge has agreed to participate in a mentoring program, the commission may provide the mentor judge with the specifications of the allegations before the commission, any materials concerning the allegations the commission deems relevant and necessary for the mentor to perform his or her services, and any prior discipline, including private discipline, imposed on the judge for similar misconduct. The mentor judge will not be given the complaint or witness statements, but may be given a summary of information provided in the complaint and witness statements.

If a judge who participated in mentoring is found to have engaged in subsequent misconduct, any resulting discipline, including public discipline, on the subsequent matter may

include a discussion of the prior matter that was the subject of the mentoring and that the judge participated in mentoring.

The provision of subsection (q) of rule 102 shall take effect June 29, 2016, and shall be operative until June 28, 2018, unless after review, it is reenacted by the commission.

[Adopted 12/1/96; amended 10/8/98, 2/11/99; interim amendment 5/9/01; amended 1/29/03; amended and interim amendment 8/26/04; amended 10/25/05, 5/23/07, 1/28/09, 3/23/11, 5/13/15; interim amendment 6/29/16.]

Rule 103. Protection from Liability for Statements

The making of statements to the commission, the filing of papers with or the giving of testimony before the commission, or before the masters appointed by the Supreme Court pursuant to rule 121, shall not give rise to civil liability for the person engaged in such acts. This privilege extends to any motions or petitions filed in the Supreme Court, as well as papers filed in connection therewith. No other publication of such statements, papers or proceedings shall be so privileged.

[Adopted 12/1/96.]

Rule 104. Duty to Cooperate; Response by Respondent Judge

(a) A respondent judge shall cooperate with the commission in all proceedings in accordance with Government Code section 68725. The judge's cooperation or lack of cooperation may be considered by the commission in determining the appropriate disciplinary sanction or disposition as well as further proceedings to be taken by the commission but may not be considered in making evidentiary determinations.

(b) A respondent judge shall, within the time limits set forth in rules 110(a) and 111(a), respond to the merits of a staff inquiry letter or preliminary investigation letter.

(c) A respondent judge shall, within the time limits set forth in rule 119(b), file an answer to a notice of formal proceedings which comports with the requirements set forth in rule 119(c).

(d) A respondent judge shall file all other responses and documents required in commission proceedings within such reasonable time as the commission may prescribe, and shall comply with all other requirements of commission proceedings, including the discovery requirements set forth in rule 122.

(e) In accordance with California Evidence Code section 913, no inference shall be drawn as to any matter in issue or to the credibility of the judge based on a refusal to respond as

EXHIBIT C

1960

ADMINISTRATION OF JUSTICE

for example, would a person seriously injured be denied payment due him because of his failure in filing his claim to comply with some obscure provision in a city charter.

Proposition 9 was placed on this ballot by the unanimous vote of the Senators and Assemblymen present in the Legislature when the vote was taken. Vote YES on Proposition 9.

CLARK BRADLEY
Member of the Assembly
WILLIAM BIDDICK, Jr.
Member of the Assembly

10 ADMINISTRATION OF JUSTICE. Senate Constitutional Amendment No. 14. Provides that membership of Judicial Council besides judges shall include members of State Bar and two legislators; permits appointment of administrative director. Creates Commission on Judicial Qualifications consisting of judges, members of State Bar and citizens; provides procedure for removal of judges for misconduct or to compel retirement for disability. Declares State Bar of California is a public corporation. Changes name of Commission on Qualifications to Commission on Judicial Appointments.

YES ☐

NO ☐

(For Full Text of Measure, See Page 8, Part II)

Analysis by the Legislative Counsel

Section 1a of Article VI provides for a Judicial Council consisting of the Chief Justice and 10 judges appointed by him. This measure would amend that section to add four members of the State Bar appointed by its Board of Governors, one member selected by each house of the Legislature, and one additional municipal court judge. The Clerk of the Supreme Court would be secretary of the Council, which would be authorized to appoint an administrative director of the courts who would hold office at its pleasure. The administrative director would perform such of the Council's duties, other than making rules of practice and procedure, as may be delegated to him. The measure would allow the Chief Justice to equalize judicial business by assigning a judge, with his consent, to a court of lower jurisdiction and a retired judge, with his consent, to any court.

The constitutional amendment would create a Commission on Judicial Qualifications by adding Section 1b to Article VI. The commission would consist of two justices of district courts of appeal, two judges of superior courts and one judge of a municipal court, selected by the Supreme Court for four year terms. The commission would also include, for four year terms, two members of the State Bar appointed by its Board of Governors and two citizens, appointed by the Governor. The citizen members could not be active or retired judges nor members of the State Bar. An existing "Commission of Qualifications," created by Section 26 of Article VI, would be renamed to be the "Commission on Judicial Appointments."

The constitutional amendment would add Section 10b to Article VI to provide for the removal of judges for willful misconduct in office, or willful and persistent failure to perform their duties, or habitual intemperance. It would also provide for involuntary retirement of judges for permanent disability. The new Commission on Judicial Qualifications may hold a hearing concerning the removal or retirement of a judge or it may request the Supreme Court to appoint three special masters to hold such a hearing on its behalf. If the commission finds good cause therefor, it must recommend the removal or retirement of the judge to the Supreme Court. The Supreme Court is required to review the record and may take additional evidence. It may order the judge's removal or retirement, or may wholly reject the commission's recommendation. The amendment would provide other procedural requirements and it constitutes a method of removal which is an alternative to such existing procedures as impeachment, recall, removal by the Legislature and removal for conviction of a crime involving moral turpitude.

The constitutional amendment would add Section 1c to Article VI to provide that the State Bar of California is a public corporation with perpetual existence. Every person admitted and licensed to practice law in this State is required to be a member of the State Bar except while holding office as a judge of a court of record.

Argument in Favor of Senate Constitutional Amendment No. 14

This measure is designed to improve the administration of justice. It was formulated by the Joint Judiciary Committee of the California Legislature with the assistance of the Judicial Council, the State Bar and the Conference of California Judges. It is proposed by the overwhelming vote of both Houses of the Legislature.

First, the measure proposes an effective and expeditious method for the removal of a judge who is unable or unwilling to perform his duties. Impeachment, recall and other existing methods are too cumbersome and expensive to be workable. It is only rarely that cause exists for the removal of a judge. But where such cause does exist, the removal should be fast and sure. The Conference of California Judges, by an overwhelming vote, has endorsed this measure as a protection for the competent, hardworking judges against the rare cases of incompetency and misconduct on the Bench. The People are at least equally entitled to such protection.

A commission of nine members—five judges appointed by the Supreme Court, two lawyers appointed by the Board of Governors of the State Bar, and two citizens appointed by the Governor

will receive complaints, conduct investigations, hold hearings, and make recommendations to the Supreme Court. To avoid the unfairness of publishing complaints of merely disgruntled litigants, proceedings before the commission will not be public, unless and until it recommends to the Supreme Court the removal or retirement of the judge. The record before the commission will then be a public record of the Supreme Court which will determine whether the judge in question shall be removed or retired.

This proposal will assure real protection against incompetency, misconduct or non-performance of duty on the Bench.

The amendment also strengthens the Judicial Council, which makes the rules of court procedure, by enlarging its membership to include two legislators and four lawyers, and authorizes it to appoint a Court Administrator to supervise the administrative work of the courts. Some 18 other States and the Federal Government have learned that such a Court Administrator performs an important function in increasing the efficiency of the courts and equalizing the workload of the judges.

Inasmuch as the measure provides that the State Bar shall appoint the four lawyer members of the Judicial Council and the two lawyer members of the Commission on Judicial Qualifications, both of which are created by the State Constitution, it is thought advisable to include a provision giving the State Bar, which is now a statutory entity, the status of a constitutional body too. The Legislature, however, will continue to have power to regulate the administration of the State Bar by statute as it now does.

Finally, the amendment changes the name of the existing Commission on Qualifications, which is concerned with approving or rejecting the Governor's appointments of appellate judges, and with voluntary retirement of judges, to the more appropriate one of the "Commission on Judicial Appointments." This will prevent confusing it with the proposed new Commission.

This constitutional amendment should have your Yes vote.

EDWIN J. REGAN
Senator, 5th District
Trinity and Shasta Counties

JOSEPH A. RATTIGAN
Senator, 12th District
Sonoma County

11 **VETERANS' TAX EXEMPTION.** **Senate Constitutional Amendment No. 13.** Provides that residency requirement for veterans' tax exemption of $1,000 means those who were residents at time of entry into armed forces or operative date of this amendment; survivor to be entitled to exemption must be survivor of qualified veteran and also resident at time of application. Extends exemption to widowers as well as widows; exemption denied to survivor owning property of value of $10,000. Permits totally disabled veteran entitled to $5,000 exemption on a home to transfer it to subsequently acquired home.

YES	
NO	

(For Full Text of Measure, See Page 10, Part II)

Analysis by the Legislative Counsel

This constitutional amendment would amend Section 1¼ of Article XIII. It would extend the present coverage of the veterans' tax exemption to include veterans of the Armed Forces of the United States, rather than merely those of the Army, Navy, Marine Corps, Coast Guard or Revenue Marine (Revenue Cutter) Service.

It would restrict the present exemption by making it applicable only to those veterans who were residents of this State at the time of their entry into the Armed Forces or who are residents on November 8, 1960, which will be the effective date of the amendment if it is adopted. Under the present constitutional provision a veteran need only be a resident of California at the time he makes application for the exemption.

In addition, the proposed amendment would use the word "spouse" instead of "wife" or "widow," thus extending the exemption to husbands and widowers. The measure would provide that a surviving spouse, father or mother of a deceased veteran may not own property of the value of $10,000 or more, rather than $5,000 or more, if they are to qualify for the exemption.

It would also restrict the exemption granted to a surviving spouse or parent of a veteran to situations in which such spouse or parent resided in this State and the deceased veteran was eligible for an exemption at the time of his death.

The proposed constitutional amendment also restates the last paragraph of Section 1¼ in the form of a new Section 1¼a. Under the present provisions of that paragraph the Legislature has authority to exempt from property taxes the homes of veterans of this State who are permanently and totally disabled due to the loss, or loss of use, of both lower extremities from specified causes. Present authority is limited, however, to exempting homes acquired with the assistance of the Federal Government. This constitutional amendment would extend the exemption to any home acquired and occupied by such a totally disabled veteran after disposing of the home acquired with Federal assistance, whether or not the new home is acquired with such assistance.

Proposition No. 3 also would amend Section 1¼ of Article XIII and would add a Section 1¼a to that article. The two measures are therefore in conflict and in the event that both are adopted by the voters, the one receiving the higher vote will prevail.

Argument in Favor of Senate Constitutional Amendment No. 13

This proposition relates to the Veterans Tax Exemption. There are five changes contained in Proposition 11:

1. Eligibility for exemption is limited to:

ernor, in his discretion, prior to such general election, in the same manner that a constitutional amendment proposed by the Legislature would be submitted, and all of the provisions of law relative to submission of such constitutional amendments to the electors and to matters incidental thereto shall apply to the submission of Sections 1 and 2 of this act, except as otherwise provided in this section or as such provisions may be clearly inapplicable for the submission of amendment to an initiative measure pursuan Section 1b of Article IV of the State Constituti...

ELIGIBILITY TO VOTE. Assembly Constitutional Amendment No. 5. Changes prohibitions of eligibility to vote from those convicted of infamous crime to those convicted of felony during punishment therefor and those convicted of treason.

8

YES ☐

NO ☐

(This proposed amendment expressly amends an existing section of the Constitution; therefore **EXISTING PROVISIONS** proposed to be **DELETED** are printed in ~~STRIKEOUT TYPE~~; and **NEW PROVISIONS** proposed to be **INSERTED** are printed in **BLACK-FACED TYPE.**)

PROPOSED AMENDMENT TO ARTICLE II

SECTION 1. Every native citizen of the United States of America, every person who shall have acquired the rights of citizenship under and by virtue of the Treaty of Querétaro, and every naturalized citizen thereof, who shall have become such 90 days prior to any election, of the age of 21 years, who shall have been a resident of the State one year next preceding the day of the election, and of the county in which he or she claims his or her vote 90 days, and in the election precinct 54 days, shall be entitled to vote at all elections which are now or may hereafter be authorized by law; provided, any person duly registered as an elector in one precinct and removing therefrom to another precinct in the same county within 54 days, or any person duly registered as an elector in any county in California and removing therefrom to another county in California within 90 days prior to an election, shall for the purpose of such election be deemed to be a resident and qualified elector of the precinct or county from which he so removed until after such election; provided, further, no alien ineligible to citizenship, no idiot, no insane person, no person convicted of any ~~infamous crime, no person hereafter convicted of~~ felony, while paying the penalties imposed by law therefor, including any period of probation or parole, no person convicted of treason, the embezzlement or misappropriation of public money, and no person who shall not be able to read the Constitution in the English language and write his or her name, shall ever exercise the privileges of an elector in this State; provided, that the provisions of this amendment relative to an educational qualification shall not apply to any person prevented by a physical disability from complying with its requisitions, nor to any person who had the right to vote on October 10, 1911, nor to any person who was 60 years of age and upwards on October 10, 1911; provided, further, that the Legislature may, by general law, provide for the casting of votes by duly registered voters who expect to be absent from t... respective precincts or unable to vote therein reason of physical disability, on the day on w... any election is held.

CLAIMS AGAINST CHARTERED CITIES AND COUNTIES. Assembly Constitutional Amendment No. 16. Permits Legislature to prescribe procedures governing claims against chartered counties, cities and counties, and cities, or against officers, agents and employees thereof.

9

YES ☐

NO ☐

(This proposed amendment does not expressly amend any existing section of the Constitution, but adds a new section thereto; therefore, the provisions thereof are printed in **BLACK-FACED TYPE** to indicate that they are **NEW.**)

PROPOSED AMENDMENT TO ARTICLE XI

Sec. 10. No provision of this article shall limit the power of the Legislature to prescribe procedures governing the presentation, consideration and enforcement of claims against chartered counties, chartered cities and counties, and chartered cities, or against officers, agents and employees thereof.

ADMINISTRATION OF JUSTICE. Senate Constitutional Amendment No. 14. Provides that membership of Judicial Council besides judges shall include members of State Bar and two legislators; permits appointment of administrative director. Creates Commission on Judicial Qualifications consisting of judges, members of State Bar and citizens; provides procedure for removal of judges for misconduct or to compel retirement for disability. Declares State Bar of California is a public corporation. Changes name of Commission on Qualifications to Commission on Judicial Appointments.

10

YES ☐

NO ☐

(This proposed amendment expressly amends an existing section of the Constitution, and adds new sections thereto; therefore, **EXISTING PROVISIONS** proposed to be **DELETED** are printed in ~~STRIKEOUT TYPE~~, and **NEW PROVISIONS** proposed to be **INSERTED** or **ADDED** are pri...d in **BLACK-FACED TYPE.**)

PROPOSED AMENDMENTS TO ARTICLE VI

First—That Section 1a of Article VI is amended to read:

Sec. 1a. There shall be a Judicial Council. It shall consist of: **(i)** the Chief Justice or Acting Chief Justice~~, and of~~; **(ii)** one associate justice of the Supreme Court, three justices of district courts of appeal, four judges of superior courts, ~~one judge~~ **two judges** of ~~a police or~~ municipal ~~court~~ **courts**, and one judge of ~~an inferior~~ a justice court, ~~assigned~~ **designated** by the Chief Justice ~~to sit there on~~ for terms of two years; **(iii) four members of the State Bar of California appointed by the Board of Governors of the State Bar for terms of two years, two of the first such appointees to be appointed for one year and two for two years; and (iv) one member of each house of the Legislature designated as provided by the respective house.** ~~provided, that if~~ **If** any judge so ~~assigned~~ **designated** shall cease to be a judge of the court from which he is ~~assigned~~ **selected**, his ~~term~~ **designation** shall forthwith terminate. **If any member of the State Bar so appointed shall cease to be a member of the State Bar, his appointment shall forthwith terminate, and the Board of Governors of the State Bar shall fill the vacancy in his unexpired term. If any member of the Legislature so designated shall cease to be a member of the house from which designated, his designation shall forthwith terminate, and a new designation shall be made in the manner provided by the respective house.** The Chief Justice or Acting Chief Justice shall be chairman **and the Clerk of the Supreme Court shall serve as secretary. The council may appoint an administrative director of the courts, who shall hold office at its pleasure and shall perform such of the duties of the council and of its chairman, other than to adopt or amend rules of practice and procedure, as may be delegated to him.** No act of the council shall be valid unless concurred in by ~~six~~ **a majority of its** members.

The Judicial Council shall from time to time:

(1) Meet at the call of the chairman or as otherwise provided by it.

(2) Survey the condition of business in the several courts with a view to simplifying and improving the administration of justice.

(3) Submit such suggestions to the several courts as may seem in the interest of uniformity and the expedition of business.

(4) Report to the Governor and Legislature at the commencement of each regular session with such recommendations as it may deem proper.

(5) Submit to the Legislature, at each general session thereof, its recommendations with reference to amendments of, or changes in, existing laws relating to practice and procedure.

~~(5)~~ **(6)** Adopt or amend rules of practice and procedure for the several courts not inconsistent with laws that are now or that may hereafter be in force~~; and the council shall submit to the Legislature, at each regular session thereof, its recommendations with reference to amendments of, or changes in, existing laws relating to practice and procedure~~.

~~(6)~~ **(7)** Exercise such other functions as may be provided by law.

The chairman shall seek to expedite judicial business and to equalize the work of the judges, and shall provide for the assignment of any judge to another court of a like or higher jurisdiction to assist a court or judge whose calendar is congested, to act for a judge who is disqualified or unable to act, or to sit and hold court where a vacancy in the office of judge has occurred. **A judge may likewise be assigned with his consent to a court of lower jurisdiction, and a retired judge may similarly be assigned with his consent to any court.**

~~The clerk of the supreme court shall act as secretary of the council.~~

The ~~several~~ judges shall co-operate with the council, shall sit and hold court as assigned, and shall report to the chairman at such times and in such manner as he shall request respecting the condition, and manner of disposal, of judicial business in their respective courts.

No member of the council shall receive any compensation for his services as such, but shall be allowed his necessary expenses for travel, board and lodging incurred in the performance of his duties as such. Any judge assigned to a court wherein a judge's compensation is greater than his own shall receive while sitting therein the compensation of a judge thereof. The extra compensation shall be paid in such manner as may be provided by law. Any judge assigned to a court in a county other than that in which he regularly sits shall be allowed his necessary expenses for travel, board and lodging incurred in the discharge of the assignment.

Second—That Section 1b is added to Article VI, to read:

Sec. 1b. There shall be a Commission on Judicial Qualifications. It shall consist of: (i) Two justices of district courts of appeal, two judges of superior courts, and one judge of a municipal court, each selected by the Supreme Court for a four-year term; (ii) two members of the State Bar, who shall have practiced law in this State for at least 10 years and who shall be appointed by the Board of Governors of the State Bar for a four-year term; and (iii) two citizens, neither of whom shall be a justice or judge of any court, active or retired, nor a member of the State Bar, and who shall be appointed by the Governor for a four-year term. Every appointment made by the Governor to the commission shall be subject to the advice and consent of a majority of members elected to the Senate, except that if a vacancy occurs when the Legislature is not in session, the Governor may issue an interim commission which shall expire on the last day of the next regular or special session of the Legislature. Whenever a member selected under subdivision (i) ceases to be a member of the commission or a justice or judge of the court from which he was selected, his membership shall forthwith terminate and the Supreme Court shall select a successor for a four-year term; and whenever a member appointed under subdivision (ii) ceases to be a member of the commission or of the State Bar, his membership shall forthwith terminate and the Board of Governors of the State Bar shall appoint a successor for a four-year term; and whenever a member appointed under

subdivision (iii) ceases to be a member of the commission or becomes a justice or judge of any court or a member of the State Bar, his membership shall forthwith terminate and the Governor shall appoint a successor for a four-year term. No member of the commission shall receive any compensation for his services as such, but shall be allowed his necessary expenses for travel, board and lodging incurred in the performance of his duties as such.

No act of the commission shall be valid unless concurred in by a majority of its members. The commission shall select one of its members to serve as chairman.

Third—That Section 1c is added to Article VI, to read:

Sec. 1c. The State Bar of California is a public corporation with perpetual existence and succession. Every person admitted and licensed to practice law in this State is and shall be a member of the State Bar except while holding office as a justice or judge of a court of record.

Fourth—That Section 10b is added to Article VI, to read:

Sec. 10b. A justice or judge of any court of this State, in accordance with the procedure prescribed in this section, may be removed for willful misconduct in office or willful and persistent failure to perform his duties or habitual intemperance, or he may be retired for disability seriously interfering with the performance of his duties, which is, or is likely to become, of a permanent character. The Commission on Judicial Qualifications may, after such investigation as the commission deems necessary, order a hearing to be held before it concerning the removal or retirement of a justice or a judge, or the commission may in its discretion request the Supreme Court to appoint three special masters, who shall be justices or judges of courts of record, to hear and take evidence in any such matter, and to report thereon to the commission. If, after hearing, or after considering the record and report of the masters, the commission finds good cause therefor, it shall recommend to the Supreme Court the removal or retirement, as the case may be, of the justice or judge.

The Supreme Court shall review the record of the proceedings on the law and facts and in its discretion may permit the introduction of additional evidence and shall order removal or retirement, as it finds just and proper, or wholly reject the recommendation. Upon an order for retirement, the justice or judge shall thereby be retired wth the same rights and privileges as if he retired pursuant to statute. Upon an order for removal, the justice or judge shall thereby be removed from office, and his salary shall cease from the date of such order.

All papers filed with and proceedings before the Commission on Judicial Qualifications or masters appointed by the Supreme Court, pursuant to this section, shall be confidential, and the filing of papers with and the giving of testimony before the commission or the masters shall be privileged; but no other publication of such papers or proceedings shall be privileged in any action for defamation except that (a) the record filed by the commission in the Supreme Court continues privileged and upon such filing loses its confidential character and (b) a writing which was privileged prior to its filing with the commission or the masters does not lose such privilege by such filing. The Judicial Council shall by rule provide for procedure under this section before the Commission on Judicial Qualifications, the masters, and the Supreme Court. A justice or judge who is a member of the commission or Supreme Court shall not participate in any proceedings involving his own removal or retirement.

This section is alternative to, and cumulative with, the methods of removal of justices and judges provided in Sections 10 and 10a of this article, Sections 17 and 18 of Article IV, and Article XXIII, of this Constitution.

Fifth—That Section 26a is added to Article VI, to read:

Sec. 26a. The "Commission on Qualifications" created by Section 26 of this article is renamed and henceforth shall be known as the "Commission on Judicial Appointments."

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11 **VETERANS' TAX EXEMPTION.** **Senate Constitutional Amendment No. 13.** Provides that residency requirement for veterans' tax exemption of $1,000 means those who were residents at time of entry into armed forces or operative date of this amendment; survivor to be entitled to exemption must be survivor of qualified veteran and also resident at time of application. Extends exemption to widowers as well as widows; exemption denied to survivor owning property of value of $10,000. Permits totally disabled veteran entitled to $5,000 exemption on a home to transfer it to subsequently acquired home.

YES	
NO	

(This proposed amendment expressly amends an existing section of the Constitution, and adds a new section thereto; therefore, **EXISTING PROVISIONS** proposed to be **DELETED** are printed in ~~STRIKEOUT TYPE~~, and **NEW PROVISIONS** proposed to be **INSERTED** or **ADDED** are printed in **BLACK-FACED TYPE.**)

PROPOSED AMENDMENTS TO ARTICLE XIII

First—That Section 1¼ of Article XIII be amended to read:

Sec. 1¼. **(a)** The property to the amount of one thousand dollars ($1,000) of every resident of this State who has served in the ~~Army, Navy, Marine Corps, Coast Guard or Revenue Marine (Revenue Cutter) Service~~ **Armed Forces** of the United States (1) in time of war, or (2) in time of peace, in a campaign or expedition for service in which a medal has been issued by, **or under the authority of,** the Congress of the United S' and in either case has received an honorable charge therefrom, or who after such service of the

EXHIBIT D

1966

CONSTITUTIONAL REVISION

PART I—ARGUMENTS

1-a **CONSTITUTIONAL REVISION.** Legislative Constitutional Amendment. Repeals, amends, and revises various provisions of Constitution relating to separation of powers, and to the legislative, executive, and judicial departments; provides for annual general legislative sessions; provides compensation of members of Legislature shall be prescribed by statute passed by two-thirds vote, and limits rate of annual future adjustments; Legislature must enact laws prohibiting members from engaging in conflicting activities. Signatures necessary on petition for initiative statute reduced from 8% to 5%; eliminates initiatives to Legislature. Legislature shall provide for succession to the office of Governor in event of disability or vacancy.

YES	
NO	

(For Full Text of Measure, See Page 1, Part II)

General Analysis by the Legislative Counsel *

A "Yes" vote on the measure is a vote to revise portions of the California Constitution dealing with the separation of powers and with the legislative, executive, and judicial departments of state government.

A "No" vote is a vote to reject this revision.

For further details see below.

Detailed Analysis by the Legislative Counsel *

This measure would revise portions of the State Constitution dealing with the separation of powers and with the legislative, executive, and judicial departments of state government. Some provisions, mainly procedural, would be transferred to statutes enacted at the 1966 First Extraordinary Session. The major changes made by the measure include the following:

Legislative

The Legislature now meets in general session, at which all subjects can be considered, in odd-numbered years. It meets in budget sessions, at which only fiscal matters may be considered, in even-numbered years. Both sessions are of limited duration. Under this measure the Legislature would meet in annual general sessions, unlimited as to duration and unlimited as to subjects that could be considered.

Salaries and the expenses of legislators would be set by statute passed by a two-thirds vote in each house, rather than by the Constitution, provided: (a) beginning in 1967, an increase in salary could not exceed 5 percent for each year following the last adjustment; and (b) an increase could not apply until the commencement of the regular session following the next general election after enactment of the increase. Any increase in the legislator's salary over the present $500 per month could not be used in computing the retirement allowance of a member unless he receives the greater amount while serving as a Member of the Legislature.

The Legislature would be required to enact conflict of interest legislation applicable to legislators. Impeachment proceedings would be extended to cover additional elective officers of the state.

The number of signatures needed for an initiative petition for enactment of a statute would be reduced from 8 to 5 percent of the votes cast at the last election for Governor; however, the signature requirement for an initiative constitutional amendment would remain unchanged. Provisions for the submission of initiative petitions to the Legislature would be eliminated.

Executive

The age requirement for the office of Governor would be lowered to 21 years. The measure would make various technical changes in the pardoning and clemency powers of the Governor. Provisions setting minimums for statutory salaries of certain elective state officers would be deleted. Provision would be made for determining questions of succession to the governorship and temporary disability of Governor. The Legislature could authorize certain executive reorganizations.

Judiciary

When authorized by law a judge would be permitted, on agreement of the counties, to serve the superior courts of two or more counties. The experience required for judges of superior and higher courts would be increased. The Legislature could provide that the names of unopposed incumbent judges need not be placed on the ballot for any trial court in the state, rather than only for superior courts in counties of 700,000 population or more. The automatic suspension of judges charged with a felony or recommended for removal by qualifications commission would be required. A superior or municipal court judge would be required to take a leave of absence without pay when seeking other public office.

* Section 3566 of the Elections Code requires the Legislative Counsel to prepare an impartial analysis of measures appearing on the ballot.

Argument in Favor of Proposition No. 1-a

We support the proposed revision of the State Constitution and urge all Californians to vote YES on Proposition 1-a.

EDMUND G. "PAT" BROWN
Governor of the State
of California

RONALD REAGAN

RICHARD J. DONOVAN
Judge, Municipal Court
San Diego Judicial District
(Former Member of the Assembly,
77th District)

Argument in Favor of Proposition No. 1-a

One of our most crucial needs in these times is effective government—based on a modern Constitution.

Yet, concerning the California Constitution, former State Supreme Court Justice Phil S. Gibson has stated:

"(Our Constitution is) . . . cumbersome, unelastic, and outmoded . . . It is not only much too long, but it is almost everything a Constitution ought not to be."

California's Constitution is hardly modern. It is the third longest Constitution in the world and has been amended over 300 times since 1879. In short, it is a mess.

In 1962, by more than a 2 to 1 vote, the people mandated modernization of their Constitution. As a result, a blue-ribbon Constitution Revision Commission of 69 leading Californians was appointed to recommend a revised Constitution. These prominent citizens from all walks of life worked without pay for three years and spent thousands of hours at their task.

The result is Proposition 1-a. It is the first phase of the Commission's work. It covers approximately one-third of the existing Constitution, and reduces that one-third from 22,000 to 6,000 words.

The reforms in Proposition 1-a have been labeled by party leaders and non-partisan groups alike as essential to the effective operation of government.

Proposition 1-a puts the Constitution into modern, concise and easily understandable language.

The changes in the legislative, executive and judicial articles would include machinery, with adequate safeguards, to remove a Governor from office if he is proven unable to carry on his duties; judges would be under stronger disciplinary procedures and the practice of running for political office while still a judge would be curtailed; and the Legislature would meet annually to consider all problems confronting California.

In keeping with increased time demands on the Legislature Proposition 1-a removes salary provisions frozen in the Constitution and ratifies a new compensation plan with careful controls and strict regulations regarding the outside activities and income of legislators.

The fundamental weapons available to California's citizens to combat abuses by their governmental officials—the initiative, the referendum and the recall—have been carefully preserved.

State government today faces new challenges and new responsibilities not dreamed of in 1879. This new Constitution helps to meet those challenges by making government itself more flexible and able to do the job which our citizens have a right to expect.

If states are to survive and prosper in our system, they need the tools of effective government—Proposition 1-a is a giant step toward that goal. California can lead the way. Vote YES on 1-a.

LUTHER E. GIBSON
State Senator, Solano County

BRUCE W. SUMNER
Chairman, Calif. Constitution
Revision Commission
Judge, Superior Court, Orange Co.

THOMAS L. PITTS
(Exec. Sec'y. Calif. Labor
Fed. AFL-CIO)
Member Calif. Constitution
Revision Commission

Argument Against Proposition No. 1-a

As the only person who cast a negative vote in the Assembly on the Constitutional Revision program, under California law I am designated to submit the negative argument on Proposition 1-a. At the time the vote was taken in the Assembly, I was not opposed to this proposition in its entirety; rather, I found fault with a few of its provisions which placed unrealistic restrictions on the legislature. It would be unfair to those persons who are vigorously opposed to this program for broad and fundamental philosophical beliefs if I were to submit an argument which would express, as is the case, only minor reservations about this program of reform. Because of these considerations, I have delegated my responsibility for the negative argument to Senator John G. Schmitz (R—Orange County) whose statement follows:

"This Constitutional Amendment, if passed, would mark a significant departure from our traditional system of citizen legislators to fully paid, full time legislators.

"The passing of laws in a free country ought not to be a fulltime profession for anyone. When it becomes so, the country permitting it will not long remain truly free.

"We certainly need legal professionals in our courts, at the bar and on the bench. We certainly need police professionals to enforce the law and protect the innocent. We may or may not need professional bureaucrats in other branches of government. But we do not need professional legislators.

"The men who founded our American system of government assigned the law-making responsibility to elected legislatures which were much closer to the people than either the executive or the judiciary. The executive and the judiciary were in the hands of professionals. The legislature was the people's check on the appetite of government professionals for more and ever more power and money.

"PRESCRIBING LAWS WHICH OTHER PEOPLE ARE TO BE FORCED TO OBEY CAN NEVER BE A PRIMARY OCCUPATION FOR ANY MAN WHO LOVES LIBERTY."

LEO J. RYAN
Assemblyman, San Mateo County

PART II—APPENDIX

CONSTITUTIONAL REVISION. Legislative Constitutional Amendment.

1-a Repeals, amends, and revises various provisions of Constitution relating to separation of powers, and to the legislative, executive, and judicial departments; provides for annual general legislative sessions; provides compensation of members of Legislature shall be prescribed by statute passed by two-thirds vote, and limits rate of annual future adjustments; Legislature must enact laws prohibiting members from engaging in conflicting activities. Signatures necessary on petition for initiative statute reduced from 8% to 5%; eliminates initiatives to Legislature. Legislature shall provide for succession to the office of Governor in event of disability or vacancy.

YES	
NO	

(This amendment proposed by Assembly Constitutional Amendment No. 13, 1966 First Extraordinary Session, expressly amends existing sections of the Constitution, amends and renumbers existing sections thereof, repeals existing sections and existing articles thereof, and adds new sections and new articles thereto; therefore **EXISTING PROVISIONS** proposed to be **DELETED** or **REPEALED** are printed in ~~STRIKEOUT TYPE~~; and **NEW PROVISIONS** proposed to be **INSERTED** or **ADDED** are printed in **BLACK-FACED TYPE.**)

PROPOSED AMENDMENTS TO ARTICLES III, IV, V, VI, VII, VIII, XIII, XXII

First, that Article III of the Constitution of the State is repealed.

~~ARTICLE III~~

~~DISTRIBUTION OF POWERS~~

~~SECTION 1. The powers of the government of the State of California shall be divided into three separate departments—the legislative, executive, and judicial; and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any functions appertaining to either of the others, except as in this Constitution expressly directed or permitted.~~

Second, That Article III is added, to read:

ARTICLE III
SEPARATION OF POWERS

The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution.

Second and One-half, That the heading of Article IV is amended to read:

LEGISLATIVE ~~DEPARTMENT~~

Third, That Section 1 of Article IV is repealed.

~~SECTION 1. The legislative power of this State shall be vested in a Senate and Assembly which shall be designated "The Legislature of the State of California," but the people reserve to themselves the power to propose laws and amendments to the Constitution, and to adopt or reject the same, at the polls independent of the Legislature, and also reserve the power, at their own option, to so adopt or reject any act, or section or part of any act, passed by the Legislature. The enacting clause of every law shall be "The people of the State of California do enact as follows:".~~

~~The first power reserved to the people shall be known as the initiative. Upon the presentation to the Secretary of State of a petition certified as herein provided to have been signed by qualified electors, equal in number to eight per cent of all the votes cast for all candidates for Governor at the last preceding general election, at which a Governor was elected, proposing a law or amendment to the Constitution, set forth in full in said petition, the Secretary of State shall submit the said proposed law or amendment to the Constitution to the electors at the next succeeding general election occurring subsequent to 130 days after the presentation aforesaid of said petition, or at any special election called by the Governor in his discretion prior to such general election. All such initiative petitions shall have printed across the top thereof in twelve-point black-face type the following: "Initiative measure to be submitted directly to the electors."~~

~~Upon the presentation to the Secretary of State, at any time not less than ten days before the commencement of any regular session of the Legislature, of a petition certified as herein provided to have been signed by qualified electors of the State equal in number to five per cent of all votes cast for all candidates for Governor at the last preceding general election, at which a Governor was elected, proposing a law set forth in full in said petition, the Secretary of State shall transmit the same to the Legislature as soon as it convenes and organizes. The law proposed by such petition shall be either enacted or rejected without change or amendment by the Legislature, within forty days from the time it is received by the Legislature. If any law proposed by such petition shall be enacted by the Legislature it shall be subject to referendum, as hereinafter provided. If any law so petitioned for be rejected, or if no action is taken upon it by the Legislature, within said forty days, the Secretary of State shall submit it to the people for approval or rejection at the next ensuing general election. The legislature may reject any measure so proposed by initiative petition and propose a different one on the same subject by a yea and nay vote upon separate roll call, and in such event both measures shall be submitted by the Secretary of State to the electors for approval or rejection at the next ensuing general election or at a prior special election called by the Governor, in his discretion, for such purpose. All said initiative petitions last above described shall have printed in twelve-point black-face type the following: "Initiative measure to be presented to the Legislature."~~

The second power reserved to the people shall be known as the referendum. No act passed by the Legislature shall go into effect until ninety days after the final adjournment of the session of the Legislature which passed such act, except acts calling elections, acts providing for tax levies or appropriations for the usual current expenses of the State, and urgency measures necessary for the immediate preservation of the public peace, health or safety, passed by a two-thirds vote of all the members elected to each House. Whenever it is deemed necessary for the immediate preservation of the public peace, health or safety that a law shall go into immediate effect, a statement of the facts constituting such necessity shall be set forth in one section of the act, which section shall be passed only upon a yea and nay vote, upon a separate roll call thereon; *provided, however*, that no measure creating or abolishing any office or changing the salary, term or duties of any officer, or granting any franchise or special privilege, or creating any vested right or interest, shall be construed to be an urgency measure. Any law so passed by the Legislature and declared to be an urgency measure shall go into immediate effect.

Upon the presentation to the Secretary of State within ninety days after the final adjournment of the Legislature of a petition certified as herein provided, to have been signed by qualified electors equal in number to five per cent of all the votes cast for all candidates for Governor at the last preceding general election at which a Governor was elected, asking that any act or section or part of any act of the Legislature be submitted to the electors for their approval or rejection, the Secretary of State shall submit to the electors for their approval or rejection, such act, or section or part of such act, at the next succeeding general election occurring at any time subsequent to thirty days after the filing of said petition or at any special election which may be called by the Governor, in his discretion, prior to such regular election, and no such act or section or part of such act shall go into effect until and unless approved by a majority of the qualified electors voting thereon; but if a referendum petition is filed against any section or part of any act the remainder of such act shall not be delayed from going into effect.

Any act, law or amendment to the Constitution submitted to the people by either initiative or referendum petition and approved by a majority of the votes cast thereon, at any election, shall take effect five days after the date of the official declaration of the vote by the Secretary of State. No act, law or amendment to the Constitution, initiated or adopted by the people, shall be subject to the veto power of the Governor, and no act, law or amendment to the Constitution, adopted by the people at the polls under the initiative provisions of this section, shall be amended or repealed except by a vote of the electors, unless otherwise provided in said initiative measure, but acts and laws adopted by the people under the referendum provisions of this section may be amended by the Legislature at any subsequent session thereof. If any provision or provisions of two or more measures, approved by the electors at the same election, conflict, the provision or provisions of the measure receiving the highest affirmative vote shall prevail. Until otherwise provided by law, all measures submitted to a vote of the electors, under the provisions of this section, shall be printed, and together with arguments for and against each such measure by those in favor of, and those opposed to, it shall be mailed to each elector in the same manner as now provided by law as to amendments to the Constitution, proposed by the Legislature; and the persons to prepare and present such arguments shall, until otherwise provided by law, be selected by the presiding officer of the Senate.

If for any reason any initiative or referendum measure, proposed by petition as herein provided, be not submitted at the election specified in this section, such failure shall not prevent its submission at a succeeding general election, and no law or amendment to the Constitution, proposed by the Legislature, shall be submitted at any election unless at the same election there shall be submitted all measures proposed by petition of the electors, if any be so proposed, as herein provided.

Prior to circulation of any initiative or referendum petition for signatures thereof, a draft of the said petition shall be submitted to the Attorney General with a written request that he prepare a title, and summary of the chief purpose and points of said proposed measure, said title and summary not to exceed one hundred words in all. The persons presenting such request to the Attorney General shall be known as "proponents" of said proposed measure. The Attorney General shall preserve said written request until after the next general election.

Any initiative or referendum petition may be presented in sections, but each section shall contain a full and correct copy of the title and text of the proposed measure. Each signer shall add to his signature his place of residence, giving the street and number if such exist. His election precinct shall also appear on the paper after his name. The number of signatures attached to each section shall be at the pleasure of the person soliciting signatures to the same. Any qualified elector of the State shall be competent to solicit said signatures within the county or city and county of which he is an elector. Each section of the petition shall bear the name of the county or city and county in which it is circulated, and only qualified electors of such county or city and county shall be competent to sign such section. Each section shall have attached thereto the affidavit of the person soliciting signatures to the same, stating his own qualifications and that all the signatures to the attached section were made in his presence and that to the best of his knowledge and belief each signature to the section is the genuine signature of the person whose name it purports to be, and no other affidavit thereto shall be required. The affidavit of any person soliciting signatures hereunder shall be verified free of charge by any officer authorized to administer oaths. Such petitions so verified shall be prima facie evidence that the signatures thereon are genuine and that the persons signing the same are qualified electors. Unless and until it be otherwise proved upon official investigation, it shall be presumed that the petition presented contains the signatures of the requisite number of qualified electors.

~~Each section of the petition shall be filed with the clerk or registrar of voters of the county or city and county in which it was circulated, but all said sections circulated in any county or city and county shall be filed at the same time. Within twenty days after the filing of such petition in his office the said clerk, or registrar of voters, shall determine from the records of registration what number of qualified electors have signed the same, and if necessary the board of supervisors shall allow said clerk or registrar additional assistance for the purpose of examining such petition and provide for their compensation. The said clerk or registrar, upon the completion of such examination, shall forthwith attach to said petition, except the signatures thereto appended, his certificate, properly dated, showing the result of said examination and shall forthwith transmit said petition, together with his said certificate, to the Secretary of State and also file a copy of said certificate in his office. Within forty days from the transmission of the said petition and certificate by the clerk or registrar to the Secretary of State, a supplemental petition identical with the original as to the body of the petition but containing supplemental names, may be filed with the clerk or registrar of voters, as aforesaid.~~

~~The right to file the original petition shall be reserved to its proponents, as defined herein and any section thereof or supplement thereto presented for filing by any person or persons other than the proponents of a measure or by persons duly authorized in writing by such proponents will be disregarded by the county clerk or registrar of voters.~~

~~The clerk or registrar of voters shall within ten days after the filing of such supplemental petition make like examination thereof, as of the original petition, and upon the completion of such examination shall forthwith attach to said petition his certificate, properly dated, showing the result of said examination, and shall forthwith transmit a copy of said supplemental petition, except the signatures thereto appended, together with his certificate, to the Secretary of State.~~

~~When the Secretary of State shall have received from one or more county clerks or registrars of voters a petition certified as herein provided to have been signed by the requisite number of qualified electors, he shall forthwith transmit to the county clerk or registrar of voters of every county or city and county in the State his certificate showing such fact. A petition shall be deemed to be filed with the Secretary of State upon the date of the receipt by him of a certificate or certificates showing said petition to be signed by the requisite number of electors of the State. Any county clerk or registrar of voters shall, upon receipt of such copy, file the same for record in his office. The duties herein imposed upon the clerk or registrar of voters shall be performed by such registrar of voters in all cases where the office of registrar of voters exists.~~

~~The initiative and referendum powers of the eople are hereby further reserved to the electors each county, city and county, city and town of .e State to be exercised under such procedure as may be provided by law. Until otherwise provided by law, the legislative body of any such county, city and county, city or town may provide for the manner of exercising the initiative and referendum powers herein reserved to such counties, cities and counties, cities and towns, but shall not require more than fifteen per cent of the electors thereof to propose any initiative measure nor more than ten per cent of the electors thereof to order the referendum. Nothing contained in this section shall be construed as affecting or limiting the present or future powers of cities or cities and counties having charters adopted under the provisions of Section 8 of Article XI of this Constitution. In the submission to the electors of any measure under this section, all officers shall be guided by the general laws of this State, except as is herein otherwise provided. This section is self-executing, but legislation may be enacted to facilitate its operation, but in no way limiting or restricting either the provisions of this section or the powers herein reserved.~~

Fourth, That Section 1a of Article IV is amended and renumbered to be Section 20 of Article XIII, to read:

~~SEC. 1a~~ **SEC. 20.** Notwithstanding any limitations or restrictions in this Constitution contained, every ~~State~~ state office, department, institution, board, commission, bureau, or other agency of the State, whether created by initiative law or otherwise, shall be subject to the regulations and requirements with respect to the filing of claims with the State Controller and the submission, approval and enforcement of budgets prescribed by law.

Fifth, That Section 1b of Article IV is repealed.

~~SEC. 1b. Laws may be enacted by the Legislature to amend or repeal any act adopted by vote of the people under the initiative, to become effective only when submitted to and approved by the electors unless the initiative act affected permits the amendment or the repeal without such approval. The Legislature shall by law prescribe the method and manner of submitting such a proposal to the electors.~~

Sixth, That Section 1c of Article IV is repealed.

~~SEC. 1c. Every constitutional amendment or statute proposed by the initiative shall relate to but one subject. No such amendment or statute shall hereafter be submitted to the electors if it embraces more than one subject, nor shall any such amendment or statute embracing more than one subject, hereafter submitted to or approved by the electors, become effective for any purpose.~~

Seventh, That Section 1d of Article IV is repealed.

~~SEC. 1d. (a) No amendment to the Constitution and no law or amendment thereto whether proposed by the initiative or by the Legislature which names any individual or individuals by name or names to hold any office or offices shall hereafter be submitted to the electors, nor shall any such amendment to the Constitution, law, or amendment thereto hereafter submitted to or approved by the electors become effective for any purpose.~~

~~(b) No amendment to the Constitution, whether proposed by the initiative or by the Legislature, which names any private corporation, or more than one such corporation, by name or names, to perform any function or have any power or duty,~~

shall be submitted to the electors, nor shall any such amendment to the Constitution, submitted to or approved by the electors at the 1964 general election or any election thereafter become effective for any purpose.

Eighth, That Section 2 of Article IV is repealed.

SEC. 2. (a) The sessions of the Legislature shall be annual, but the Governor may, at any time, convene the Legislature by proclamation, in extraordinary session.

All regular sessions in odd-numbered years shall be known as general sessions and no general session shall exceed 120 calendar days in duration, not including Saturdays or Sundays.

All regular sessions in even-numbered years shall be known as budget sessions, at which the Legislature shall consider only the Budget Bill for the succeeding fiscal year, revenue acts necessary therefor, the approval or rejection of charters and charter amendments of cities, counties, and cities and counties, and acts necessary to provide for the expenses of the session.

All general sessions shall commence at 12 o'clock m., on the first Monday after the first day of January.

At the general session, no bill, other than the Budget Bill, shall be heard by any committee or acted upon by either house until 30 calendar days have elapsed following the date the bill was first introduced; provided, that this provision may be dispensed with by the consent of three-fourths of the members of the house.

(b) Each Member of the Legislature shall receive for his services the sum of five hundred dollars ($500) for each month of the term for which he is elected.

No Member of the Legislature shall be reimbursed for his expenses, except for expenses incurred (1) while attending a regular, special or extraordinary session of the Legislature (the expense allowances for which may equal but not exceed the expense allowances at the time authorized for other elected state officers), not exceeding the duration of any general session or of any budget session or the duration of a special or extraordinary session or (2) while serving after the Legislature has adjourned or during any recess of the two houses of the Legislature as a member of a joint committee of the two houses or of a committee of either house, when the committee is constituted and acting as an investigating committee to ascertain facts and make recommendations, not exceeding, during any calendar year, 40 days as a member of one or more committees of either house, or 60 days as a member of one or more joint committees, but not exceeding 60 days in the aggregate for all such committee work. The limitations in this subsection (b) are not applicable to mileage allowances.

(c) Notwithstanding any provisions in subdivision (a) of this section of this article to the contrary, all budget sessions shall commence at 12 m. on the first Monday in February and no budget session shall exceed 30 calendar days in duration exclusive of the recess authorized to be taken by this subdivision. After the introduction of the Budget Bill at a budget session a recess of both houses may be taken for a period not to exceed 30 calendar days. Members of the committees to which the Budget Bill is assigned for consideration during such recess shall be reimbursed for their expenses incurred for days while serving as members of such committees during the recess, in addition to the days allowed by subdivision (b) of this section.

Ninth, That Section 3 of Article IV is repealed.

SEC. 3. Members of the Assembly shall be elected biennially, and their term of office shall be two years. Each election shall be on the first Tuesday after the first Monday in November, unless otherwise ordered by the Legislature.

Tenth, That Section 4 of Article IV is repealed.

SEC. 4. Senators shall be chosen for the term of four years, at the same time and places as members of the Assembly, and no person shall be a member of the Senate or Assembly who has not been a citizen and inhabitant of the State three years, and of the district for which he shall be chosen one year, next before his election.

Eleventh, That Section 5 of Article IV is repealed.

SEC. 5. The Senate shall consist of 40 members, and the Assembly of 80 members, to be elected by districts, numbered as hereinafter provided. One-half of the Senators shall be elected every two years, those from the odd-numbered districts being elected when the number of the year is divisible by four.

Twelfth, That Section 7 of Article IV is repealed.

SEC. 7. Each House shall choose its officers, and judge of the qualifications, elections, and returns of its members.

Thirteenth, That Section 8 of Article IV is repealed.

SEC. 8. A majority of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner, and under such penalties, as each House may provide.

Fourteenth, That Section 9 of Article IV is repealed.

SEC. 9. Each House shall determine the rule of its proceedings, and may, with the concurrence of two-thirds of all members elected, expel a member.

Fifteenth, That Section 10 of Article IV is repealed.

SEC. 10. Each House shall keep a Journal of its proceedings, and publish the same, and the yeas and nays of the members of either House, on any question, shall, at the desire of any three members present, be entered on the Journal.

Sixteenth, That Section 11 of Article IV is repealed.

SEC. 11. Members of the Legislature shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest, and shall not be subject to any civil process during the session of the Legislature, nor for fifteen days next before the commencement and after the termination of each session.

Seventeenth, That Section 12 of Article IV is repealed.

SEC. 12. When vacancies occur in either House the Governor, or the person exercising the functions of the Governor, shall issue writs of election to fill such vacancies.

Eighteenth, That Section 13 of Article IV is repealed.

~~SEC. 13. The doors of each House shall be open, except on such occasions as, in the opinion of the House, may require secrecy.~~

Nineteenth, That Section 14 of Article IV is repealed.

~~SEC. 14. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any place other than that in which they may be sitting.~~

Twentieth, That Section 15 of Article IV is repealed.

~~SEC. 15. No law shall be passed except by bill. Nor shall any bill be put upon its final passage until the same, with the amendments thereto, shall have been printed for the use of the members; nor shall any bill become a law unless the same be read on three several days in each House, unless, in case of urgency, two-thirds of the House where such bill may be pending, shall, by a vote of yeas and nays, dispense with this provision. Any bill may originate in either House, but may be amended or rejected by the other; and on the final passage of all bills they shall be read at length, and the vote shall be by yeas and nays upon each bill separately, and shall be entered on the Journal; and no bill shall become a law without the concurrence of a majority of the members elected to each House.~~

Twenty-first, That Section 16 of Article IV is repealed.

~~SEC. 16. Every bill which may have passed the Legislature shall, before it becomes a law, be presented to the Governor. If he approve it, he shall sign it; but if not, he shall return it, with his objections, to the House in which it originated, which shall enter such objections upon the journal and proceed to reconsider it. If after such reconsideration, it again pass both houses, by yeas and nays, two-thirds of the members elected to each House voting therefor, it shall become a law, notwithstanding the Governor's objections. If any bill shall not be returned within ten days after it shall have been presented to him (Sundays excepted), the same shall become a law in like manner as if he had signed it, unless the Legislature, by adjournment, prevents such return, in which case it shall not become a law, unless the Governor, within thirty days after such adjournment (Sundays excepted), shall sign and deposit the same in the office of the Secretary of State, in which case it shall become a law in like manner as if it had been signed by him before adjournment. If any bill presented to the Governor contains several items of appropriation of money, he may object to one or more items, while approving other portions of the bill. In such case he shall append to the bill at the time of signing it, a statement of the items to which he objects, and the reasons therefor, and the appropriation so objected to shall not take effect unless passed over the Governor's veto, as hereinbefore provided. If the Legislature be in session, the Governor shall transmit to the House in which the bill originated a copy of such statement, and the items so objected to shall be separately reconsidered in the same manner as bills which have been disproved by the Governor.~~

Twenty-second, That Section 17 of Article IV is repealed.

~~SEC. 17. The Assembly shall have the sole power of impeachment, and all impeachments shall be tried by the Senate. When sitting for that purpose, the Senators shall be upon oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the members elected.~~

Twenty-third, That Section 18 of Article IV is repealed.

~~SEC. 18. The Governor, Lieutenant Governor, Secretary of State, Controller, Treasurer, Attorney General, Chief Justice and Associate Justices of the Supreme Court, judges of the district court of appeal, and judges of the superior courts, shall be liable to impeachment for any misdemeanor in office, but judgment in such cases shall extend only to removal from office, and disqualification to hold any office of honor, trust, or profit under the State; but the party convicted or acquitted shall nevertheless be liable to indictment, trial, and punishment according to law. All other civil officers shall be tried for misdemeanor in office in such manner as the Legislature may provide.~~

Twenty-fourth, That Section 19 of Article IV is repealed.

~~SEC. 19. No Senator or member of Assembly shall, during the term for which he shall have been elected, hold or accept any office, trust, or employment under this State; *provided*, that this provision shall not apply to any office filled by election by the people.~~

Twenty-fifth, That Section 20 of Article IV is repealed.

~~SEC. 20. No person holding any lucrative office under the United States, or any other power, shall be eligible to any civil office of profit under this State; provided, that local officers or postmasters whose compensation does not exceed five hundred dollars ($500) per annum, or officers in the militia or members of any reserve component of the armed forces of the United States except where on active federal duty for more than 30 days in any year, shall not be deemed to hold lucrative offices; provided further, that the holding of any civil office of profit under this State shall not be affected or suspended by such military service as above described.~~

Twenty-sixth, That Section 21 of Article IV is repealed.

~~SEC. 21. No person convicted of the embezzlement or defalcation of the public funds of the United States, or of any State, or of any county or municipality therein, shall ever be eligible to any office of honor, trust, or profit under this State, and the Legislature shall provide, by law, for the punishment of embezzlement or defalcation as a felony.~~

Twenty-seventh, That Section 22 of Article IV is amended and renumbered to be Section 21 of Article XIII, to read:

~~SEC. 22.~~ **SEC. 21.** No money shall be drawn from the Treasury but in consequence of appropriation made by law, and upon warrants duly drawn thereon by the Controller. ~~; and no~~ **No** money shall ever be appropriated or drawn from the State Treasury for the purpose or benefit of any corporation, association, asylum, hospital, or any other institution not under the exclusive management and control of the State as a state in-

stitution, nor shall any grant or donation of property ever be made thereto by the State, except that notwithstanding anything contained in this or any other section of the Constitution:

(1) Whenever federal funds are made available for the construction of hospital facilities by public agencies and nonprofit corporations organized to construct and maintain such facilities, nothing in this Constitution shall prevent the Legislature from making state money available for that purpose, or from authorizing the use of such money for the construction of hospital facilities by nonprofit corporations organized to construct and maintain such facilities.

(2) The Legislature shall have the power to grant aid to the institutions conducted for the support and maintenance of minor orphans, or half-orphans, or abandoned children, or children of a father who is incapacitated for gainful work by permanent physical disability or ~~in~~ is suffering from tuberculosis in such a stage that he cannot pursue a gainful occupation, or aged persons in indigent circumstances—such aid to be granted by a uniform rule, and proportioned to the number of inmates of such respective institutions.

(3) The Legislature shall have the power to grant aid to needy blind persons not inmates of any institution supported in whole or in part by the State or by any of its political subdivisions, and no person concerned with the administration of aid to needy blind persons shall dictate how any applicant or recipient shall expend such aid granted him, and all money paid to a recipient of such aid shall be intended to help him meet his individual needs and is not for the benefit of any other person, and such aid when granted shall not be construed as income to any person other than the blind recipient of such aid, and the State Department of Social Welfare shall take all necessary action to enforce the provisions relating to aid to needy blind persons as heretofore stated.

(4) The Legislature shall have power to grant aid to needy physically handicapped persons not inmates of any institution under the supervision of the Department of Mental Hygiene and supported in whole or in part by the State or by any institution supported in whole or part by any political subdivision of the State.

(5) The State shall have at any time the right to inquire into the management of such institutions.

(6) Whenever any county, or city and county, or city, or town, shall provide for the support of minor orphans, or half-orphans, or abandoned children, or children of a father who is incapacitated for gainful work by permanent physical disability or is suffering from tuberculosis in such a stage that he cannot pursue a gainful occupation, or aged persons in indigent circumstances, or needy blind persons not inmates of any institution supported in whole or in part by the State or by any of its political subdivisions, or needy physically handicapped persons not inmates of any institution under the supervision of the Department of Mental Hygiene and supported in whole or in part by the State or by any institution supported in whole or part by any political subdivision of the State; such county, city and county, city, or town shall be entitled to receive the same pro rata appropriations as may be granted to such institutions under church, or other control.

An accurate statement of the receipts and expenditures of public moneys shall be attached to and published with the laws at every regular session of the Legislature.

Twenty-eighth, That Section 22a of Article IV is repealed.

~~SEC. 22a. The Legislature shall have power to provide for the payment of retirement salaries to employees of the State who shall qualify therefor by service in the work of the State as provided by law. The Legislature shall have power to fix and from time to time change the requirements and conditions for retirement which shall include a minimum period of service, a minimum attained age and minimum contribution of funds by such employees and such other conditions as the Legislature may prescribe, subject to the power of the Legislature to prescribe lesser requirements for retirement because of disability.~~

~~The rates of contribution and the periods and conditions of service and amount of retirement salaries fixed in pursuance of this section shall not be changed except by the vote of two-thirds of the members elected to each of the two Houses of the Legislature.~~

Twenty-ninth, That Section 23 of Article IV is repealed.

~~SEC. 23. The Members of the Legislature shall receive mileage to be fixed by law and paid out of the State Treasury, such mileage not to exceed five cents ($0.05) per mile.~~

Thirtieth, That Section 23a of Article IV is repealed.

~~SEC. 23a. The Legislature shall provide for the selection of all officers, employees and attaches of both houses.~~

Thirtieth and one-half, That Section 23b of Article IV is repealed.

~~SEC. 23b. Members of the Legislature shall receive no compensation for their services other than that fixed by the Constitution but each member shall be allowed and reimbursed expenses necessarily incurred by him while attending regular, special and extraordinary sessions of the Legislature. The amount of the expense necessarily incurred by the respective members, while attending any such sessions, shall be determined and payment thereof provided for by joint rules of the Senate and Assembly. Such expense allowances may equal but shall not exceed the expense allowances now authorized for other elected State officers.~~

Thirty-first, That Section 24 of Article IV is repealed.

~~SEC. 24. Every Act shall embrace but one subject, which subject shall be expressed in its title. But if any subject shall be embraced in an Act which shall not be expressed in its title, such Act shall be void only as to so much thereof as shall not be expressed in its title. No law shall be revised or amended by reference to its title; but in such case the Act revised or section amended shall be enacted and published at length as revised amended; and all laws of the State of California,~~

and all official writings, and the executive, legislative, and judicial proceedings shall be conducted, preserved, and published in no other than the English language.

Thirty-second, That Section 25 of Article IV is repealed.

SEC. 25. The Legislature shall not pass local or special laws in any of the following enumerated cases, that is to say:

First—Regulating the jurisdiction and duties of Justices of the Peace, Police Judges, and of Constables.

Second—For the punishment of crimes and misdemeanors.

Third—Regulating the practice of Courts of justice.

Fourth—Providing for changing the venue in civil or criminal actions.

Fifth—Granting divorces.

Sixth—Changing the names of persons or places.

Seventh—Authorizing the laying out, opening, altering, maintaining, or vacating roads, highways, streets, alleys, town plats, parks, cemeteries, graveyards, or public grounds not owned by the State.

Eighth—Summoning and impaneling grand and petit juries, and providing for their compensation.

Ninth—Regulating county and township business, or the election of county and township officers.

Tenth—For the assessment or collection of taxes.

Eleventh—Providing for conducting elections, or designating the places of voting, except on the organization of new counties.

Twelfth—Affecting estates of deceased persons, minors, or other persons under legal disabilities.

Thirteenth—Extending the time for the collection of taxes.

Fourteenth—Giving effect to invalid deeds, wills, or other instruments.

Fifteenth—Refunding money paid into the State treasury.

Sixteenth—Releasing or extinguishing, in whole or in part, the indebtedness, liability, or obligation of any corporation or person to this State, or to any municipal corporation therein.

Seventeenth—Declaring any person of age, or authorizing any minor to sell, lease, or encumber his or her property.

Eighteenth—Legalizing, except as against the State, the unauthorized or invalid act of any officer.

Nineteenth—Granting to any corporation, association, or individual any special or exclusive right, privilege, or immunity.

Twentieth—Exempting property from taxation.

Twenty-first—Changing county seats.

Twenty-second—Restoring to citizenship persons convicted of infamous crimes.

Twenty-third—Regulating the rate of interest on money.

Twenty-fourth—Authorizing the creation, extension, or impairing of liens.

Twenty-fifth—Chartering or licensing ferries, bridges, or roads.

Twenty-sixth—Remitting fines, penalties, or forfeitures.

Twenty-seventh—Providing for the management of common schools.

Twenty-eighth—Creating offices, or prescribing the powers and duties of officers in counties, cities, ities and counties, townships, election or school districts.

Twenty-ninth—Affecting the fees or salary of any officer.

Thirtieth—Changing the law of descent or succession.

Thirty-first—Authorizing the adoption or legitimation of children.

Thirty-second—For limitation of civil or criminal actions.

Thirty-third—In all other cases where a general law can be made applicable.

Thirty-third, That Section 25a of Article IV is repealed.

SEC. 25a. The Legislature may provide for the regulation of horseraces and horserace meetings and wagering on the results thereof.

Thirty-fourth, That Section 25½ of Article IV is repealed.

SEC. 25½. The Legislature may provide for the division of the State into fish and game districts and may enact such laws for the protection of fish and game in such districts or parts thereof as it may deem appropriate.

There shall be a Fish and Game Commission of five members appointed by the Governor, subject to confirmation by the Senate, with a term of office of six years and until their respective successors are appointed and qualified, except that the terms of the members first appointed shall expire as follows: One member, January 15, 1943; one member, January 15, 1944; one member, January 15, 1945; one member, January 15, 1946; and one member, January 15, 1947. Each subsequent appointment shall be for six years, or, in case of a vacancy, then for the unexpired portion of such term. The Legislature may delegate to the commission such powers relating to the protection, propagation and preservation of fish and game as the Legislature sees fit. Any member of the commission may be removed by concurrent resolution of the Legislature passed by the vote of a majority of the members elected to each of the two houses thereof.

Thirty-fifth, That Section 25¾ of Article IV is amended and renumbered to be Section 22 of Article XIII, to read:

SEC. 25¾. **SEC. 22.** All money collected under the provision of any law of this State relating to the protection, conservation, propagation, or preservation of fish, game, mollusks, or crustaceans and all fines and forfeitures imposed by any court for the violation of any such law shall be used and expended exclusively for the protection, conservation, propagation, and preservation of fish, game, mollusks, or crustaceans and for the administration and enforcement of laws relating thereto. The Legislature may provide for the division of money derived from such fines and forfeitures.

Thirty-sixth, That Section 25.7 of Article IV is repealed.

SEC. 25.7. The Legislature may amend, revise, or supplement any part of that certain initiative act approved by the electors November 4, 1924, which is set forth in the Statutes of 1925, preceding page 1.

The Legislature shall, however, have no power to prohibit wrestling and 12-round boxing contests in the State of California.

Thirty-seventh, That Section 26 of Article IV is repealed.

~~Sec. 26. The Legislature shall have no power to authorize lotteries or gift enterprises for any purpose and shall pass laws to prohibit the sale in this State of lottery or gift enterprise tickets or tickets in any scheme in the nature of a lottery. The Legislature shall pass laws to prohibit the fictitious buying and selling of the shares of the capital stock of corporations in any stock board, stock exchange or stock market under the control of any corporation or association. All contracts for the purchase or sale of shares of the capital stock of any corporation or association without any intention on the part of one party to deliver and of the other party to receive the shares, and contemplating merely the payment of differences between the contract and market prices on divers days, shall be void, and neither party to any such contract shall be entitled to recover any damages for failure to perform the same, or any money paid thereon, in any court of this State.~~

Thirty-eighth, That Section 28 of Article IV is repealed.

~~Sec. 28. In all elections by the Legislature the members thereof shall vote viva voce, and the votes shall be entered on the Journal.~~

Thirty-ninth, That Section 29 of Article IV is amended and renumbered to be Section 23 of Article XIII, to read:

~~Sec. 29.~~ **Sec. 23.** The Legislature may provide that any money belonging to the State in the control of any State agency or department or collected under the authority of this State from any source whatever other than money in the control of or collected by ~~The~~ **the** Regents of ~~the~~ **The** University of California shall be held in trust by the State Treasurer prior to its deposit in the State ~~treasury~~ **Treasury** by the State agency or department as may be required by law. Any money held in trust may be disbursed by the State Treasurer upon the order of the State agency or department in the manner permitted by law and money held in trust may be deposited in banks to the same extent that money in the State ~~treasury~~ **Treasury** may be deposited in banks.

Fortieth, That Section 30 of Article IV is amended and renumbered to be Section 24 of Article XIII, to read:

~~Sec. 30.~~ **Sec. 24.** Neither the Legislature, nor any county, city and county, township, school district, or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose, or help to support or sustain any school, college, university, hospital, or other institution controlled by any religious creed, church, or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the ~~State~~ **state**, or any city, city and county, town, or other municipal corporation for any religious creed, church, or sectarian purpose whatever; provided, that nothing in this section shall prevent the Legislature granting aid pursuant to Section ~~22~~ **21** of this article.

Forty-first, That Section 31 of Article IV is amended and renumbered to be Section 25 of Article XIII, to read:

~~Sec. 31.~~ **Sec. 25.** The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever; *provided*, that nothing in this section shall prevent the Legislature granting aid pursuant to Section ~~22~~ **21** of this article; and it shall not have power to authorize the State, or any political subdivision thereof, to subscribe for stock, or to become a stockholder in any corporation whatever; *provided, further*, that irrigation districts for the purpose of acquiring the control of any entire international water system necessary for its use and purposes, a part of which is situated in the United States, and a part thereof in a foreign country, may in the manner authorized by law, acquire the stock of any foreign corporation which is the owner of, or which holds the title to the part of such system situated in a foreign country; *provided, further*, that irrigation districts for the purpose of acquiring water and water rights and other property necessary for their uses and purposes, may acquire and hold the stock of corporations, domestic or foreign, owning waters, water rights, canals, waterworks, franchises or concessions subject to the same obligations and liabilities as are imposed by law upon all other stockholders in such corporation; and

Provided, further, that nothing contained in this Constitution shall prohibit the use of State money or credit, in aiding veterans who served in the military or naval service of the United States during the time of war, in the acquisition of, or payments for, (1) farms or homes, or in projects of land settlement or in the development of such farms or homes or land settlement projects for the benefit of such veterans, or (2) any business, land or any interest therein, buildings, supplies, equipment, machinery, or tools, to be used by the veteran in pursuing a gainful occupation.

And provided, still further, that notwithstanding the restrictions contained in this Constitution, the treasurer of any city, county, or city and county shall have power and it shall be his duty to make such temporary transfers from the funds in his custody as may be necessary to provide funds for meeting the obligations incurred for maintenance purposes by any city, county, city and county, district, or other political subdivision whose funds are in his custody and are paid out solely through his office. Such temporary transfer of funds to any political subdivision shall be made only upon resolution adopted by the governing body of the city, county, or city and county directing the treasurer of such city, county, or city and county to make such temporary transfer. Such temporary transfer of funds to any political

subdivision shall not exceed ~~eighty-five percent~~ 85 ~~p~~ ~~e~~nt of the taxes accruing to such political ~~s~~vision, shall not be made prior to the first day of the fiscal year nor after the last Monday in April of the current fiscal year, and shall be replaced from the taxes accruing to such political subdivision before any other obligation of such political subdivision is met from such taxes.

Forty-second, That Section 31a of Article IV is amended and renumbered to be Section 26 of Article XIII, to read:

~~SEC. 31a.~~ **SEC. 26.** No provision of this Constitution shall be construed as a limitation upon the power of the Legislature to provide by general law, from public moneys or funds, for the indemnification of the owners of live stock taken, slaughtered or otherwise disposed of pursuant to law to prevent the spread of a contagious or infectious disease; *provided*, the amount paid in any case for such animal or animals shall not exceed the value of such animal or animals.

Forty-third, That Section 31b of Article IV is amended and renumbered to be Section 27 of Article XIII, to read:

~~SEC. 31b.~~ **SEC. 27.** No provision of this Constitution shall be construed as a limitation upon the power of the Legislature to provide that the lien of every tax, whether heretofore or hereafter attaching, shall cease to exist for all purposes after ~~thirty~~ 30 years from the time such tax became a lien, or to provide that every tax whether heretofore or hereafter levied shall be conclusively presumed to have been paid after thirty ~~y~~ from the time the same became a lien unless ~~p~~roperty subject thereto has been sold in the manner provided by law for the payment of said tax.

Forty-fourth, That Section 31c of Article IV is amended and renumbered to be Section 28 of Article XIII, to read:

~~SEC. 31c.~~ **SEC. 28.** No provision of this Constitution shall be construed as a limitation upon the power of the Legislature to provide by general law for the refunding, repayment or adjustment, from public funds raised or appropriated by the United States, the State or any city, city and county, or county for street and highway improvement purposes, of assessments or bonds, or any portion thereof, which have become a lien upon real property, and which were levied or issued to pay the cost of street or highway improvements or of opening and widening proceedings which may be or may have become of more than local benefit. Any such acts of the Legislature heretofore adopted are hereby confirmed and declared valid and shall have the same force and effect as if adopted after the effective date of this amendment.

Forty-fifth, That Section 32 of Article IV is repealed.

~~SEC. 32. The Legislature shall have no power to grant, or authorize any county or municipal authority to grant, any extra compensation or allowance to any public officer, agent, servant, or contractor, after service has been rendered, or a contract has been entered into and performed, in whole part, nor to pay, or to authorize the payment or, any claim hereafter created against the State, or any county or municipality of the State, under any agreement or contract made without express authority of law; and all such unauthorized agreements or contracts shall be null and void.~~

Forty-sixth, That Section 33 of Article IV is repealed.

~~SEC. 33. The Legislature shall pass laws for the regulation and limitation of the charges for services performed and commodities furnished by telegraph and gas corporations, and the charges by corporations or individuals for storage and wharfage, in which there is a public use, and where laws shall provide for the selection of any person or officer to regulate and limit such rates, no such person or officer shall be selected by any corporation or individual interested in the business to be regulated, and no person shall be selected who is an officer or stockholder in any such corporation.~~

Forty-seventh, That Section 34 of Article IV is repealed.

~~SEC. 34. The Governor shall, at each regular session of the Legislature, submit to the Legislature, with an explanatory message, a budget containing a complete plan and itemized statement of all proposed expenditures of the State provided by existing law or recommended by him, and of all its institutions, departments, boards, bureaus, commissions, officers, employees and other agencies, and of all estimated revenues, for the ensuing fiscal year, together with a comparison, as to each item of revenues and expenditures, with the actual revenues and expenditures for the last completed fiscal year and the actual and estimated expenditures for the existing fiscal year. If the proposed expenditures for the ensuing fiscal year shall exceed the estimated revenues therefor, the Governor shall recommend the sources from which the additional revenue shall be provided.~~

~~The Governor shall submit the budget within the first 30 days of each general session, and prior to its recess, and within the first three days of each budget session.~~

~~The Governor, and also the Governor-elect, shall have the power to require any institution, department, board, bureau, commission, officer, employee or other agency to furnish him with any information which he may deem necessary in connection with the budget or to assist him in its preparation.~~

~~The budget shall be accompanied by an appropriation bill covering the proposed expenditures, to be known as the Budget Bill. The Budget Bill shall be introduced immediately into each house of the Legislature by the respective chairmen of the committees having to do with appropriations, and shall be subject to all the provisions of Section 15 of this article. The Governor may at any time amend or supplement the budget and propose amendments to the Budget Bill before or after its enactment, and each such amendment shall be referred in each house to the committee to which the Budget Bill was originally referred. Until the Budget Bill has been finally enacted, neither house shall place upon final passage any other appropriation bill, except emergency bills recommended by the Governor, or appropriations for the salaries, mileage and expenses of the Senate and Assembly.~~

~~No bill making an appropriation of money, except the Budget Bill, shall contain more than one~~

~~item of appropriation. and that for one single and certain purpose to be therein expressed.~~

~~In any appropriation bill passed by the Legislature, the Governor may reduce or eliminate any one or more items of appropriation of money while approving other portions of the bill, whereupon the effect of such action and the further procedure shall be as provided in Section 16 of this article.~~

~~In case of conflict between this section and any other portion of this Constitution, the provisions of this section shall govern. except that any item of appropriation in the Budget Act, other than for the usual current expenses of the State, shall be subject to the referendum.~~

~~The Legislature shall enact all laws necessary or desirable to carry out the purposes of this section, and may enact additional provisions not inconsistent herewith.~~

Forty-eighth, That Section 34a of Article IV is repealed.

~~SEC. 34a. Appropriations from the General Fund of the State for any fiscal year, exclusive of appropriations for the support of the public school system, shall be void unless two-thirds of all the members elected to each house of the Legislature vote in favor thereof.~~

~~Not more than 25 per centum of the total appropriations from all funds of the State shall be raised by means of taxes on real and personal property according to the value thereof.~~

Forty-ninth, That Section 35 of Article IV is repealed.

~~SEC. 35. Any person who seeks to influence the vote of a Member of the Legislature by bribery, promise of reward, intimidation, or any other dishonest means, shall be guilty of a felony, and it shall be the duty of the Legislature to provide, by law, for the punishment of this crime. Any Member of the Legislature, who shall be influenced in his vote or action upon any matter pending before the Legislature by any reward, or promise of future reward, shall be deemed guilty of a felony, and upon conviction thereof, in addition to such punishment as may be provided by law, shall be disfranchised and forever disqualified from holding any office or public trust. Any person may be compelled to testify in any lawful investigation or judicial proceeding against any person who may be charged with having committed the offense of bribery or corrupt solicitation, or with having been influenced in his vote or action, as a Member of the Legislature, by reward, or promise of future reward, and shall not be permitted to withhold his testimony upon the ground that it may criminate himself or subject him to public infamy; but such testimony shall not afterwards be used against him in any judicial proceeding, except for perjury in giving such testimony.~~

Fiftieth, That Section 36 of Article IV is repealed.

~~SEC. 36. The Legislature shall have power to establish a system of State highways or to declare any road a State highway, and to pass all laws necessary or proper to construct and maintain the same, and to extend aid for the construction and maintenance in whole or in part of any county highway.~~

Fifty-first, That Section 37 of Article IV is repealed.

~~SEC. 37. In order to expedite the work of the Legislature, either house of the Legislature may by resolution provide for the appointment of committees to ascertain facts and to make recommendations as to any subject within the scope of legislative regulation or control, and joint committees for such purposes, consisting of members of both houses, may be created by concurrent resolutions.~~

~~The resolution creating any such committee may authorize it to act either during sessions of the Legislature or after final adjournment. Any such committee shall have such powers and perform such duties as may be provided by the resolution creating it and in addition shall have such powers and perform such duties as may be provided by law or by the rules of the Legislature or either house thereof.~~

~~Members of such committees shall not receive any additional compensation for their services other than their salaries as members of the Legislature, but each house of the Legislature may provide for the payment of the expenses necessarily incurred by any such committee or the members thereof either from its contingent fund or from any money provided by law for that purpose.~~

Fifty-second, That Section 38 of Article IV is repealed.

~~SEC. 38. Nothing in this Constitution shall limit the power of the Legislature to provide by law at any time for:~~

~~(a) The filling of the offices of members of either house of the Legislature and Governor should the incumbent Governor or at least one-fifth of the incumbent members of either house of the Legislature as a result of a war or enemy-caused disaster occurring in the State of California be either killed, missing or so seriously injured as to be unable to perform their duties until said incumbent or incumbents are able to perform their duties or until successors are chosen.~~

~~(b) The convening of the Legislature into general or extraordinary session during or after a war or enemy-caused disaster occurring in this State, and to specify subjects that may be considered and acted upon at any such extraordinary session. At any such general session the Legislature may consider and act upon any subject within the scope of legislative regulation and control. Nothing in this Constitution limiting the length of general or budget sessions, or requiring a recess thereof, or restricting the introduction of bills shall apply to general sessions convened pursuant to this section.~~

~~(c) The calling and holding of elections to fill offices that are elective under this Constitution and which, as a result of a war or enemy-caused disaster occurring in this State, are either vacant or are being filled by persons not elected thereto.~~

~~(d) The selection and changing from time to time of a temporary seat of government of this State, and of temporary county seats, to be used, if made necessary by enemy attack.~~

Fifty-third, That Section 1 is added to Article IV, to read:

Sec. 1. The legislative power of this S[illegible]'s vested in the California Legislature which c[illegible]s of the Senate and Assembly, but the people re-

serve to themselves the powers of initiative and r ndum.

ty-fourth, That Section 2 is added to Article IV, to read:

Sec. 2. (a) The Senate has a membership of 40 Senators elected for 4-year terms, 20 to begin every 2 years. The Assembly has a membership of 80 Assemblymen elected for 2-year terms.

(b) Election of Assemblymen shall be on the first Tuesday after the first Monday in November of even-numbered years unless otherwise prescribed by the Legislature. Senators shall be elected at the same time and places as Assemblymen.

(c) A person is ineligible to be a member of the Legislature unless he is an elector and has been a resident of his district for one year, and a citizen of the United States and a resident of California for 3 years, immediately preceding his election.

(d) When a vacancy occurs in the Legislature the Governor immediately shall call an election to fill the vacancy.

Fifty-fifth, That Section 3 is added to Article IV, to read:

Sec. 3. (a) The Legislature shall meet annually in regular session at noon on the Monday after January 1. A measure introduced at any session may not be deemed pending before the Legislature at any other session.

(b) On extraordinary occasions the Governor by proclamation may convene the Legislature in special session. When so convened it has power to l ate only on subjects specified in the procla- n but may provide for expenses and other matters incidental to the session.

Fifty-sixth, That Section 4 is added to Article IV, to read:

Sec. 4. Compensation of members of the Legislature, and reimbursement for travel and living expenses in connection with their official duties, shall be prescribed by statute passed by rollcall vote entered in the journal, two thirds of the membership of each house concurring. Commencing with 1967, in any statute enacted making an adjustment of the annual compensation of a member of the Legislature, the adjustment may not exceed an amount equal to 5 percent for each calendar year following the operative date of the last adjustment, of the salary in effect when the statute is enacted. Any adjustment in the compensation may not apply until the commencement of the regular session commencing after the next general election following enactment of the statute.

The Legislature may not provide retirement benefits based on any portion of a monthly salary in excess of 500 dollars paid to any member of the Legislature unless the member receives the greater amount while serving as a member in the Legislature. The Legislature may, prior to their retirement, limit the retirement benefits payable to members of the Legislature who serve during or after the term commencing in 1967.

When computing the retirement allowance of a member who serves in the Legislature during the t commencing in 1967 or later, allowance may b de for increases in cost of living if so provided by statute, but only with respect to increases in the cost of living occurring after retirement of the member, except that the Legislature may provide that no member shall be deprived of a cost of living adjustment based on a monthly salary of 500 dollars which has accrued prior to the commencement of the 1967 Regular Session of the Legislature.

Fifty-seventh, That Section 5 is added to Article IV, to read:

Sec. 5. Each house shall judge the qualifications and elections of its members and, by rollcall vote entered in the journal, two thirds of the membership concurring, may expel a member.

The Legislature shall enact laws to prohibit members of the Legislature from engaging in activities or having interests which conflict with the proper discharge of their duties and responsibilities; provided that the people reserve to themselves the power to implement this requirement pursuant to Section 22 of this article.

Fifty-eighth, That Section 7 is added to Article IV, to read:

Sec. 7. (a) Each house shall choose its officers and adopt rules for its proceedings. A majority of the membership constitutes a quorum, but a smaller number may recess from day to day and compel the attendance of absent members.

(b) Each house shall keep and publish a journal of its proceedings. The rollcall vote of the members on a question shall be taken and entered in the journal at the request of 3 members present.

(c) The proceedings of each house shall be public except on occasions that in the opinion of the house require secrecy.

(d) Neither house without the consent of the other may recess for more than 3 days or to any other place.

Fifty-ninth, That Section 8 is added to Article IV, to read:

Sec. 8. (a) At regular sessions no bill other than the budget bill may be heard or acted on by committee or either house until the 31st day after the bill is introduced unless the house dispenses with this requirement by rollcall vote entered in the journal, three fourths of the membership concurring.

(b) The Legislature may make no law except by statute and may enact no statute except by bill. No bill may be passed unless it is read by title on 3 days in each house except that the house may dispense with this requirement by rollcall vote entered in the journal, two thirds of the membership concurring. No bill may be passed until the bill with amendments has been printed and distributed to the members. No bill may be passed unless, by rollcall vote entered in the journal, a majority of the membership of each house concurs.

(c) No statute may go into effect until the 91st day after adjournment of the session at which the bill was passed, except statutes calling elections, statutes providing for tax levies or appropriations for the usual current expenses of the State, and urgency statutes.

(d) Urgency statutes are those necessary for immediate preservation of the public peace, health, or safety. A statement of facts constituting the necessity shall be set forth in one section of the

bill. In each house the section and the bill shall be passed separately, each by rollcall vote entered in the journal, two thirds of the membership concurring. An urgency statute may not create or abolish any office or change the salary, term, or duties of any office, or grant any franchise or special privilege, or create any vested right or interest.

Sixtieth, That Section 9 is added to Article IV, to read:

Sec. 9. A statute shall embrace but one subject, which shall be expressed in its title. If a statute embraces a subject not expressed in its title, only the part not expressed is void. A statute may not be amended by reference to its title. A section of a statute may not be amended unless the section is re-enacted as amended.

Sixty-first, That Section 10 is added to Article IV, to read:

Sec. 10. (a) Each bill passed by the Legislature shall be presented to the Governor. It becomes a statute if he signs it. He may veto it by returning it with his objections to the house of origin, which shall enter the objections in the journal and proceed to reconsider it. If each house then passes the bill by rollcall vote entered in the journal, two thirds of the membership concurring, it becomes a statute. A bill presented to the Governor that is not returned within 12 days, becomes a statute unless the Legislature by adjournment of the session prevents the return. It does not then become a statute unless the Governor signs the bill and deposits it in the office of the Secretary of State within 35 days after adjournment.

(b) The Governor may reduce or eliminate one or more items of appropriation while approving other portions of a bill. He shall append to the bill a statement of the items reduced or eliminated with the reasons for his action. If the Legislature is in session, the Governor shall transmit to the house originating the bill a copy of his statement and reasons. Items reduced or eliminated shall be separately reconsidered and may be passed over the Governor's veto in the same manner as bills.

Sixty-second, That Section 11 is added to Article IV, to read:

Sec. 11. The Legislature or either house may by resolution provide for the selection of committees necessary for the conduct of its business, including committees to ascertain facts and make recommendations to the Legislature on a subject within the scope of legislative control. Committees may be authorized to act during sessions or after adjournment of a session.

Sixty-third, That Section 12 is added to Article IV, to read:

Sec. 12. (a) Within the first 30 days of each regular session, the Governor shall submit to the Legislature, with an explanatory message, a budget for the ensuing fiscal year containing itemized statements of recommended state expenditures and estimated state revenues. If recommended expenditures exceed estimated revenues, he shall recommend the sources from which the additional revenues should be provided.

(b) The Governor and the Governor-elect may require a state agency, officer or employee to furnish him whatever information he deems necessary to prepare the budget.

(c) The budget shall be accompanied by a budget bill itemizing recommended expendi[illegible]. The bill shall be introduced immediately in [illegible] house by the chairmen of the committees that consider appropriations. Until the budget bill has been enacted, neither house may pass any other appropriation bill, except emergency bills recommended by the Governor or appropriations for the salaries and expenses of the Legislature.

(d) No bill except the budget bill may contain more than one item of appropriation, and that for one certain, expressed purpose. Appropriations from the general fund of the State, except appropriations for the public schools, are void unless passed in each house by rollcall vote entered in the journal, two thirds of the membership concurring.

Sixty-fourth, That Section 13 is added to Article IV, to read:

Sec. 13. A member of the Legislature may not, during the term for which he is elected, hold any office or employment under the State other than an elective office.

Sixty-fifth, That Section 14 is added to Article IV, to read:

Sec. 14. A member of the Legislature is not subject to civil process during a session of the Legislature or for 5 days before and after a session.

Sixty-sixth, That Section 15 is added to Article IV, to read:

Sec. 15. A person who seeks to influence the vote or action of a member of the Legislature in his legislative capacity by bribery, promise of reward, intimidation, or other dishonest mea[illegible] a member of the Legislature so influenced, is guilty of a felony.

Sixty-seventh, That Section 16 is added to Article IV, to read:

Sec. 16. A local or special statute is invalid in any case if a general statute can be made applicable.

Sixty-eighth, That Section 17 is added to Article IV, to read:

Sec. 17. The Legislature has no power to grant, or to authorize a city, county, or other public body to grant, extra compensation or extra allowance to a public officer, public employee, or contractor after service has been rendered or a contract has been entered into and performed in whole or in part, or to authorize the payment of a claim against the State or a city, county, or other public body under an agreement made without authority of law.

Sixty-ninth, That Section 18 is added to Article IV, to read:

Sec. 18. (a) The Assembly has the sole power of impeachment. Impeachments shall be tried by the Senate. A person may not be convicted unless, by rollcall vote entered in the journal, two thirds of the membership of the Senate concurs.

(b) State officers elected on a statewide basis, members of the State Board of Equalization, and judges of state courts are subject to impeachment for misconduct in office. Judgment may extend only to removal from office and disqualification to hold any office under the State, but the person convicted or acquitted remains subject to criminal punishment according to law.

Seventieth, That Section 19 is added to Article [illegible] read:

Sec. 19. (a) The Legislature has no power to authorize lotteries and shall prohibit the sale of lottery tickets in the State.

(b) The Legislature may provide for the regulation of horse races and horse race meetings and wagering on the results.

Seventy-first, That Section 20 is added to Article IV, to read:

Sec. 20. (a) The Legislature may provide for division of the State into fish and game districts and may protect fish and game in districts or parts of districts.

(b) There is a Fish and Game Commission of 5 members appointed by the Governor and approved by the Senate, a majority of the membership concurring, for 6-year terms and until their successors are appointed and qualified. Appointment to fill a vacancy is for the unexpired portion of the term. The Legislature may delegate to the commission such powers relating to the protection and propagation of fish and game as the Legislature sees fit. A member of the commission may be removed by concurrent resolution adopted by each house, a majority of the membership concurring.

Seventy-second, That Section 21 is added to Article IV, to read:

Sec. 21. To meet the needs resulting from war-caused or enemy-caused disaster in California, the Legislature may provide for:

(a) Filling the offices of members of the Legislature should at least one fifth of the membership of either house be killed, missing, or disabled, until they are able to perform their duties or successors are elected.

(b) Filling the office of Governor should he be killed, missing, or disabled, until he or his successor designated in this Constitution is able to perform his duties or a successor is elected.

(c) Convening the Legislature.

(d) Holding elections to fill offices that are elective under this Constitution and that are either vacant or occupied by persons not elected thereto.

(e) Selecting a temporary seat of state or county government.

Seventy-third, That Section 22 is added to Article IV, to read:

INITIATIVE AND REFERENDUM

Sec. 22. (a) The initiative is the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them.

(b) An initiative measure may be proposed by presenting to the Secretary of State a petition that sets forth the text of the proposed statute or amendment to the Constitution and is certified to have been signed by electors equal in number to 5 percent in the case of a statute, and 8 percent in the case of an amendment to the Constitution, of the votes for all candidates for Governor at the last gubernatorial election.

(c) The Secretary of State shall then submit the measure at the next general election held at least 131 days after it qualifies or at any special statewide election held prior to that general election. The Governor may call a special statewide election for the measure.

(d) An initiative measure embracing more than one subject may not be submitted to the electors or have any effect.

Seventy-fourth, That Section 23 is added to Article IV, to read:

Sec. 23. (a) The referendum is the power of the electors to approve or reject statutes or parts of statutes except urgency statutes, statutes calling elections, and statutes providing for tax levies or appropriations for usual current expenses of the State.

(b) A referendum measure may be proposed by presenting to the Secretary of State, within 90 days after adjournment of the session at which the statute was passed, a petition certified to have been signed by electors equal in number to 5 percent of the votes for all candidates for Governor at the last gubernatorial election, asking that the statute or part of it be submitted to the electors.

(c) The Secretary of State shall then submit the measure at the next general election held at least 31 days after it qualifies or at a special statewide election held prior to that general election. The Governor may call a special statewide election for the measure.

Seventy-fifth, That Section 24 is added to Article IV, to read:

Sec. 24. (a) An initiative or referendum measure approved by a majority of the votes thereon takes effect 5 days after the date of the official declaration of the vote by the Secretary of State unless the measure provides otherwise. If a referendum petition is filed against a part of a statute the remainder of the statute shall not be delayed from going into effect.

(b) If provisions of 2 or more measures approved at the same election conflict, those of the measure receiving the highest affirmative vote shall prevail.

(c) The Legislature may amend or repeal referendum statutes. It may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval.

(d) Prior to circulation of an initiative or referendum petition for signatures, a copy shall be submitted to the Attorney General who shall prepare a title and summary of the measure as provided by law.

(e) The Legislature shall provide the manner in which petitions shall be circulated, presented, and certified, and measures submitted to the electors.

Seventy-sixth, That Section 25 is added to Article IV, to read:

Sec. 25. Initiative and referendum powers may be exercised by the electors of each city or county under procedures that the Legislature shall provide. This section does not affect a city having a charter.

Seventy-seventh, That Section 26 is added to Article IV, to read:

Sec. 26. No amendment to the Constitution, and no statute proposed to the electors by the Legislature or by initiative, that names any individual to hold any office, or names or identifies any private corporation to perform any function

or to have any power or duty, may be submitted to the electors or have any effect.

Seventy-eighth, That Section 28 is added to Article IV, to read:

MISCELLANEOUS

Sec. 28. A person holding a lucrative office under the United States or other power may not hold a civil office of profit. A local officer or postmaster whose compensation does not exceed 500 dollars per year or an officer in the militia or a member of a reserve component of the armed forces of the United States except where on active federal duty for more than 30 days in any year is not a holder of a lucrative office, nor is his holding of a civil office of profit affected by this military service.

Seventy-ninth, That Article V is repealed.

~~ARTICLE V~~

~~EXECUTIVE DEPARTMENT~~

~~SECTION 1. The supreme executive power of this State shall be vested in a chief magistrate, who shall be styled the Governor of the State of California.~~

~~SEC. 2. The Governor shall be elected by the qualified electors at the time and places of voting for members of the Assembly, and shall hold his office four years from and after the first Monday after the first day of January subsequent to his election, and until his successor is elected and qualified.~~

~~SEC. 3. No person shall be eligible to the office of Governor who has not been a citizen of the United States and a resident of this State five years next preceding his election, and attained the age of twenty-five years at the time of such election.~~

~~SEC. 4. The Legislature may regulate by law the manner of making returns of elections for Governor and Lieutenant Governor.~~

~~SEC. 5. The Governor shall be Commander-in-Chief of the militia, the army and navy of this State.~~

~~SEC. 6. He shall transact all executive business with the officers of government, civil and military, and may require information, in writing, from the officers of the executive department, upon any subject relating to the duties of their respective offices.~~

~~SEC. 7. He shall see that the laws are faithfully executed.~~

~~SEC. 8. When any office shall, from any cause, become vacant, and no mode is provided by the Constitution and law for filling such vacancy, the Governor shall have power to fill such vacancy by granting a commission, which shall expire at the end of the next session of the Legislature, or at the next election by the people.~~

~~SEC. 9. He may, on extraordinary occasions, convene the Legislature by proclamation, stating the purposes for which he has convened it, and when so convened it shall have no power to legislate on any subjects other than those specified in the proclamation, but may provide for the expenses of the session and other matters incidental thereto.~~

~~SEC. 10. He shall communicate by message to the Legislature, at every session, the condition of the State, and recommend such matters as he shall deem expedient.~~

~~SEC. 11. In case of a disagreement between the two Houses with respect to the time of adjournment, the Governor shall have power to adjourn the Legislature to such time as he may think proper; *provided*, it be not beyond the time fixed for the meeting of the next Legislature.~~

~~SEC. 12. No person shall, while holding any office under the United States or this State, exercise the office of Governor except as hereinafter expressly provided.~~

~~SEC. 13. There shall be a seal of this State, which shall be kept by the Governor, and used by him officially, and shall be called "The Great Seal of the State of California."~~

~~SEC. 14. All grants and commissions shall be in the name and by the authority of The People of the State of California, sealed with the great seal of the State, signed by the Governor, and countersigned by the Secretary of State.~~

~~SEC. 15. A Lieutenant Governor shall be elected at the same time and place and in the same manner as the Governor, and his term of office and his qualifications shall be the same. He shall be president of the Senate, but shall only have a casting vote therein.~~

~~SEC. 16. In case of vacancy in the Office of Governor the Lieutenant Governor shall become Governor and the last duly elected President pro Tempore of the Senate shall become Lieutenant Governor, for the residue of the term; but, if there be no such President pro Tempore of the Senate, the last duly elected Speaker of the Assembly shall become Lieutenant Governor for the residue of the term. In case of vacancy in the Office of Governor and in the Office of Lieutenant Governor, the last duly elected President pro Tempore of the Senate shall become Governor and the last duly elected Speaker of the Assembly shall become Lieutenant Governor, for the residue of the term, or if there be no President pro Tempore of the Senate, then the last duly elected Speaker of the Assembly shall become Governor for the residue of the term; or if there be none, then the Secretary of State; or if there be none, then the Attorney General; or if there be none, then the Treasurer, or if there be none, then the Controller; or if, as the result of a war or enemy-caused disaster, there be none, then such person designated as provided by law. If at the time this amendment takes effect a vacancy has occurred in the Office of Governor or in the Offices of Governor and Lieutenant Governor, within the term or terms thereof, the provisions of this section as amended by this amendment shall apply. In case of impeachment of the Governor or officer acting as Governor, his absence from the State, or his other temporary disability to discharge the powers and duties of office, then the powers and duties of the Office of Governor devolve upon the same officer as in the case of vacancy in the Office of Governor, but only until the disability shall cease.~~

~~In case of the death, disability or other failure to take office of the Governor-elect, whether occurring prior or subsequent to the returns of election, the Lieutenant Governor-elect shall act as Governor from the same time and in the same manner as provided for the Governor-elect and shall, in case of death, be Governor for the full term in the case of disability or other failure to take office,~~

~~shall act as Governor until the disability of the Governor-elect shall cease.~~

~~In case of the death, disability or other failure to take office of both the Governor-elect and the Lieutenant Governor-elect, the last duly elected President pro Tempore of the Senate, or in case of his death, disability, or other failure to take office, the last duly elected Speaker of the Assembly, or in case of his death, disability, or other failure to take office, the Secretary of State-elect, or in case of his death, disability, or other failure to take office, the Attorney General-elect, or in case of his death, disability, or other failure to take office, the Treasurer-elect, or in case of his death, disability, or other failure to take office, the Controller-elect shall act as Governor from the same time and in the same manner as provided for the Governor-elect. Such person shall, in the case of death, be Governor for the full term or in the case of disability or other failure to take office shall act as Governor until the disability of the Governor-elect shall cease.~~

~~In any case in which a vacancy shall occur in the Office of Governor, and provision is not made in or pursuant to this Constitution for filling such vacancy, the senior deputy Secretary of State shall convene the Legislature by proclamation to meet within eight days after the occurrence of the vacancy in joint convention of both houses at an extraordinary session for the purpose of choosing a person to act as Governor until the office may be filled at the next general election appointed for election to the Office of Governor.~~

~~Such a session the Legislature may provide for necessary expenses of the session and other matters incidental thereto.~~

~~SEC. 17. A Secretary of State, a Controller, a Treasurer, and an Attorney General shall be elected at the same time and places, and in the same manner as the Governor and Lieutenant Governor, and their terms of office shall be the same as that of the Governor.~~

~~SEC. 18. The Secretary of State shall keep a correct record of the official acts of the legislative and executive departments of the government, and shall, when required, lay the same, and all matters relative thereto, before either branch of the Legislature, and shall perform such other duties as may be assigned him by law.~~

~~SEC. 20. United States Senators shall be elected by the people of the State in the manner provided by law.~~

~~SEC. 21. Subject to the powers and duties of the Governor vested in him by Article V of the Constitution, the Attorney General shall be the chief law officer of the State and it shall be his duty to see that the laws of the State of California are uniformly and adequately enforced in every county of the State. He shall have direct supervision over every district attorney and sheriff and over such other law enforcement officers as may be designated by law, in all matters pertaining to the duties of their respective offices, and may require any of said officers to make to him such written reports concerning the investigation, detection, prosecution or punishment of crime in their respective jurisdictions as to him may seem advisable. Whenever in the opinion of the Attorney General any law of the State is not being adequately enforced in any county, it shall be the duty of the Attorney General to prosecute any violations of law of which the superior court shall have jurisdiction, and in such cases he shall have all the powers of a district attorney. When required by the public interest, or directed by the Governor, he shall assist any district attorney in the discharge of his duties. In addition to appropriations made by law for the use of the Attorney General, the Governor and the Controller may in writing authorize the setting aside and the payment in accordance with law, from moneys in the State treasury not otherwise appropriated, of such sums as they consider proper for the necessary expenses of the Attorney General in performing the duties imposed by this paragraph.~~

~~He shall also have such powers and perform such duties as are or may be prescribed by law and which are not inconsistent herewith.~~

~~The Attorney General shall receive the same salary as that now or hereafter prescribed by law for an associate justice of the Supreme Court, and he shall not engage in the private practice of law, nor shall he be associated directly or indirectly with any attorney in private practice, and he shall devote his entire time to the service of the State.~~

~~All provisions of this section shall be self-executing, but legislation may be enacted to facilitate their operation.~~

~~SEC. 22. The compensation for the services of the Governor, the Lieutenant Governor, the State Controller, Secretary of State, Superintendent of Public Instruction and State Treasurer may be fixed at any time by the Legislature at an amount not less than ten thousand dollars ($10,000) per annum, for the Governor, and not less than five thousand dollars ($5,000) per annum for each of the other state officers named herein. The compensation of no state officer named herein shall be increased or diminished during his term of office. Such compensation shall be in full for all services respectively rendered by them in any official capacity or employment whatsoever during their respective terms of office, and none of the officers named in this section, or the Attorney General, shall receive for his own use any fees or perquisites for the performance of any official duty.~~

Eightieth, That Article V is added, to read:

ARTICLE V

Executive

Sec. 1. The supreme executive power of this State is vested in the Governor. He shall see that the law is faithfully executed.

Sec. 2. The Governor shall be elected every fourth year at the same time and places as Assemblymen and hold office from the Monday after January 1 following his election until his successor qualifies. He shall be an elector who has been a citizen of the United States and a resident of this State for 5 years immediately preceding his election. He may not hold other public office.

Sec. 3. The Governor shall report to the Legislature at each session on the condition of the State and may make recommendations. He may adjourn the Legislature if the Senate and Assembly disagree as to adjournment.

Sec. 4. The Governor may require executive officers and agencies and their employees to furnish information relating to their duties.

Sec. 5. Unless the law otherwise provides, the Governor may fill a vacancy in office by appointment until a successor qualifies.

Sec. 6. Authority may be provided by statute for the Governor to assign and reorganize functions among executive officers and agencies and their employees, other than elective officers and agencies administered by elective officers.

Sec. 7. The Governor is commander in chief of a militia that shall be provided by statute. He may call it forth to execute the law.

Sec. 8. Subject to application procedures provided by statute, the Governor, on conditions he deems proper, may grant a reprieve, pardon, and commutation, after sentence, except in case of impeachment. At each session he shall report to the Legislature each reprieve, pardon, and commutation granted, stating the pertinent facts and his reasons for granting it. He may not grant a pardon or commutation to a person twice convicted of a felony except on recommendation of the Supreme Court, 4 judges concurring.

Sec. 9. The Lieutenant Governor shall have the same qualifications as the Governor. He is President of the Senate but has only a casting vote.

Sec. 10. The Lieutenant Governor shall become Governor when a vacancy occurs in the office of Governor.

He shall act as Governor during the impeachment, absence from the State, or other temporary disability of the Governor or of a Governor-elect who fails to take office.

The Legislature shall provide an order of precedence after the Lieutenant Governor for succession to the office of Governor and for the temporary exercise of his functions.

The Supreme Court has exclusive jurisdiction to determine all questions arising under this section.

Standing to raise questions of vacancy or temporary disability is vested exclusively in a body provided by statute.

Sec. 11. The Lieutenant Governor, Attorney General, Controller, Secretary of State, and Treasurer shall be elected at the same time and places and for the same term as the Governor.

Sec. 12. Compensation of the Governor, Lieutenant Governor, Attorney General, Controller, Secretary of State, Superintendent of Public Instruction, and Treasurer shall be prescribed by statute but may not be increased or decreased during a term.

Sec. 13. Subject to the powers and duties of the Governor, the Attorney General shall be the chief law officer of the State. It shall be his duty to see that the laws of the State are uniformly and adequately enforced. He shall have direct supervision over every district attorney and sheriff and over such other law enforcement officers as may be designated by law, in all matters pertaining to the duties of their respective offices, and may require any of said officers to make to him such reports concerning the investigation, detection, prosecution, and punishment of crime in their respective jurisdictions as to him may seem advisable. Whenever in the opinion of the Attorney General any law of the State is being adequately enforced in any county, it shall be the duty of the Attorney General to prosecute any violations of law of which the superior court shall have jurisdiction, and in such cases he shall have all the powers of a district attorney. When required by the public interest or directed by the Governor, he shall assist any district attorney in the discharge of his duties.

Eighty-first. That Article VI is repealed.

~~ARTICLE VI~~

~~JUDICIAL DEPARTMENT~~

~~SECTION 1. The judicial power of the State shall be vested in the Senate, sitting as a court of impeachment, in a Supreme Court, district courts of appeal, superior courts, municipal courts, and justice courts.~~

~~SEC. 1a. There shall be a Judicial Council. It shall consist of: (i) the Chief Justice or Acting Chief Justice; (ii) one associate justice of the Supreme Court, three justices of districts courts of appeal, four judges of superior courts, two judges of municipal courts, and one judge of a justice court, designated by the Chief Justice for terms of two years; (iii) four members of the State Bar of California appointed by the Board of Governors of the State Bar for terms of two years, two of the first such appointees to be appointed for one year and two for two years; and (iv) one member of each house of the Legislature designated as provided by the respective house. If any judge so designated shall cease to be a judge of the court in which he is selected, his designation shall forthwith terminate. If any member of the State Bar so appointed shall cease to be a member of the State Bar, his appointment shall forthwith terminate, and the Board of Governors of the State Bar shall fill the vacancy in his unexpired term. If any member of the Legislature so designated shall cease to be a member of the house from which designated, his designation shall forthwith terminate, and a new designation shall be made in the manner provided by the respective house. The Chief Justice or Acting Chief Justice shall be chairman and the Clerk of the Supreme Court shall serve as secretary. The council may appoint an administrative director of the courts, who shall hold office at its pleasure and shall perform such of the duties of the council and of its chairman, other than to adopt or amend rules of practice and procedure, as may be delegated to him. No act of the council shall be valid unless concurred in by a majority of its members.~~

~~The Judicial Council shall from time to time:~~

~~(1) Meet at the call of the chairman or as otherwise provided by it.~~

~~(2) Survey the condition of business in the several courts with a view to simplifying and improving the administration of justice.~~

~~(3) Submit such suggestions to the several courts as may seem in the interest of uniformity and the expedition of business.~~

~~(4) Report to the Governor and Legislature at the commencement of each regular session such recommendations as it may deem prop~~

~~(5) Submit to the Legislature, at each general session thereof, its recommendations with reference~~

to amendments of, or changes in, existing laws re[l]
to practice and procedure.

Adopt or amend rules of practice and procedure for the several courts not inconsistent with laws that are now or that may hereafter be in force.

(7) Exercise such other functions as may be provided by law.

The chairman shall seek to expedite judicial business and to equalize the work of the judges, and shall provide for the assignment of any judge to another court of a like or higher jurisdiction to assist a court or judge whose calendar is congested, to act for a judge who is disqualified or unable to act, or to sit and hold court where a vacancy in the office of judge has occurred. A judge may likewise be assigned with his consent to a court of lower jurisdiction, and a retired judge may similarly be assigned with his consent to any court.

The judges shall co-operate with the council, shall sit and hold court as assigned, and shall report to the chairman at such times and in such manner as he shall request respecting the condition, and manner of disposal, of judicial business in their respective courts.

No member of the council shall receive any compensation for his services as such, but shall be allowed his necessary expenses for travel, board and lodging incurred in the performance of his duties as such. Any judge assigned to a court wherein a judge's compensation is greater than his own shall receive while sitting therein the compensation of a judge thereof. The extra compensation shall be paid in such manner as may be provided by law. Any j[udge] assigned to a court in a county other than t[he county] which he regularly sits shall be allowed his necessary expenses for travel, board and lodging incurred in the discharge of the assignment.

Sec. 1b. There shall be a Commission on Judicial Qualifications. It shall consist of: (i) Two justices of district courts of appeal, two judges of superior courts, a[ll] one judge of a municipal court, each selected by the Supreme Court for a four-year term; (ii) two members of the State Bar, who shall have practiced l[aw] in this State for at least 10 years and who shall be appointed by the Board of Governors of the State Bar for a four-year term; and (iii) two citizens, neither of whom shall be a justice or judge of any court, active or retired, nor a member of the State Bar, and who shall be appointed by the Governor for a four-year term. Every appointment made by the Governor to the commission shall be subject to the advice and consent of a majority of members elected to the Senate, except that if a vacancy occurs when the Legislature is not in session, the Governor may issue an interim commission which shall expire on the last day of the next regular or special session of the Legislature. Whenever a member selected under subdivision (i) ceases to be a member of the commission or a justice or judge of the court from which he was selected, his membership shall forthwith terminate and the Supreme Court shall select a successor for a four-year term; and whenever a member appointed under subdivision (ii) ceases to be a member of the commission or of the State Bar, his membership shall forthwith terminate and the Board of [Gov]ernors of the State Bar shall appoint a success[or] for a four-year term; and whenever a member appointed under subdivision (iii) ceases to be a member of the commission or becomes a justice or judge of any court or a member of the State Bar, his membership shall forthwith terminate and the Governor shall appoint a successor for a four-year term. No member of the commission shall receive any compensation for his services as such, but shall be allowed his necessary expenses for travel, board and lodging incurred in the performance of his duties as such.

No act of the commission shall be valid unless concurred in by a majority of its members. The commission shall select one of its members to serve as chairman.

Sec. 1c. The State Bar of California is a public corporation with perpetual existence and succession. Every person admitted and licensed to practice law in this State is and shall be a member of the State Bar except while holding office as a justice or judge of a court of record.

Sec. 2. The Supreme Court shall consist of a Chief Justice and six Associate Justices. The Court may sit in departments and in bank, and shall always be open for the transaction of business. There shall be two departments, denominated, respectively, Department One and Department Two. The Chief Justice shall assign three of the Associate Justices to each department, and such assignment may be changed by him from time to time. The Associate Justices shall be competent to sit in either department, and may interchange with each other by agreement among themselves or as ordered by the Chief Justice. Each of the departments shall have the power to hear and determine causes and all questions arising therein, subject to the provisions hereinafter contained in relation to the Court in bank. The presence of three Justices shall be necessary to transact any business in either of the departments, except such as may be done at Chambers, and the concurrence of three Justices shall be necessary to pronounce a judgment. The Chief Justice shall apportion the business to the departments, and may, in his discretion, order any cause pending before the Court to be heard and decided by the Court in bank. The order may be made before or after judgment pronounced by a department; but where a cause has been allotted to one of the departments, and a judgment pronounced thereon, the order must be made within thirty days after such judgment, and concurred in by two Associate Justices, and if so made it shall have the effect to vacate and set aside the judgment. Any four Justices may, either before or after judgment by a department, order a case to be heard in bank. If the order be not made within the time above limited the judgment shall be final. No judgment by a department shall become final until the expiration of the period of thirty days aforesaid, unless approved by the Chief Justice, in writing, with the concurrence of two Associate Justices. The Chief Justice may convene the Court in bank at any time, and shall be the presiding Justice of the Court when so convened. The concurrence of four Justices present at the argument shall be necessary to pronounce a judgment in bank; but if four Justices, so present, do not concur in a judgment, then all the Justices qualified to sit in the cause shall hear the argument; but to render a judgment a concurrence of four Judges shall be necessary. In the determination of

causes, all decisions of the Court in bank or in departments shall be given in writing, and the grounds of the decision shall be stated. The Chief Justice may sit in either department, and shall preside when so sitting, but the Justices assigned to each department shall select one of their number as presiding Justice. In case of the absence of the Chief Justice from the place at which the Court is held, or his inability to act, the Associate Justices shall select one of their own number to perform the duties and exercise the powers of the Chief Justice during such absence or inability to act.

SEC. 3. The Chief Justice and the associate justices shall be elected by the qualified electors of the State at large at the general elections, at the time and places at which state officers are elected as provided in Section 26 of this article, and the term of office shall be 12 years from and after the first Monday after the first day of January next succeeding their election, except that the term of a justice elected to fill a term which expires subsequent to the first Monday after the first day of January next after his election shall be for the remainder of the unexpired term in the office to which he is elected.

SEC. 4. The supreme court shall have appellate jurisdiction on appeal from the superior courts in all cases in equity, except such as arise in municipal or justices' courts; also, in all cases at law which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine also, in all such probate matters as may be provided by law; also, on questions of law alone, in all criminal cases where judgment of death has been rendered; the said court shall also have appellate jurisdiction in all cases, matters and proceedings pending before a district court of appeal, which shall be ordered by the supreme court to be transferred to itself for hearing and decision, as hereinafter provided. The said court shall also have power to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and all other writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the justices shall have power to issue writs of habeas corpus to any part of the State, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself or the supreme court or before any district court of appeal, or before any justice thereof, or before any superior court in the State, or before any judge thereof.

SEC. 4a. The State shall be divided into at least three appellate districts, known as the First, Second and Third Appellate Districts, in each of which there shall be a district court of appeal, consisting of such number of divisions having three justices each as the Legislature shall determine.

The Legislature may from time to time create and establish additional district courts of appeal or divisions thereof and fix the places at which the regular sessions thereof shall be held and may provide for the maintenance and operation thereof. For that purpose the Legislature may redivide the State into appellate districts, subject to the power of the Supreme Court to remove one or more counties from one appellate district to another as in this section provided.

Each of such divisions shall have and exercise all of the powers of the district court of appeal.

Upon the creation of any additional division of the district court of appeal the Governor shall appoint three persons to serve as justices t[hereof] as provided in Section 26 of this article. The justices of said division first elected as provided in Section 26 of this article shall so classify themselves by lot that one of them shall go out of office at the end of four years, one of them at the end of eight years, and one of them at the end of 12 years, and entry of such classification shall be made in the minutes of said division, signed by the three justices thereof, and a duplicate thereof filed in the office of the Secretary of State.

The justices of the district courts of appeal shall be elected by the qualified electors within their respective districts at the general elections as provided in Section 26 of this article, and the term of office of said justices shall be 12 years from and after the first Monday after the first day of January next succeeding their election, except that the term of a justice elected to fill a term which expires subsequent to the first Monday after the first day of January next after his election shall be for the remainder of the unexpired term in the office to which he is elected.

One of the justices of each of the district courts of appeal, and of each division of said courts, shall be the presiding justice thereof, and as such shall be appointed or elected, as the case may be.

In cases wherein the presiding justice is not acting, the other justices shall designate one of their number to perform the duties and exercise the powers of presiding justice.

The presence of two justices shall be necessary for the transaction of any business by such [court] except such as may be done at chambers, a[nd] concurrence of two justices shall be necessary to pronounce a judgment.

No appeal taken to the supreme court or to a district court of appeal shall be dismissed for the reason only that the same was not taken to the proper court, but the cause shall be transferred to the proper court upon such terms as to costs or otherwise as may be just, and shall be proceeded with therein as if regularly appealed thereto.

The Supreme Court, by orders entered in its minutes, may from time to time remove one or more counties from one appellate district to another, but no county not contiguous to another county of a district shall be added to such district.

The district courts of appeal in the First, Second and Third Appellate Districts shall hold their regular sessions respectively at San Francisco, Los Angeles and Sacramento, and they shall always be open for the transaction of business.

SEC. 4b. The district courts of appeal shall have appellate jurisdiction on appeal from the superior courts (except in cases in which appellate jurisdiction is given to the supreme court) in all cases at law in which the superior courts are given original jurisdiction; also, in all cases of forcible or unlawful entry or detainer (except such as arise in municipal, or in justices' or other inferior courts); in proceedings in insolvency; in actions to prevent or abate a nuisance; in proceedings of mandamus, certiorari, prohibition, usurpation of office, removal from office, contesting elections, eminent domain, and in such other special proce[edings] as may be provided by law; also, on questi[ons of] law alone, in all criminal cases prosecuted by [the]

dictment or information, except where judgment e[illegible]th has been rendered.

[illegible] said courts shall also have appellate jurisdiction in all cases, matters, and proceedings pending before the supreme court which shall be ordered by the supreme court to be transferred to a district court of appeal for hearing and decision. The said courts shall also have power to issue writs of mandamus, certiorari, prohibition and habeas corpus, and all other writs necessary or proper to the complete exercise of their appellate jurisdiction. Each of the justices thereof shall have power to issue writs of habeas corpus to any part of his appellate district upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself or the district court of appeal of his district, or before any superior court within his district, or before any judge thereof.

SEC. 4c. The Supreme Court may order any case: (i) in the Supreme Court transferred to a district court of appeal for decision; and (ii) in the district court of appeal for one district transferred to the district court of appeal for another district; or in one division of a district court of appeal transferred to another division of the same district court of appeal, for decision. An order under this section must be made before decision by the court or division from which the case is to be transferred.

SEC. 4d. The Supreme Court may order any case in a district court of appeal transferred to it for decision. An order under this section may be m[illegible] before decision by the district court of appeal [illegible] reafter up to the time such decision becomes fin[illegible] as provided by rule of the Judicial Council.

SEC. 4e. The district courts of appeal shall have appellate jurisdiction on appeal in all cases within the original jurisdiction of the municipal and justice courts, to the extent and in the manner provided for by law.

SEC. 4f. No judgment shall be set aside, or new trial granted, in any case, on the ground of misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, or for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.

SEC. 4g. In all cases where trial by jury is not a matter of right or where trial by jury has been waived, the Legislature may grant to any court of appellate jurisdiction the power, in its discretion, to make findings of fact contrary to, or in addition to, those made by the trial court. The Legislature may provide that such findings may be based on the evidence adduced before the trial court, either with or without the taking of additional evidence by the court of appellate jurisdiction. The Legislature may also grant to any court of appellate jurisdiction the power, in its discretion, for the purpose of making such findings or for any other purpose in the interest of justice, t[illegible]e additional evidence of or concerning facts [illegible]ring at any time prior to the decision of the appeal, and to give or direct the entry of any judgment or order and to make such further or other order as the case may require.

SEC. 5. The superior courts shall have original jurisdiction in all civil cases and proceedings (except as in this article otherwise provided, and except also cases and proceedings in which jurisdiction is or shall be given by law to municipal or to justices or other inferior courts); in all criminal cases amounting to felony, and cases of misdemeanor not otherwise provided for; and of all such special cases and proceedings as are not otherwise provided for; and said court shall have the power of naturalization and to issue papers therefor.

The superior courts shall have appellate jurisdiction in such cases arising in municipal and in justices' and other inferior courts in their respective counties or cities and counties as may be prescribed by law. The Legislature may, in addition to any other appellate jurisdiction of the superior courts, also provide for the establishment of appellate departments of the superior court in any county or city and county wherein any municipal court is established, and for the constitution, regulation, jurisdiction, government and procedure of such appellate departments. Superior courts, municipal courts and justices' courts in cities having a population of more than forty thousand inhabitants shall always be open, legal holidays and nonjudicial days excepted. The process of superior courts shall extend to all parts of the State; *provided*, that all actions for the recovery of the possession of, quieting the title to, or for the enforcement of liens upon real estate, shall be commenced in the county in which the real estate, or any part thereof, affected by such action or actions, is situated. Said superior courts, and their judges shall have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus on petition by or on behalf of any person in actual custody, in their respective counties. Injunctions and writs of prohibition may be issued and served on legal holidays and nonjudicial days. The process of any municipal court shall extend to all parts of the county or city and county in which the city is situated where such court is established, and to such other parts of the State as may be provided by law, and such process may be executed or enforced in such manner as the Legislature shall provide.

Upon stipulation of the parties litigant or their attorneys of record a cause in the superior court or in a municipal court may be tried by a judge pro tempore who must be a member of the bar sworn to try the cause, and who shall be empowered to act in such capacity in the cause tried before him until the final determination thereof. The selection of such judge pro tempore shall be subject to the approval and order of the court in which said cause is pending and shall also be subject to such regulations and orders as may be prescribed by the judicial council.

SEC. 6. There shall be in each of the organized counties, or cities and counties, of the State, a superior court, for each of which at least one judge shall be elected by the qualified electors of the county, or city and county, at the general state election, except that in any county or city and

county containing a population of more than 700,000, as determined by the last preceding federally published decennial census, in which only the incumbent has filed nomination papers for the office of superior court judge, his name shall not appear on the ballot unless there is filed with the county clerk or registrar of voters, within 20 days after the final date for filing nomination papers for the office, a petition indicating that a write-in campaign will be conducted for the office and signed by 100 registered voters qualified to vote with respect to the office.

If a petition indicating that a write-in campaign will be conducted for the office at the general election, signed by 100 registered voters qualified to vote with respect to the office, is filed with the county clerk or registrar of voters not less than 15 days before the general election, the name of the incumbent shall be placed on the general election ballot if it has not appeared on the direct primary election ballot.

There may be as many sessions of a superior court, at the same time, as there are judges elected, appointed or assigned thereto. The judgments, orders, and proceedings of any session of a superior court, held by any one or more of the judges sitting therein, shall be equally effectual as though all the judges of said court presided at such session.

If, in conformity with this section, the name of the incumbent does not appear either on the primary ballot or general election ballot, the county clerk or registrar of voters, on the day of the general election, shall declare the incumbent reelected.

SEC. 7. The judges of each superior court in which there are more than two judges sitting, shall choose, from their own number, a presiding judge, who may be removed as such at their pleasure. Subject to the regulations of the judicial council, he shall distribute the business of the court among the judges, and prescribe the order of business.

SEC. 8. The term of office of judges of the superior courts shall be six years from and after the first Monday of January after the first day of January next succeeding their election. A vacancy in such office shall be filled by the election of a judge for a full term at the next general state election after the first day of January next succeeding the accrual of the vacancy; except that if the term of an incumbent, elective or appointive, is expiring at the close of the year of a general state election and a vacancy accrues after the commencement of that year and prior to the commencement of the ensuing term, the election to fill the office for the ensuing full term shall be held in the closing year of the expiring term in the same manner and with the same effect as though such vacancy had not accrued. In the event of any vacancy, the Governor shall appoint a person to hold the vacant office until the commencement of the term of the judge elected to the office as herein provided.

SEC. 9. The Legislature shall have no power to grant leave of absence to any judicial officer; and any such officer who shall absent himself from the State for more than sixty consecutive days shall be deemed to have forfeited his office. The Legislature of the State may at any time, two-thirds of the members of the Senate and two-thirds of the members of the Assembly voting therefor, increase or diminish the number of Judges of the Superior Court in any county, or city and county, of the State; *provided*, that no such reduction shall . . . any Judge who has been elected.

SEC. 10. Justices of the supreme court, and of the district courts of appeal, and judges of the superior courts may be removed by concurrent resolution of both Houses of the Legislature adopted by a two-thirds vote of each House. All other judicial officers, except justices of the peace, may be removed by the Senate on the recommendation of the Governor; but no removal shall be made by virtue of this section unless the cause thereof be entered on the journal, nor unless the party complained of has been served with a copy of the complaint against him and shall have had an opportunity of being heard in his defense. On the question of removal the ayes and noes shall be entered on the Journal.

SEC. 10a. Whenever a justice of the supreme court, or of a district court of appeal, or a judge of any court of this State, has been convicted in any court of this State or of the United States, of a crime involving moral turpitude, the supreme court shall of its own motion or upon a petition filed by any person, and upon finding that such a conviction was had, enter its order suspending said justice or judge from office until such time as said judgment of conviction becomes final, and the payment of salary of said justice or judge shall also be suspended from the date of such order. When said judgment of conviction becomes final, the supreme court shall enter its order permanently dismissing said justice or judge and striking his name from the roll of attorneys and counsellors, and removing said justice or judge from office and his right to salary shall cease from the date of the order of suspension. If said judgment of conviction is reversed, the supreme court shall enter its order terminating the suspension of said justice or judge and said justice or judge shall be entitled to his salary for the period of the suspension.

SEC. 10b. A justice or judge of any court of this State, in accordance with the procedure prescribed in this section, may be removed for willful misconduct in office or willful and persistent failure to perform his duties or habitual intemperance, or he may be retired for disability seriously interfering with the performance of his duties, which is, or is likely to become, of a permanent character. The Commission on Judicial Qualifications may, after such investigation as the commission deems necessary, order a hearing to be held before it concerning the removal or retirement of a justice or a judge, or the commission may in its discretion request the Supreme Court to appoint three special masters, who shall be justices or judges of courts of record, to hear and take evidence in any such matter, and to report thereon to the commission. If, after hearing, or after considering the record and report of the masters, the commission finds good cause therefor, it shall recommend to the Supreme Court the removal or retirement, as the case may be, of the justice or judge.

The Supreme Court shall review the record of the proceedings on the law and facts and in its discretion may permit the introduction of additional evidence and shall order removal or retirement, as

it finds just and proper, or wholly reject the rec[illegible]ndation. Upon an order for retirement, the [illegible]e or judge shall thereby be retired with the same rights and privileges as if he retired pursuant to statute. Upon an order for removal, the justice or judge shall thereby be removed from office, and his salary shall cease from the date of such order.

All papers filed with and proceedings before the Commission on Judicial Qualifications or masters appointed by the Supreme Court, pursuant to this section, shall be confidential, and the filing of papers with and the giving of testimony before the commission or the masters shall be privileged; but no other publication of such papers or proceedings shall be privileged in any action for defamation except that (a) the record filed by the commission in the Supreme Court continues privileged and upon such filing loses its confidential character and (b) a writing which was privileged prior to its filing with the commission or the masters does not lose such privilege by such filing. The Judicial Council shall by rule provide for procedure under this section before the Commission on Judicial Qualifications, the masters, and the Supreme Court. A justice or judge who is a member of the commission or Supreme Court shall not participate in any proceedings involving his own removal or retirement.

This section is alternative to, and cumulative with, the methods of removal of justices and judges provided in Sections 10 and 10a of this article, Sections 17 and 18 of Article IV, and Article XXIII, of this Constitution.

[illegible] 11. Each county of the State shall be di[illegible] into judicial districts in the manner to be prescribed by the Legislature; provided, however, that no incorporated city or city and county shall be divided so as to lie partly within one district and partly within another.

In each district containing a population of more than forty thousand inhabitants, as ascertained in the manner prescribed by the Legislature, and in each consolidated city and county there shall be a municipal court; in each district containing a population of forty thousand inhabitants or less, as ascertained in the manner prescribed by the Legislature, there shall be a justice court, except that the Legislature may provide that each incorporated city the boundaries of which were coextensive with those of the township two years before the effective date of this amendment and which is entirely surrounded by another incorporated city containing a population of more than forty thousand inhabitants shall constitute a judicial district in which there shall be a municipal court. For each such municipal court and justice court at least one judge, with such additional judges as may be authorized, shall be elected by the qualified electors of the district, provided, however, that the judges of the municipal courts heretofore established pursuant to general law shall continue in office during the terms for which they were elected or appointed and until their successors are elected and qualify.

The Legislature shall provide by general law for the regulation, government, procedure and jurisdiction of municipal courts and of justice courts, [illegible]all fix by law the powers, duties and respon[illegible]es of such courts and of the judges thereof, except as such matters are otherwise provided in this article, the Legislature shall prescribe the manner in which, the time at which, and the terms for which the judges, officers and attaches of municipal courts and of justice courts shall be elected or appointed, the number, qualifications and compensation of the judges, officers and attaches of municipal courts, and provide for the manner in which the number, qualifications and compensation of the judges, officers and attaches of justice courts shall be fixed.

In each judicial district or consolidated city and county in which a municipal or justice court is established, and in cities and townships situated in whole or in part in such district or city and county, there shall be no other court inferior to the superior court; provided, however, that in each such district or city and county existing courts shall continue to function as presently organized until the first selection and qualification of the judge or judges of the municipal or justice court, at which time, unless otherwise provided by law, pending actions, trials and all pending business of existing courts shall be transferred to and become pending in the municipal or justice court established for the judicial district or city and county in which they are situated, and all records of such superseded courts shall be transferred to, and thereafter be and become records of said municipal or justice court.

The compensation of the justices or judges of all courts of record shall be fixed, and the payment thereof prescribed, by the Legislature.

The Legislature shall enact such general or special laws, except in the particulars otherwise specified herein, as may be necessary to carry out the provisions of this section.

SEC. 12. The supreme court, the district courts of appeal, the superior courts, the municipal courts, and such other courts as the Legislature shall prescribe, shall be courts of record.

SEC. 14. The county clerks shall be ex officio clerks of the courts of record, other than municipal courts, in and for their respective counties or cities and counties. The Legislature may also provide for the appointment, by the several superior courts, of one or more commissioners in their respective counties, or cities and counties, with authority to perform chamber business of the judges of the superior courts, to take depositions, and to perform such other business connected with the administration of justice as may be prescribed by law.

SEC. 15. No judicial officer shall receive to his own use any fees or perquisites of office.

SEC. 16. The Legislature shall provide for the speedy publication of such opinions of the supreme court and of the district courts of appeal as the supreme court may deem expedient, and all opinions shall be free for publication by any person.

SEC. 18. The justices of the supreme court, and of the district courts of appeal and the judges of the superior courts and the municipal courts shall be ineligible to any other office or public employment than a judicial office or employment during the term for which they shall have been elected or appointed, and no justice or judge of a court of record shall practice law in or out of court during his continuance in office; *provided, however,* that a judge of the superior court or of a municipal court shall be eligible to election or appointment to a public office during the time for which he may be

elected, and the acceptance of any other office shall be deemed to be a resignation from the office held by said judge.

Sec. 19. The court may instruct the jury regarding the law applicable to the facts of the case, and may make such comment on the evidence and the testimony and credibility of any witness as in its opinion is necessary for the proper determination of the case. The court shall inform the jury in all cases that the jurors are the exclusive judges of all questions of fact submitted to them and of the credibility of the witnesses.

Sec. 20. The style of all process shall be, "The People of the State of California," and all prosecutions shall be conducted in their name and by their authority.

Sec. 21. The Supreme Court shall appoint a clerk of the Supreme Court. Said court may also appoint a reporter and assistant reporters of the decisions of the Supreme Court and of the district courts of appeal. Each of the district courts of appeal shall appoint its own clerk. All the officers herein mentioned shall hold office and be removable at the pleasure of the courts by which they are severally appointed, and they shall receive such compensation as shall be prescribed by law, and discharge such duties as shall be prescribed by law, or by the rules or orders of the courts by which they are severally appointed.

Sec. 22. No person shall be eligible to the office of a Justice of the Supreme Court, or of a district court of appeal, or of a judge of a superior court, or of a municipal court, unless he shall have been admitted to practice before the Supreme Court of the State for a period of at least five years immediately preceding his election or appointment to such office; provided, however, that any elected judge or justice of an existing court who has served in that capacity by election or appointment for five consecutive years immediately preceding the effective date of this amendment shall be eligible to become the judge of a municipal court by which the existing court is superseded upon the establishment of said municipal court or at the first election of judges thereto and for any consecutive terms thereafter for which he may be reelected. The requirement of consecutive years of judicial service shall be deemed to have been met even though interrupted by service in the armed forces of the United States during the period of war.

Sec. 24. No justice of the supreme court nor of a district court of appeal, nor any judge of a superior court nor of a municipal court shall draw or receive any monthly salary unless he shall make and subscribe an affidavit before an officer entitled to administer oaths, that no cause in his court remains pending and undetermined that has been submitted for decision for a period of ninety days. In the determination of causes all decisions of the supreme court and of the district courts of appeal shall be given in writing, and the grounds of the decision shall be stated.

Sec. 26. Within thirty days before the sixteenth day of August next preceding the expiration of his term, any justice of the Supreme Court, justice of a District Court of Appeal, or judge of a superior court in any county the electors of which have adopted the provisions of this section as applicable to the judge or judges of the superior court of such county in the manner hereinafter provided, may file with the officer charged with the duty of certifying nominations for publication the official ballot a declaration of candidacy, election to succeed himself. If he does not file such declaration the Governor must nominate a suitable person for the office before the sixteenth day of September, by filing such nomination with the officer charged with said duty of certifying nominations.

In either event, the name of such candidate shall be placed upon the ballot for the ensuing general election in November in substantially the following form:

For —————————— (title of office) Shall —————————— (name) be elected to the office for the term expiring January ——, ——? (year)	Yes No

No name shall be placed upon the ballot as a candidate for any of said judicial offices except that of a person so declaring or so nominated. If a majority of the electors voting upon such candidacy vote "yes," such person shall be elected to said office. If a majority of those voting thereon vote "no," he shall not be elected, and may not thereafter be appointed to fill any vacancy in that court, but may be nominated and elected thereto as hereinabove provided.

Whenever a vacancy shall occur in any judicial office above named, by reason of the failure of a candidate to be elected or otherwise, the Governor shall appoint a suitable person to fill the vacancy. An incumbent of any such judicial office serving a term by appointment of the Governor shall hold office until the first Monday after the first day of January following the general election next after his appointment, or until the qualification of any nominee who may have been elected to said office prior to that time.

No such nomination or appointment by the Governor shall be effective unless there be filed with the Secretary of State a written confirmation of such nomination or appointment signed by a majority of the three officials herein designated as the Commission on Judicial Appointments. The commission shall consist of (1) the Chief Justice of the Supreme Court, or, if such office be vacant, the acting Chief Justice; (2) the presiding justice of the district court of appeal of the district in which a justice of a district court of appeal or a judge of a superior court is to serve, or, if there be two such presiding justices, the one who has served the longer as such; or, in the case of the nomination or appointment of a justice of the Supreme Court, the presiding justice who has served longest as such upon any of the district courts of appeal; and (3) the Attorney General. If two or more presiding justices above designated shall have served terms of equal length, they shall choose the one who is to be a member of the commission by lot, whenever occasion for action arises. The Legislature shall provide by general law for the retirement, with reasonable retirement allowance, of such justices and judges for age or disability.

In addition to the methods of removal by Legislature provided by sections 17 and 18 of Ar-

~~Section IV and by section 10 of this article, the provi[illegible] of Article XXIII relative to the recall of [illegible]e public officers shall be applicable to justices and judges elected and appointed pursuant to the provisions of this section so far as the same relate to removal from office.~~

~~The provisions of this section shall not apply to the judge or judges of the superior court of any county until a majority of the electors of such county voting on the question of the adoption of such provisions, in a manner to be provided for by the Legislature, shall vote in favor thereof.~~

~~If the Legislature diminishes the number of judges of the superior court in any county or city and county, the offices which first become vacant, to the number of judges diminished, shall be deemed to be abolished.~~

Eighty-second, That Article VI is added, to read:

ARTICLE VI

JUDICIAL

Sec. 1. The judicial power of this State is vested in the Supreme Court, courts of appeal, superior courts, municipal courts, and justice courts. All except justice courts are courts of record.

Sec. 2. The Supreme Court consists of the Chief Justice of California and 6 associate justices. The Chief Justice may convene the court at any time. Concurrence of 4 judges present at the argument is necessary for a judgment.

An acting Chief Justice shall perform all func[illegible] of the Chief Justice when he is absent or u[illegible]e to act. The Chief Justice or, if he fails to do so, the court shall select an associate justice as acting Chief Justice.

Sec. 3. The Legislature shall divide the State into districts each containing a court of appeal with one or more divisions. Each division consists of a presiding justice and 2 or more associate justices. It has the power of a court of appeal and shall conduct itself as a 3-judge court. Concurrence of 2 judges present at the argument is necessary for a judgment.

An acting presiding justice shall perform all functions of the presiding justice when he is absent or unable to act. The presiding justice or, if he fails to do so, the Chief Justice shall select an associate justice of that division as acting presiding justice.

Sec. 4. In each county there is a superior court of one or more judges. The Legislature shall prescribe the number of judges and provide for the officers and employees of each superior court. If the governing body of each affected county concurs, the Legislature may provide that one or more judges serve more than one superior court.

The county clerk is ex officio clerk of the superior court in his county.

Sec. 5. Each county shall be divided into municipal court and justice court districts as provided by statute, but a city may not be divided into more than one district. Each municipal and justice court shall have one or more judges.

[illegible]re shall be a municipal court in each district o[illegible]re than 40,000 residents and a justice court in each district of 40,000 residents or less. The number of residents shall be ascertained as provided by statute.

The Legislature shall provide for the organization and prescribe the jurisdiction of municipal and justice courts. It shall prescribe for each municipal court and provide for each justice court the number, qualifications, and compensation of judges, officers, and employees.

Sec. 6. The Judicial Council consists of the Chief Justice as chairman and one other judge of the Supreme Court, 3 judges of courts of appeal, 5 judges of superior courts, 3 judges of municipal courts, and 2 judges of justice courts, each appointed by the chairman for a 2-year term; 4 members of the State Bar appointed by its governing body for 2-year terms; and one member of each house of the Legislature appointed as provided by the house.

Council membership terminates if a member ceases to hold the position that qualified him for appointment. A vacancy shall be filled by the appointing power for the remainder of the term.

The council may appoint an Administrative Director of the Courts, who serves at its pleasure and performs functions delegated by the council or its chairman, other than adopting rules of court administration, practice and procedure.

To improve the administration of justice the council shall survey judicial business and make recommendations to the courts, make recommendations annually to the Governor and Legislature, adopt rules for court administration, practice and procedure, not inconsistent with statute, and perform other functions prescribed by statute.

The chairman shall seek to expedite judicial business and to equalize the work of judges; he may provide for the assignment of any judge to another court but only with the judge's consent if the court is of lower jurisdiction. A retired judge who consents may be assigned to any court.

Judges shall report to the chairman as he directs concerning the condition of judicial business in their courts. They shall cooperate with the council and hold court as assigned.

Sec. 7. The Commission on Judicial Appointments consists of the Chief Justice, the Attorney General, and the presiding justice of the court of appeal of the affected district or, if there are 2 or more presiding justices, the one who has presided longest or, when a nomination or appo[illegible]tment to the Supreme Court is to be considered, the presiding justice who has presided longest on any court of appeal.

Sec. 8. The Commission on Judicial Qualifications consists of 2 judges of courts of appeal, 2 judges of superior courts, and one judge of a municipal court, each appointed by the Supreme Court; 2 members of the State Bar who have practiced law in this State for 10 years, appointed by its governing body; and 2 citizens who are not judges, retired judges, or members of the State Bar, appointed by the Governor and approved by the Senate, a majority of the membership concurring. All terms are 4 years.

Commission membership terminates if a member ceases to hold the position that qualified him for appointment. A vacancy shall be filled by the appointing power for the remainder of the term.

Sec. 9. The State Bar of California is a public corporation. Every person admitted and licensed to practice law in this State is and shall be a member of the State Bar except while holding office as a judge of a court of record.

Sec. 10. The Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings. Those courts also have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition.

Superior courts have original jurisdiction in all causes except those given by statute to other trial courts.

The court may make such comment on the evidence and the testimony and credibility of any witness as in its opinion is necessary for the proper determination of the cause.

Sec. 11. The Supreme Court has appellate jurisdiction when judgment of death has been pronounced. With that exception courts of appeal have appellate jurisdiction when superior courts have original jurisdiction and in other causes prescribed by statute.

Superior courts have appellate jurisdiction in causes prescribed by statute that arise in municipal and justice courts in their counties.

The Legislature may permit appellate courts to take evidence and make findings of fact when jury trial is waived or not a matter of right.

Sec. 12. The Supreme Court may, before decision becomes final, transfer to itself a cause in a court of appeal. It may, before decision, transfer a cause from itself to a court of appeal or from one court of appeal or division to another. The court to which a cause is transferred has jurisdiction.

Sec. 13. No judgment shall be set aside, or new trial granted, in any cause, on the ground of misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, or for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.

Sec. 14. The Legislature shall provide for the prompt publication of such opinions of the Supreme Court and courts of appeal as the Supreme Court deems appropriate, and those opinions shall be available for publication by any person.

Decisions of the Supreme Court and courts of appeal that determine causes shall be in writing with reasons stated.

Sec. 15. A person is ineligible to be a judge of a court of record unless for 5 years immediately preceding selection to a municipal court or 10 years immediately preceding selection to other courts, he has been a member of the State Bar or served as a judge of a court of record in this State. A judge eligible for municipal court service may be assigned by the chairman of the Judicial Council to serve on any court.

Sec. 16. (a) Judges of the Supreme Court shall be elected at large and judges of courts of appeal shall be elected in their districts at general elections at the same time and places as the Governor. Their terms are 12 years beginning the Monday after January 1 following their ele
except that a judge elected to an unexpired
serves the remainder of the term. In creating a new court of appeal district or division the Legislature shall provide that the first elective terms are 4, 8, and 12 years.

(b) Judges of other courts shall be elected in their counties or districts at general elections. The Legislature may provide that an unopposed incumbent's name not appear on the ballot.

(c) Terms of judges of superior courts are 6 years beginning the Monday after January 1 following their election. A vacancy shall be filled by election to a full term at the next general election after the January 1 following the vacancy, but the Governor shall appoint a person to fill the vacancy temporarily until the elected judge's term begins.

(d) Within 30 days before August 16 preceding the expiration of his term, a judge of the Supreme Court or a court of appeal may file a declaration of candidacy to succeed himself. If he does not, the Governor before September 16 shall nominate a candidate. At the next general election, only the candidate so declared or nominated may appear on the ballot, which shall present the question whether he shall be elected. If he receives a majority of the votes on the question he is elected. A candidate not elected may not be appointed to that court but later may be nominated and elected.

The Governor shall fill vacancies in those co
by appointment. An appointee holds office
the Monday after January 1 following the
general election at which he had the right to become a candidate or until an elected judge qualifies. A nomination or appointment by the Governor is effective when confirmed by the Commission on Judicial Appointments.

Electors of a county, by majority of those voting and in a manner the Legislature shall provide, may make this system of selection applicable to judges of superior courts.

Sec. 17. A judge of a court of record may not practice law and during the term for which he was selected is ineligible for public employment or public office other than judicial employment or judicial office. A judge of the superior or municipal court may, however, become eligible for election to other public office by taking a leave of absence without pay prior to filing a declaration of candidacy. Acceptance of the public office is a resignation from the office of judge.

A judicial officer may not receive fines or fees for his own use.

Sec. 18. (a) A judge is disqualified from acting as a judge, without loss of salary, while there is pending (1) an indictment or an information charging him in the United States with a crime punishable as a felony under California or federal law, or (2) a recommendation to the Supreme Court by the Commission on Judicial Qualifications for his removal or retirement.

(b) On recommendation of the Commission on Judicial Qualifications or on its own motio
Supreme Court may suspend a judge from
without salary when in the United States he

pleads guilty or no contest or is found guilty of a crime punishable as a felony under California or federal law or of any other crime that involves moral turpitude under that law. If his conviction is reversed suspension terminates, and he shall be paid his salary for the period of suspension. If he is suspended and his conviction becomes final the Supreme Court shall remove him from office.

(c) On recommendation of the Commission on Judicial Qualifications the Supreme Court may (1) retire a judge for disability that seriously interferes with the performance of his duties and is or is likely to become permanent, and (2) censure or remove a judge for action occurring not more than 6 years prior to the commencement of his current term that constitutes wilful misconduct in office, wilful and persistent failure to perform his duties, habitual intemperance, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

(d) A judge retired by the Supreme Court shall be considered to have retired voluntarily. A judge removed by the Supreme Court is ineligible for judicial office and pending further order of the court he is suspended from practicing law in this State.

(e) The Judicial Council shall make rules implementing this section and providing for confidentiality of proceedings.

Sec. 19. The Legislature shall prescribe compensation for judges of courts of record.

A judge of a court of record may not receive his salary while any cause before him remains pending and undetermined for 90 days after it has been submitted for decision.

Sec. 20. The Legislature shall provide for retirement, with reasonable allowance, of judges of courts of record for age or disability.

Sec. 21. On stipulation of the parties litigant the court may order a cause to be tried by a temporary judge who is a member of the State Bar, sworn and empowered to act until final determination of the cause.

Sec. 22. The Legislature may provide for the appointment by trial courts of record of officers such as commissioners to perform subordinate judicial duties.

Eighty-third, That Article VII is repealed.

~~ARTICLE VII~~

~~PARDONING POWER~~

~~SECTION 1. The Governor shall have the power to grant reprieves, pardons, and commutations of sentence, after conviction, for all offenses except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations, as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, the Governor shall have power to suspend the execution of the sentence until the case shall be reported to the Legislature at its next meeting, when the Legislature shall either pardon, direct the execution of the sentence, or grant a further reprieve. The Governor shall communicate to the Legislature at the beginning of every session, every case of reprieve or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence, its date, the date of the pardon or reprieve, and the reasons for granting the same. Neither the Governor nor the Legislature shall have power to grant pardons, or commutations of sentence, in any case where the convict has been twice convicted of felony, unless upon the written recommendation of a majority of the Judges of the Supreme Court.~~

Eighty-fourth, That Article VIII is repealed.

~~ARTICLE VIII~~

~~MILITIA~~

~~SECTION 1. The Legislature shall provide, by law, for organizing and disciplining the militia, in such manner as it may deem expedient, not incompatible with the Constitution and laws of the United States. Officers of the militia shall be elected or appointed in such manner as the Legislature shall from time to time direct, and shall be commissioned by the Governor. The Governor shall have power to call forth the militia to execute the laws of the State, to suppress insurrections, and repel invasions.~~

~~SEC. 2. All military organizations provided for by this Constitution, or any law of this State, and receiving State support, shall, while under arms either for ceremony or duty, carry no device, banner, or flag of any State or nation, except that of the United States or the State of California.~~

Eighty-fifth, That Section 29 is added to Article XIII, to read:

Sec. 29. Not more than 25 percent of the total appropriations from all funds of the State shall be raised by means of taxes on real and personal property according to the value thereof.

Eighty-sixth, That Section 4 is added to Article XXII, to read:

Sec. 4. Nothing in Section 15 of Article VI affects the eligibility of a judge to serve in or be elected to his office if the judge was selected prior to the operative date of Section 15 and was eligible under the law at the time of that selection.

Eighty-seventh, That Section 5 is added to Article XXII, to read:

Sec. 5. In any case in which, under the law in effect prior to the operative date of this section, the term of a judge of a municipal or justice court expires in January in a year in which a general election is held, that term shall be extended until the Monday after January 1 following the next general election following the date when the term would otherwise expire, at which general election a successor shall be elected.

Eighty-eighth, That Section 6 is added to Article XXII, to read:

Sec. 6. Any law enacted at the 1966 First Extraordinary Session of the Legislature and providing for increased compensation for members of the Legislature shall become operative only at the time the 1967 Regular Session of the Legislature is convened. Any such law enacted at the 1966 First Extraordinary Session of the Legislature is not subject to the requirement of Section 4 of Article IV as to passage by a two thirds vote or to the requirement of Section 4 of Article IV that any adjustment of the annual compensation of a member of the Legislature may not

exceed an amount equal to 5 percent for each calendar year following the operative date of the last adjustment, of the salary in effect when the statute is enacted. The provisions of Assembly Bill No. 173 of the 1966 First Extraordinary Session are hereby ratified.

Eighty-ninth, That Section 7 is added to Article XXII, to read:

Sec. 7. To the extent there is a conflict, constitutional amendments adopted by the electors at the November 1966 General Election shall prevail over the provisions transferred from Article IV to Article XIII by Assembly Constitutional Amendment No. 13, adopted by the Legislature at the 1966 First Extraordinary Session.

[Second Resolved Clause]

And be it further resolved, That the Legislature having adopted Assembly Constitutional Amendment No. 90 at its 1965 Regular Session to propose an amendment to portions of Sections 1, 2 and 16 of Article IV of the State Constitution for the sole purpose of requiring the Legislature to reconvene and reconsider measures submitted to the Governor during the last ten days of a general session (Sundays excepted) which he fails to sign, and since said amendment did not propose any other change in the length, duration or scope of general or budget sessions of the Legislature, it is the intent of the Legislature, if both Assembly Constitutional Amendment No. 90 and Assembly Constitutional Amendment (Revision) No. 13, 1966 First Extraordinary Session, are approved by the electors, that both shall be given effect regardless of the vote by which they are approved and that their provisions be construed together so as to give effect to both in the following manner:

First, That subdivision (a) be added to Section 3 of Article IV thereof, to read:

(a) The Legislature shall meet annually in regular session at noon on the Monday after January 1. At the end of each regular session the Legislature shall recess for 30 days. It shall reconvene on the Monday after the 30-day recess, for a period not to exceed 5 days, to reconsider vetoed measures.

A measure introduced at any session may not be deemed pending before the Legislature at any other session.

Second, That Section 4 be added to Article IV thereof, to read:

Sec. 4. Compensation of members of the Legislature, and reimbursement for travel and living expenses in connection with their official duties, shall be prescribed by statute passed by rollcall vote entered in the journal, two thirds of the membership of each house concurring. Commencing with 1967, in any statute enacted making an adjustment of the annual compensation of a member of the Legislature the adjustment may not exceed an amount equal to 5 percent for each calendar year following the operative date of the last adjustment, of the salary in effect when the statute is enacted. Any adjustment in the compensation may not apply until the commencement of the regular session commencing after the next general election following enactment of the statute.

Members of the Legislature shall receive 5 cents per mile for traveling to and from their ho in order to attend reconvening following the ıy recess after a regular session.

The Legislature may not provide retirement benefits based on any portion of a monthly salary in excess of 500 dollars paid to any member of the Legislature unless the member receives the greater amount while serving as a member in the Legislature. The Legislature may, prior to their retirement, limit the retirement benefits payable to members of the Legislature who serve during or after the term commencing in 1967.

When computing the retirement allowance of a member who serves in the Legislature during the term commencing in 1967 or later, allowance may be made for increases in cost of living if so provided by statute, but only with respect to increases in the cost of living occurring after retirement of the member, except that the Legislature may provide that no member shall be deprived of a cost of living adjustment based on a monthly salary of 500 dollars which has accrued prior to the commencement of the 1967 Regular Session of the Legislature.

Third, That subdivision (c) be added to Section 8 of Article IV thereof, to read:

(c) No statute may go into effect until the 61st day after adjournment of the regular session at which the bill was passed, or until the 91st day after adjournment of the special session at which the bill was passed, except statutes calling elections, statutes providing for tax levies or appropriations for the usual current expense the State, and urgency statutes.

Fourth, That subdivision (a) be added to Section 10 of Article IV thereof, to read:

(a) Each bill passed by the Legislature shall be presented to the Governor. It becomes a statute if he signs it. He may veto it by returning it with his objections to the house of origin, which shall enter the objections in the journal and proceed to reconsider it. If each house then passes the bill by rollcall vote entered in the journal, two thirds of the membership concurring, it becomes a statute. A bill presented to the Governor that is not returned within 12 days becomes a statute. If the 12-day period expires during the recess at the end of a regular session, the bill becomes a statute unless the Governor vetoes it within 30 days from the commencement of the recess. If the Legislature by adjournment of a special session prevents the return of a bill it does not become a statute unless the Governor signs the bill and deposits it in the office of the Secretary of State within 30 days after adjournment.

Fifth, That subdivision (b) be added to Section 23 of Article IV thereof, to read:

(b) A referendum measure may be proposed by presenting to the Secretary of State, within 60 days after adjournment of the regular session at which the statute was passed or within 90 days after adjournment of the special session at which the statute was passed, a petition certified to have been signed by electors equal in number to 5 percent of the votes for all candidates for nor at the last gubernatorial election, asking the statute or part of it be submitted to the electors.

Sixth, That the provisions of the second resolved clause of this measure shall become operative only if the amendment to Article IV of the State Constitution proposed by Assembly Constitutional Amendment No. 90 of the 1965 Regular Session are approved by a majority of the electors, in which case subdivision (a) of Section 3, Section 4, subdivision (c) of Section 8, subdivision (a) of Section 10 and subdivision (b) of Section 23 of Article IV of the Constitution, as appearing in the first resolved clause of Assembly Constitutional Amendment (Revision) No. 13, shall not become operative.

1	**PUBLIC RETIREMENT FUNDS. Legislative Constitutional Amendment.** Provides Legislature may authorize investment of moneys of any public pension or retirement fund, except Teachers' Retirement Fund, in stock or shares of any corporation or a diversified management investment company; provided that not to exceed 25% of the assets of the fund may be so invested and there is compliance with specified requirements as to registration of the stock in an exchange, financial condition of the corporation, and the percentage of stock which may be acquired in any one corporation.	**YES**	
		NO	

(This amendment proposed by Assembly Constitutional Amendment No. 57, 1965 Regular Session, expressly amends an existing section of the Constitution, therefore, **NEW PROVISIONS** proposed to be **INSERTED** are printed in **BLACK-FACED TYPE.**)

PROPOSED AMENDMENT TO ARTICLE XII

SEC. 13. The state shall not in any manner loan its credit, nor shall it subscribe to, or be interested in the stock of any company, association, or corporation, except that the state and each political subdivision, district, municipality, and public agency thereof is hereby authorized to acquire and hold shares of the capital stock of any mutual water company or corporation when such stock is so acquired or held for the purpose of furnishing a supply of water for public, municipal or governmental purposes; and such holding of such stock shall entitle such holder thereof to all of the rights, powers and privileges, and shall subject such holder to the obligations and liabilities conferred or imposed by law upon other holders of stock in the mutual water company or corporation in which such stock is so held.

Notwithstanding provisions to the contrary in this section and Section 31 of Article IV of this Constitution, the Legislature may authorize the investment of moneys of any public pension or retirement fund other than the fund provided for in Section 13901 of the Education Code, or any successor thereto, not to exceed 25 percent of the assets of such fund determined on the basis of cost in the common stock or shares and not to exceed 5 percent of assets in preferred stock or shares of any corporation provided:

a. Such stock is registered on a national securities exchange, as provided in the "Securities Exchange Act of 1934" as amended, but such registration shall not be required with respect to the following stocks:

1) The common stock of a bank which is a member of the Federal Deposit Insurance Corporation and has capital funds, represented by capital, surplus, and undivided profits, of at least fifty million dollars ($50,000,000);

2) The common stock of an insurance company which has capital funds, represented by capital, special surplus funds, and unassigned surplus, of at least fifty million dollars ($50,000,000);

3) Any preferred stock

b. Such corporation has total assets of at least one hundred million dollars ($100,000,000);

c. Bonds of such corporation, if any are outstanding, qualify for investment under the law governing the investment of the retirement fund, and there are no arrears of dividend payments on its preferred stock;

d. Such corporation has paid a cash dividend on its common stock in at least 8 of the 10 years next preceding the date of investment, and the aggregate net earnings available for dividends on the common stock of such corporation for the whole of such period have been equal to the amount of such dividends paid, and such corporation has paid an earned cash dividend in each of the last 3 years;

e. Such investment in any one company may not exceed 5 percent of the common stock shares outstanding; and

f. No single common stock investment may exceed 2 percent of the assets of the fund, based on cost.

Notwithstanding provisions to the contrary in this section and Section 31 of Article IV of this Constitution, the Legislature may authorize the investment of moneys of any public pension or retirement fund other than the fund provided for in Section 13901 of the Education Code, or any successor thereto, in stock or shares of a diversified management investment company registered under the "Investment Company Act of 1940" which has total assets of at least fifty million dollars ($50,000,000); provided, however, that the total investment in such stocks and shares, together with stocks and shares of all other corporations may not exceed 25 percent of the assets of such fund determined on the basis of the cost of the stocks or shares.

EXHIBIT E

1976

Judges. Censure, Removal, Judicial Performance Commission

7 Judges. Censure, Removal, Judicial Performance Commission

Ballot Title

JUDGES. CENSURE, REMOVAL, JUDICIAL PERFORMANCE COMMISSION. LEGISLATIVE CONSTITUTIONAL AMENDMENT ARTICLE VI. Amends section 8 to change name of "Commission on Judicial Qualifications" to "Commission on Judicial Performance". Amends section 18 to permit Supreme Court to censure or remove judges for "persistent failure or inability" rather than for "wilful and persistent failure" to perform their duties; to permit Commission to admonish judges who act improperly or are derelict in performance of their duties; and to provide that Commission recommendations for censure, removal or retirement of Supreme Court judges be determined by seven court of appeals judges selected by lot. Financial impact: Minor if any effect on state costs.

FINAL VOTE CAST BY LEGISLATURE ON ACA 96 (PROPOSITION 7)

Assembly—Ayes, 66 Noes, 0

Senate—Ayes, 27 Noes, 1

Analysis by Legislative Analyst

PROPOSAL:

The Constitution provides for a Commission on Judicial Qualifications consisting of five judges appointed by the Supreme Court, two attorneys appointed by the State Bar and two citizens appointed by the Governor and approved by the Senate. The purpose of the commission is to make recommendations to the Supreme Court for the reprimand, suspension, removal or retirement of judges for improper behavior, intemperance or failure to perform their duties.

This constitutional amendment changes the name of the commission to the Commission on Judicial Performance and makes the following additions and revisions in the current law:

1. Permits the commission, subject to review by the Supreme Court, to warn judges privately of any improper conduct or failure to perform their duties.
2. Authorizes the commission to recommend the reprimand or removal of judges by the Supreme Court for constant failure or inability to perform their duties. Presently, this recommendation can be made only if the failure to perform is intentional.
3. Limits intemperance as a cause for reprimand or removal from office to the intemperate use of drugs or intoxicants. Existing law does not define intemperance.
4. Provides that if the commission recommends the reprimand, removal or retirement of a Supreme Court justice, the matter must be decided by a court consisting of seven judges of courts of appeal temporarily assigned for this purpose.

FISCAL EFFECT:

This measure would result in minor, if any, additional state cost to the extent that the Commission on Judicial Performance and the Supreme Court take action to reprimand or remove from office judges who lack ability to perform their duties. Minor costs also would be incurred for travel expenses of seven courts of appeal judges in the event they are required to consider recommendations to reprimand, remove or retire justices of the Supreme Court. Actions taken should provide longer term efficiencies and savings.

Apply for Your Absentee Ballot Early

Argument in Favor of Proposition 7

Proposition 7 will streamline what is currently known as the Commission on Judicial Qualifications renaming that Commission and modernizing its procedures.

This Proposition will change the name of the Commission on Judicial Qualifications to the Commission on Judicial Performance, a name more in keeping with the duties of the Commission.

Under the Proposition, the Commission will continue to include two lay citizens appointed by the Governor, with the concurrence of the State Senate, to provide adequate public input and insure a fair review of all citizen complaints lodged against the judiciary.

Other members of the Commission would be appointed by the Supreme Court and the State Bar Board of Governors with all members to serve four-year terms.

Proposition 7 will expand the powers of the Commission to deal with judicial officers who, due to disability, are no longer able to perform their judicial functions. Under current constitutional authority the Commission may only censure or remove a judge where the persistent failure to perform duties is willful. This Proposition will eliminate willfulness as grounds for removal and censure, enabling the Commission to more adequately deal with problems of age and health which may impede the efficiency and quality of justice.

While all Californians are sympathetic to those who fall victim to ill health, the administration of justice in this state demands an impartial and objective review of whether ill health or age adversely affects an individual's performance on the bench.

Further, the Proposition will permit the Supreme Court to censure or remove a judge for persistent inability to perform judicial duties whether such inability is willful or merely the product of incompetence. Under existing law persistent inability must be willful before it constitutes grounds for Commission action. There is no place on California's courts for persons who, though well intentioned, are not qualified by way of legal competence to serve on the bench.

This measure will also give greater flexibility to the Commission to deal with habitual intemperance relating to the use of intoxicants or drugs by judges in California. The Proposition will give to the Commission the authority to remove or censure judges for such conduct.

Proposition 7 gives to the Commission on Judicial Performance the tools that it needs to deal with today's problems relating to the administration of justice in California and insures that all Californians will be afforded the best judicial system for their tax dollars.

ROBERT G. BEVERLY
Member of the Assembly, 51st District

JOHN J. MILLER
Member of the Assembly, 13th District
Chairman, Assembly Committee on Judiciary

ALFRED H. SONG
Member of the Senate, 26th District
Chairman, Senate Committee on Judiciary

No argument against Proposition 7 was submitted

Text of proposed law appears on pages 60–61

(b) The minimum amount that may be applied for any individual grant project is ten thousand dollars ($10,000). Any application for a state grant shall comply with the provisions of the Environmental Quality Act of 1970 (commencing with Section 21000).

(c) Upon completion of the grant application review by the Director of Parks and Recreation, approved projects shall be forwarded to the Director of Finance for inclusion in the Budget Bill.

5096.131. Projects proposed pursuant to subdivisions (b), (c), (d), and (e) of Section 5096.124 shall be submitted to the office of the Secretary of the Resources Agency for review. The Director of Parks and Recreation shall provide the Secretary of the Resources Agency with a statement concerning each project originated pursuant to subdivisions (b), (c), and (e) of Section 5096.124, which statement shall include the priority of the project in regard to the need to correct the following deficiencies:

(a) Deficiencies in providing recreation.

(b) Deficiencies in preserving historical resources.

(c) Deficiencies in preserving or protecting natural, scenic, ecological, geological, or other environmental values.

5096.132. The Secretary of the Resources Agency, after completing his review, shall forward those projects recommended by the appropriate board or commission together with his comments thereon to the Director of Finance for inclusion in the Budget Bill. Projects proposed pursuant to subdivision (d) of Section 5096.124 shall be subject to the favorable recommendation of the Wildlife Conservation Board. Projects proposed for the state park system pursuant to subdivision (b) or (e) of Section 5096.124 shall be subject to the favorable recommendation of the State Park and Recreation Commission.

In submitting the list of projects recommended for inclusion in the annual budget, the secretary shall organize the projects on a priority basis within each of the purposes as set forth in subdivisions (b), (c), (d), and (e) of Section 5096.124. This priority ranking shall be based upon the provisions of Section 5096.124 and the needs specified in Section 5096.131.

In addition, the statement setting forth the priorities shall include the relationship of each separate project on the priority list to a proposed time schedule for the acquisition, development, or restoration expenditures associated with the accomplishment of the projects contained in such list. All projects proposed in the Governor's Budget of each fiscal year shall be contained in the Budget Bill as provided in Section 5096.119.

5096.133. Projects authorized for the purposes set forth in subdivisions (b), (c), and (e) of Section 5096.124 shall be subject to augmentation as provided in Section 16352 of the Government Code. The unexpended balance in any appropriation heretofore or hereafter made payable from the State, Urban, and Coastal Park Fund which the Director of Finance, with the approval of the State Public Works Board, determines not to be required for expenditure pursuant to the appropriation may be transferred on order of the Director of Finance to, and in augmentation of, the appropriation made in Section 16352 of the Government Code.

5096.134. The Director of Parks and Recreation may make agreements with respect to any real property acquired pursuant to subdivisions (b) and (c) of Section 5096.124 for continued tenancy of the seller of the property for a period of time and under such conditions as mutually agreed upon by the state and the seller so long as the seller promises to pay such taxes on his interest in the property as shall become due, owing, or unpaid on the interest created by such agreement, and so long as the seller conducts his operations on the land according to specifications issued by the Director of Parks and Recreation to protect the property for the public use for which it was acquired. A copy of such agreement shall be filed with the county clerk in the county in which the property lies. Such arrangement shall be compatible with the operation of the area by the state, as determined by the Director of Parks and Recreation.

5096.135. Notwithstanding any other provisions of law, for the purposes of this chapter, acquisition may include gifts, purchases, leases, easements, eminent domain, the transfer or exchange of property for other property of like value, and purchases of development rights and other interests, unless the Legislature shall hereafter otherwise provide. Acquisition for the state park system by purchase or by eminent domain shall be under the Property Acquisition Law (commencing with Section 15850 of the Government Code), notwithstanding any other provisions of law.

5096.136. All grants, gifts, devises, or bequests to the state, conditional or unconditional, for park, conservation, recreation, or other purposes for which real property may be acquired or developed pursuant to this chapter, may be accepted and received on behalf of the state by the appropriate department head with the approval of the Director of Finance. Such grants, gifts, devises, or bequests shall be available, when appropriated by the Legislature, for expenditure for the purposes provided in Sections 5096.124 and 5096.125.

5096.137. There shall be an agreement or contract between the Department of Parks and Recreation and the applicant in the case of a state grant project which shall contain therein the provisions that the property so acquired or developed shall be used by the applicant only for the purpose for which the state grant funds were requested and that no other use of the area shall be permitted except by specific act of the Legislature. No state grant funds shall be available for expenditure until such agreement has been signed.

5096.138. Real property acquired by the state shall consist predominantly of open or natural lands, including lands under water capable of being utilized for multiple recreational purposes, and lands necessary for the preservation of historical resources. No funds derived from the bonds authorized by this chapter shall be expended for the construction of any reservoir designated as a part of the "State Water Facilities," as defined in subdivision (d) of Section 12934 of the Water Code, but such funds may be expended for the acquisition or development of beaches, parks, recreational facilities, and historical resources at or in the vicinity of any such reservoir.

5096.139. (a) The Director of Parks and Recreation may submit to the State Lands Commission any proposal by a state or local public agency for the acquisition of lands pursuant to this chapter, which lands are located on or near tidelands, submerged lands, swamp, overflowed, or other wetlands which are under the jurisdiction of the State Lands Commission, whether or not such lands are state-owned or have been granted in trust to a local public agency; and the State Lands Commission shall, within one year of such submittal, review such proposed acquisition, make a determination as to the state's existing or potential interest in the lands, and report its findings to the Director of Parks and Recreation, who shall forward such report to the Secretary of the Resources Agency.

(b) No provision of this chapter shall be construed as authorizing the condemnation of state lands.

SEC. 2. Section 1 of this act shall become operative January 1, 1977, if the people at the special election provided in Section 3 of this act adopt the Nejedly-Hart State, Urban, and Coastal Park Bond Act of 1976, as set forth in Section 1 of this act. Sections 2 to 8, inclusive, of this act provide for the calling of an election and contain provisions relating to, and necessary for, the submission of the Nejedly-Hart State, Urban, and Coastal Park Bond Act of 1976 to the people, and for returning, canvassing, and proclaiming the votes thereon, and shall take effect immediately.

TEXT OF PROPOSITION 7

This amendment proposed by Assembly Constitutional Amendment 96 (Statutes of 1976, Resolution Chapter 56) expressly amends existing sections of the Constitution; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions to be inserted or added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO ARTICLE VI

First—That Section 8 of Article VI thereof be amended to read:

~~SEC~~ *SEC.* 8. The Commission on Judicial ~~Qualifications~~ *Performance* consists of 2 judges of courts of appeal, 2 judges of superior courts, and one judge of a municipal court, each appointed by the Supreme Court; 2 members of the State Bar who have practiced law in this State for 10 years, appointed by its governing body; and 2 citizens who are not judges, retired judges, or members of the State Bar, appointed by the Governor and approved by the Senate, a majority of the membership concurring. All terms are 4 years.

Commission membership terminates if a member ceases to hold the position that qualified the member for appointment. A vacancy shall be filled by the appointing power for the remainder of the term.

Second—That Section 18 of Article VI thereof be amended to read:

~~SEC~~ *SEC.* 18. (a) A judge is disqualified from acting as a judge, without loss of salary, while there is pending (1) an indictment or an information charging the judge in the United States with a crime punishable as a felony under California or federal law, or (2) a recommendation to the Supreme Court by the Commission on Judicial ~~Qualifications~~ *Performance* for removal or retirement of the judge.

(b) On recommendation of the Commission on Judicial ~~Qualifications~~ *Performance* or on its own motion, the Supreme Court may suspend a judge from office without salary when in the United States the judge pleads guilty or no contest or is found guilty of a crime punishable as a felony under California or federal law or of any other crime that involves moral turpitude under that law. If the conviction is reversed suspension terminates, and the judge shall be paid the salary for the judicial office held by the judge for the period of suspension. If the judge is suspended and the conviction becomes final the Supreme Court shall remove the judge from office.

(c) On recommendation of the Commission on Judicial ~~Qualifications~~ *Performance* the Supreme Court may (1) retire a judge for disability that seriously interferes with the performance of the judge's duties and is or is likely to become permanent, and (2) censure or

remove a judge for action occurring not more than 6 years prior to the commencement of the judge's current term that constitutes wilful misconduct in office, ~~wilful and~~ persistent failure *or inability* to perform the judge's duties, habitual intemperance *in the use of intoxicants or drugs*, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute. *The commission may r[illegible]ately admonish a judge found to have engaged in an improper [illegible]n or a dereliction of duty, subject to review in the Supreme Court [illegible]ne manner provided for review of causes decided by a court of appeal.*

(d) A judge retired by the Supreme Court shall be considered to have retired voluntarily. A judge removed by the Supreme Court is ineligible for judicial office and pending further order of the court is suspended from practicing law in this State.

(e) *A recommendation of the Commission on Judicial Performance for the censure, removal or retirement of a judge of the Supreme Court shall be determined by a tribunal of 7 court of appeal judges selected by lot.*

(f) The Judicial Council shall make rules implementing this section and providing for confidentiality of proceedings.

TEXT OF PROPOSITION 10

This amendment proposed by Senate Constitutional Amendment 46 (Statutes of 1976, Resolution Chapter 59) expressly adds a section to the Constitution; therefore, the new provisions to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO ARTICLE XI

SEC. 14. A local government formed after the effective date of this section, the boundaries of which include all or part of two or more counties, shall not levy a property tax unless such tax has been approved by a majority vote of the qualified voters of that local government voting on the issue of the tax.

TEXT OF PROPOSITION 11

This amendment proposed by Senate Constitutional Amendment 53 (Statutes of 1976, Resolution Chapter 60) expressly amends an existing section of the Constitution; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions to be inserted or added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO ARTICLE XIII

~~SEC~~ *SEC.* 12. *(a) Except as provided in subdivision (b),* ~~Taxes~~ *taxes* on personal property, possessory interests in land, and taxable improvements located on land exempt from taxation which are not a lien upon land sufficient in value to secure their payment shall be levied at the rates for the preceding tax year upon property of the same kind where the taxes were a lien upon land sufficient in value to secure their payment.

(b) In any year in which the assessment ratio is changed, the Legislature shall adjust the rate described in subdivision (a) to maintain equality between property on the secured and unsecured rolls.

TEXT OF PROPOSITION 13—*continued from page 49*

19713. The commission shall establish and maintain a general of[illegible] for the transaction of its business at Los Angeles, California. The commission may hold meetings at any other place when the convenience of the members of the commission requires.

19714. A public record of every vote shall be maintained at the commission's general office.

19715. A majority of the commission shall constitute a quorum for the transaction of its business or the exercise of any of its powers.

19716. The commission may visit, investigate, and place expert accountants, and such other persons as it may deem necessary in the office, track, or other place of business of any licensee for the purpose of determining that its rules and regulations are strictly complied with.

19717. The commission may require that the books and financial or other statements of any person licensed under this chapter shall reasonably be kept in a particular manner.

19718. The commission, in carrying out its functions under this chapter, may take such testimony, require by subpoena the attendance of such witnesses and the production of such books, records, papers, correspondence, and documents, as the commission deems advisable. Subpoenas shall be issued under the signature of the executive secretary or the chairman of the commission and shall be served by any person designated by the executive secretary or the chairman. Any member of the commission may administer oaths or affirmations to witnesses appearing before the commission.

In case of disobedience to a subpoena issued under this section, the commission may invoke the aid of the appropriate state court in requiring compliance with such subpoena. Any court where such person is found or transacts business may, in case of refusal to obey a subpoena issued by the commission, issue an order requiring such person to appear and testify, to produce such books, records, papers, correspondence, and documents, and any failure to obey the order of the court shall be punished by the court as a contempt thereof.

19719. In lieu of requiring an affidavit or other sworn statement in any application or other document required to be filed with it, the commission may require a certification thereof under penalty of perjury, in such form as the commission may prescribe.

Any person who willfully makes and subscribes any such certificate [illegible]ich is materially false in any particular is guilty of a felony, and shall [illegible] punished in the manner prescribed by the Penal Code for the punishment of perjury.

19720. Stewards and other racing officials appointed or approved by the commission, while performing duties required by this chapter or by the commission, shall be entitled to the same rights and immunities granted public employees by the provisions of Article 3 (commencing with Section 820) of Chapter 1 of Part 2 of Division 3.6 of Title 1 of the Government Code.

19721. The commission annually on or before January 31 shall make a full report to the Governor and the Legislature of its proceedings for the fiscal year and shall include therewith such recommendations as it deems desirable.

19722. The Attorney General shall enforce this chapter in his capacity as a law enforcement officer.

Article 3. Racing Association Licenses

19726. Notwithstanding any other provision of law, including, but not limited to, Section 337a of the Penal Code, the commission may grant a license or licenses for the conduct of greyhound racing to any racing association, as defined in this chapter.

19727. No license granted by the commission shall be transferable or permit the conduct of greyhound racing at any other facility unless authorized by the commission.

19728. Each license granted pursuant to this chapter shall be in writing, shall contain such reasonable conditions as are deemed necessary or desirable by the commission for the purposes of this chapter, and shall be subject to all rules, regulations, and conditions prescribed by the commission. In considering each license application the commission shall, among other things, require each applicant to furnish each of the following:

(a) Financial statements and credit arrangements sufficient to indicate capacity to organize, finance, build, and operate such facilities as required.

(b) A selected site for the conduct of greyhound racing which would be compatibly zoned and for which a preliminary environmental impact statement has been prepared.

(c) A plan for nuisance prevention, neighborhood preservation, law enforcement, internal security, and other operational methods of possible interest and concern to the surrounding area, supplemental to and over and above, but connected to the environmental impact report required hereby.

(d) Traffic and parking control analysis.

(e) Preliminary construction and site plans including landscaping and beautification measures.

(f) An estimate of the direct tax revenue which will accrue to the host governmental jurisdiction and an estimate of the economic benefits to the surrounding community.

EXHIBIT F

1988

Commission On Judicial Performance.

92 Commission on Judicial Performance

Official Title and Summary Prepared by the Attorney General

COMMISSION ON JUDICIAL PERFORMANCE. LEGISLATIVE CONSTITUTIONAL AMENDMENT. Specifies the powers which the Commission on Judicial Performance may exercise if, after conducting a preliminary investigation, it determines that formal disciplinary proceedings should be instituted against a judge. Such powers would permit public hearings on charges of moral turpitude, dishonesty, or corruption, and require public hearing at request of judge charged absent good cause for confidentiality. Shortens the term of specified members of the Commission from 4 to 2 years in order to provide for staggered terms. Prohibits members from serving more than two 4-year terms. Summary of Legislative Analyst's estimate of net state and local government fiscal impact: This measure would have a minor impact on state costs.

Final Vote Cast by the Legislature on SCA 6 (Proposition 92)

Assembly:	Ayes 72	Senate:	Ayes 36
	Noes 0		Noes 0

Analysis by the Legislative Analyst

Background

Under the California Constitution, the Commission on Judicial Performance investigates complaints regarding the conduct of judges.

The Commission on Judicial Performance consists of nine members. These members include five judges, who are appointed by the Supreme Court; two members of the State Bar of California, who are appointed by the State Bar's Board of Governors; and two representatives of the public, who are appointed by the Governor and approved by the Senate. The members serve four-year terms. There is no express requirement that the terms be staggered. Moreover, there are no provisions specifying whether members may be reappointed. The commission's recommendations for discipline of judges are subject to review and approval by the California Supreme Court.

The commission receives, on average, about 400 complaints against judges each year and determines that about five cases warrant hearings. The complaints are handled on a confidential basis, but become public when they are filed with the Supreme Court. For less serious cases of misconduct, the commission may privately reprimand a judge. The Supreme Court may, but is not required to, review these actions. For cases involving serious misconduct, the commission may recommend to the Supreme Court that judges be suspended, censured, retired, or removed.

Proposal

This constitutional amendment shortens the terms of specified members of the Commission on Judicial Performance to two years in order to provide for staggered terms. The measure also prohibits members from serving more than two four-year terms, but authorizes a member whose term has expired to continue serving until a successor is appointed. In addition, this measure specifies that if the commission determines that formal proceedings should be instituted, the judge or judges charged may require the hearings to be public, unless the commission finds good cause for making them confidential. The measure also allows the commission, without further review by the Supreme Court, to issue a public reprimand, with the consent of the judge, for conduct warranting discipline. It further allows the commission to issue press statements or releases, and explanatory statements, as specified, or, in some instances, to open hearings to the public.

Fiscal Effect

This measure would have a minor impact on state costs.

Text of Proposed Law

This amendment proposed by Senate Constitutional Amendment 6 (Statutes of 1988, Resolution Chapter 67) expressly amends the Constitution by amending sections thereof; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENTS TO ARTICLE VI, SECTIONS 8 AND 18

First—That Section 8 of Article VI thereof is amended to read:

SEC. 8. *(a)* The Commission on Judicial Performance consists of 2 judges of courts of appeal, 2 judges of superior courts, and one judge of a municipal court, each appointed by the Supreme Court; 2 members of the State Bar *of California* who have practiced law in this State for 10 years, appointed by its governing body; and 2 citizens who are not judges, retired judges, or members of the State Bar *of California*, appointed by the Governor and approved by the Senate, a majority of the membership concurring. ~~All~~ *Except as provided in subdivision (b), all* terms are 4 years. *No member shall serve more than 2 4-year terms.*

Commission membership terminates if a member ceases to hold the position that qualified the member for appointment. A vacancy shall be filled by the appointing power for the remainder of the term. *A member whose term has expired may continue to serve until the vacancy has been filled by the appointing power.*

(b) To create staggered terms among the members of the Commission on Judicial Performance, the following members shall be appointed, as follows:

(1) The court of appeal member appointed to immediately succeed the term that expires on November 8, 1988, shall serve a 2-year term.

(2) Of the State Bar members appointed to immediately succeed terms that expire on December 31, 1988, one member shall serve for a 2-year term.

Second—That Section 18 of Article VI thereof is amended to read:

SEC. 18. (a) A judge is disqualified from acting as a judge, without loss of salary, while there is pending (1) an indictment or an information charging the judge in the United States with a crime punishable as a felony under California or federal law, or (2) a recommendation to the Supreme Court by the Commission on Judicial Performance for removal or retirement of the judge.

(b) On recommendation of the Commission on Judicial Performance or on its own motion, the Supreme Court may suspend a judge from office without salary when in the United States the judge pleads guilty or no contest or is found guilty of a crime punishable as a felony under California or federal law or of any other crime that involves moral turpitude under that law. If the conviction is reversed suspension terminates, and the judge shall be paid the salary for the judicial office held by the judge for the period of suspension. If the judge is suspended and the conviction becomes final the Supreme Court shall remove the judge from office.

(c) On recommendation of the Commission on Judicial Performance the Supreme Court may (1) retire a judge for disability that seriously interferes with the performance of the judge's duties and is or is likely to become permanent, and (2) censure or remove a judge for action occurring not more than 6 years prior to the commencement of the judge's current term that constitutes wilful misconduct in office, persistent failure or inability to perform the judge's duties, habitual intemperance in the use of intoxicants or drugs, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The ~~commission~~ *Commission on Judicial Performance* may privately admonish a judge found to have engaged in an improper action or a dereliction of duty, subject to review in the Supreme Court in the manner provided for review of causes decided by a court of appeal.

(d) A judge retired by the Supreme Court shall be considered to have retired voluntarily. A judge removed by the Supreme Court is ineligible for judicial office and pending further order of the court is suspended from practicing law in this State.

(e) A recommendation of the Commission on Judicial Performance for the censure, removal or retirement of a judge of the Supreme Court shall be determined by a tribunal of 7 court of appeal judges selected by lot.

(f) If, after conducting a preliminary investigation, the Commission on Judicial Performance by vote determines that formal proceedings should be instituted:

(1) The judge or judges charged may require that formal hearings be public, unless the Commission on Judicial Performance by vote finds good cause for confidential hearings.

(2) The Commission on Judicial Performance may, without further review in the Supreme Court, issue a public reproval with the consent of the judge for conduct warranting discipline. The public reproval shall include an enumeration of any and all formal charges brought against the judge which have not been dismissed by the commission.

(3) The Commission on Judicial Performance may in the pursuit of public confidence and the interests of justice, issue press statements or releases or, in the event charges involve moral turpitude, dishonesty, or corruption, open hearings to the public.

(g) The Commission on Judicial Performance may issue explanatory statements at any investigatory stage when the subject matter is generally known to the public.

(h) The Judicial Council shall make rules implementing this section and providing for confidentiality of proceedings.

92 Commission on Judicial Performance

Argument in Favor of Proposition 92

For our system of justice to work, it is absolutely necessary that we have complete faith in our judges.

For the most part, California has been blessed with a judiciary of integrity. While some citizens will always object to the policies of particular judges, few would question their honesty and basic decency. When judicial abuses do occur, however, they must be addressed promptly, decisively and with sufficient openness to assure continued public confidence.

Our State Constitution provides for a Commission on Judicial Performance which investigates charges against judges and makes recommendations to the Supreme Court, including censure or removal from the bench when appropriate.

The Supreme Court has the final word, but the commission does the real work. Trouble is, the nine-member commission, including five judges and two attorneys, does its work in complete secrecy. The press and the public are barred from proceedings and any knowledge of the charges or facts in the case.

Between 1960 and 1987, only 25 of the 7,185 complaints lodged with the commission resulted in public punishment. Even if a judge has already been publicly tried and convicted of a misdemeanor, the disciplinary proceedings of the commission based on the same misconduct are closed to the public.

Judges should not be subject to public suspicion based on a mere complaint but once formal charges are filed, perhaps the public should know. That is what happens in 24 other states. That is how cases are handled involving doctors, lawyers, and other professionals.

Proposition 92 proposes to open disciplinary proceedings against judges in a limited but reasonable way. It does not require public proceedings following formal charges as in other states. It simply allows an accused judge or the commission to open proceedings subsequent to formal charges in appropriate cases. Due to the high quality of our judiciary, this change poses no threat of endless public spectacle. After all, in 1987 only five judges in California faced any formal charges at all.

Proposition 92 also includes provisions which allow the accused judge and the commission to agree to a public reprimand as well as provisions which stagger the terms of commission members.

This proposition was drafted in part by the Commission on Judicial Performance itself, with the help of the Judicial Council and the California Judges Association. All agree that the primary job of the commission is to protect the public from judicial misconduct. All believe this amendment represents a sensible accommodation of the public interest.

We're proud of our judges and the fine work they do. But every public official, no matter how high the office, must ultimately be accountable to the public. When the integrity of our courts comes under question, we can ill afford to be bound by a rule which concludes in every case that the public and press are better off in the dark. Such absolute secrecy is the antithesis of democracy.

Provide a little sunlight in this critical area of government. Vote yes on Proposition 92.

ED DAVIS
State Senator, 19th District
BILL LOCKYER
State Senator, 10th District
TOM McCLINTOCK
Member of the Assembly, 36th District

Rebuttal to Argument in Favor of Proposition 92

I agree with the proponents that we need complete faith in our judges and therein lies our difference. The proponents do not go far enough in their proposal in changing the commission on judicial performance. If you're going to amend the Constitution then do it right the first time.

Too many ignorant and incompetent lawyers are appointed as judges who too often become arrogant in their security of immunity. The record of the commission on judicial performance, given by the proponents, i.e., only 25 out of 7,185 complaints resulted in public punishment in 27 years speaks for itself—wimpy—merely a wrist-slapping public entity that is neither useful nor cost effective in its present state. Their poor record is understandable—presently there are 5 judges, 2 lawyers, and 2 laypeople on the commission who recommend to the Supreme Court (more lawyer-justices) to censure or remove a brother.

Change it to 5 laypeople (women and minorities should be represented), 2 judges, and 2 lawyers and give them some teeth by letting them have the sole power to censure or remove rogue judges. Only then would the public's confidence be restored in *their* judicial system.

VOTE NO on Prop 92. The legislators need to place another measure on the ballot with the above recommendations.

STEVE D. WILSON, Ph.D.

Commission on Judicial Performance 92

Argument Against Proposition 92

The Commission on Judicial Performance consists of 5 judges, 2 lawyers and 2 nonlawyers serving terms of 4 years. The function of the commission is to investigate alleged judicial misconduct and take appropriate action.

The Commission on Judicial Performance may clear a judge of any wrongdoing or admonish a judge if misconduct is found. The commission may also recommend that the California Supreme Court censure or remove a judge from office.

When one considers how judges gain office, it becomes quite evident why California needs an active, independent Commission on Judicial Performance.

Judges of the trial courts in California's 58 counties (called justice courts, municipal courts and superior courts) are supposed to be elected; however, the State Constitution provides that vacancies may be filled by appointment of the Governor. When a new judgeship is created or when a local judge retires, a vacancy exists and the Governor makes an appointment. *Once appointed, the new judge will never be on the ballot* unless a local lawyer has the unmitigated gall to run against the appointee and give local voters a choice in the matter.

Judges of the higher, appellate courts (the court of appeal and the California Supreme Court) are appointed by the Governor, confirmed by a Commission on Judicial Appointments and serve the unexpired portion of the 12-year terms held by their predecessors. At the next gubernatorial election, appellate court judges (actually called "justices") appear on the ballot for approval or rejection by voters. If appellate court justices are rejected by voters, the Governor has the opportunity to appoint replacements.

A lot of money is at stake in California's court system. Multimillion-dollar lawsuits are pending. The potential for corruption certainly is present.

Perhaps more important, however, is the need to control the arrogance of too many judges. We need a mechanism for instilling and ensuring humility and respect for the law in those lawyers who manage to gain appointment to judicial office.

Given that local attorneys are afraid to run against appointed trial court judges and that voters seldom receive much information when it comes time to approve or reject appellate court justices, the Commission on Judicial Performance is left to hold judges accountable and ensure that ours is a system of laws and not men.

That brings us to Proposition 92. This measure would stagger the terms of the 9 members of the commission and establish a two-term limit.

A two-term limit is desirable for many government positions, although, in this case, a one-term limit would be better.

Staggering terms is NOT desirable because periodically replacing the entire commission could allow new members to replace the entire staff and completely revise the operation, if necessary.

Voters should reject Proposition 92 and *the Legislature should place on the ballot another measure that would establish a one-term limit and provide for more than 2 nonattorneys on the commission.*

STEVE D. WILSON, Ph.D.

Rebuttal to Argument Against Proposition 92

Since its creation in 1960, the Commission on Judicial Performance has responded to complaints involving the conduct of judges. While the judges of California are not perfect, they have forged a tradition of excellence of which we can be proud. Proposition 92 seeks to ensure California's position as a national leader in the law.

Occasional breaches of judicial conduct are inevitable but no major or systematic problem exists in California. Accordingly, Proposition 92 has been drafted with the objective of assuring continued public confidence in a fine system through increased openness.

After 28 years it is appropriate that some adjustments be made to the operation of the Commission on Judicial Performance.

The argument against Proposition 92 indicates that the opponent shares some of the same objectives as those who support Proposition 92. While it is difficult to determine most appropriate degree of scrutiny, it is clear that both opponent and proponents desire greater public accountability. The differences in perspective appear minor.

Proposition 92, which is the product of numerous open hearings in the Legislature, was drafted with the expert assistance of the Commission on Judicial Performance and is designed for the sole purpose of making the Commission more responsive to the needs of the public.

Proposition 92 is not intended to allay the concerns of every disgruntled litigant, or resolve every potential problem with the judiciary, but is a sound move in the right direction.

Vote yes on Proposition 92.

ED DAVIS
State Senator, 19th District

BILL LOCKYER
State Senator, 10th District

TOM McCLINTOCK
Member of the Assembly, 36th District

EXHIBIT G

SENATE COMMITTEE ON JUDICIARY
David Roberti, Chairman
1993-94 Regular Session

ACA 46 (W. Brown)
As Amended August 9, 1994
Hearing date: August 9, 1994
Constitution
MLK:rn

COMMISSION ON JUDICIAL PERFORMANCE

HISTORY

Source: Author

Prior Legislation: None

Support: Unknown

Opposition: Unknown

Assembly Floor vote: Ayes 78 - Noes 0

KEY ISSUES

SHOULD THE MEMBERSHIP OF THE COMMISSION ON JUDICIAL PERFORMANCE BE CHANGED TO REFLECT A MAJORITY OF PUBLIC MEMBERS?

SHOULD THE COMMISSION ON JUDICIAL PERFORMANCE HAVE THE POWER TO REMOVE A JUDGE FROM OFFICE?

SHOULD THE COMMISSION ON JUDICIAL PERFORMANCE BE AUTHORIZED TO BAR A FORMER JUDGE, WHO HAS BEEN CENSURED, FROM RECEIVING AN ASSIGNMENT, APPOINTMENT OR REFERENCE FOR WORK FROM ANY CALIFORNIA STATE COURT?

ONCE FORMAL PROCEEDINGS ARE INITIATED AGAINST A JUDGE, SHOULD ALL PAPERS BE PUBLIC?

SHOULD THE EMPLOYEES OF THE COMMISSION ON JUDICIAL PERFORMANCE HAVE ABSOLUTE IMMUNITY FROM CIVIL SUIT FOR ALL CONDUCT TAKEN WITHIN THE COURSE OF THEIR OFFICIAL DUTIES?

SHOULD PERSONS WHO GIVE STATEMENTS TO THE COMMISSION ON JUDICIAL PERFORMANCE BE PROTECTED FROM ADVERSE EMPLOYMENT ACTIONS AS A RESULT OF THOSE STATEMENTS?

(More)

PURPOSE

The California Constitution currently specifies the membership, terms of office, and appointing powers with respect to the composition of the Commission on Judicial Performance.

This bill would revise the membership, terms of office and appointing powers with respect to the Commission on Judicial Performance.

The California Constitution currently provides that the Supreme Court, on recommendation of the Commission on Judicial Performance, can remove a judge from office, retire a judge or censure a judge.

This bill provides that, subject to review by the Supreme Court, the Commission on Judicial performance, can remove a judge from office, retire a judge or censure a judge.

The California Constitution currently provides that the Commission on Judicial Performance may privately admonish a judge who has engaged in an improper action or dereliction of duty.

This bill provides that the Commission on Judicial Performance may also privately admonish a former judge who has engaged in an improper action or dereliction of duty.

Under existing law, formal Commission proceedings are governed by the California Rules of Court.

This bill provides that the Commission shall make the rules for investigation of judges and for formal proceedings against judges.

This bill provides that once formal charges are brought against a judge, all papers are to be public.

This bill provides that the Commission may make explanatory statements to the public at any time.

This bill provides that the Commission's budget shall be separate from the budget of any other state agency or court.

The purpose of this bill is to revise the membership, structure and procedures of the Commission on Judicial Performance in order to provide for more accountability by judges and enhance the public's confidence in the judiciary.

COMMENT

1. Background

The Commission on Judicial Performance (Commission) was founded in 1960. It currently has nine members: two justices of the courts of appeal, two judges of the superior courts, and one judge of the municipal court, all appointed by the Supreme Court: two attorneys appointed by the State Bar; and two lay citizens appointed by the Governor and approved by the majority of the Senate. Each member is appointed to a term of four years. The terms are staggered. The Commission meets approximately seven times a year, and the meetings usually last two days. It employs a staff of thirteen.

The primary duty of the commission is to investigate charges of willful misconduct in office, persistent failure or inability to perform the duties of a judge, habitual intemperance in the use of intoxicants or drugs, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or other improper actions or derelictions of duty.[1]

In recent months the commission has come under fire in a number of newspaper articles. The main line of attack has been the secret nature of the commissions proceedings. Also frequently cited is the fact that there are few public members on the board and that no judge has been removed by the commission since 1988.

This bill is intended to make changes in the commission's make-up and proceedings in order to address these and other problems and thereby make judges more accountable.

2. Change in the membership

a) Current membership

Currently, the California Constitution provides that the commission be made up of the following:

2 court of appeal judges	Appointed by Supreme Court
2 superior court judges	Appointed by Supreme Court
1 municipal court judge	Appointed by Supreme Court
2 members CA State Bar	Appointed by the State Bar

1.The information in the first two paragraphs of this section was taken from the State of California Commission on Judicial Performance 1993 Annual Report, p.1.

(More)

2 public members	Appointed by the Governor and approved by a majority of the Senate

b) This bill

This bill provides that the membership of the commission will be changed to the following:

1 court of appeal judge	Appointed by Supreme Court
1 superior court judge	Appointed by Supreme Court
1 municipal court judge	Appointed by Supreme Court
2 members CA State Bar	Appointed by State Bar
6 citizens	2 appointed by Governor 2 appointed by Senate Rules 2 appointed by the Speaker

This bill would create a majority of public members on the commission. It is asserted that since the majority of the problems the commission deals with are ethics related and not technical legal issues, it is not necessary that someone have a legal background in order to determine whether or not a judge should be disciplined.

c) Separation of powers?

One of the issues that has been raised when it has been suggested that the commission contain a majority of public members is a question of separation of powers. Would the fact that the majority of those who will be determining the fate of judges have been appointed by the executive and legislative branches lead to a separation of powers problem? The argument would be that these members could combine to put pressure on the judiciary. The legitimacy of this argument is unclear, however, if appearances are part of the problem with the current make up of the commission it may be an argument worth further discussion.

d) Other alternatives

The membership of the commission can be structured in any number of ways.

The judges assert that in their opinion public members are essentially the same as attorney members, they are nonjudges. Furthermore, although the issues addressed by the commission

(More)

pertain to ethical matters, the argument still exists that a judge or attorney who is familiar with the court may have a better insight into what is proper conduct in court than a public member with no legal experience. Thus, it is unclear that having public members as the majority is necessary or beneficial.

The Judicial Council's Standing Advisory Committee on Judicial Performance Procedures suggested a committee make-up of 4-4-4. Thus no one group has a majority.

A compromise which was suggested by at least one judge was to create a commission of 4-4-4, but have two of the attorney members appointed by the legislature and and two by the Bar instead of all four by the Bar. Thus, the commission would be made up as follows:

4 Judges	Appointed by Supreme Court
2 Attorneys	1 Appointed by Senate Rules 1 Appointed by the Speaker
2 Attorneys	Appointed by the State Bar
4 Citizens	2 Appointed by the Governor 1 Appointed by Senate Rules 1 Appointed by the Speaker

This make-up would address the concerns of the Judicial Council and the Judges while at the same time gives the Legislature the control over which attorneys are appointed.

SHOULD THERE BE A MAJORITY OF PUBLIC MEMBERS?

SHOULD THERE BE AN EQUAL NUMBER OF JUDGES, ATTORNEYS AND PUBLIC MEMBERS?

SHOULD THERE BE AN EQUAL NUMBER OF JUDGES, ATTORNEYS AND PUBLIC MEMBERS WITH THE LEGISLATURE APPOINTING TWO OF THE ATTORNEYS?

3. Removal from office

Under existing law the Supreme Court, acting on recommendation of the commission or on its own motion, **may** suspend a judge from office, without salary, if the judge pleads or is found guilty of a felony. If the conviction becomes final the judge shall be removed from office by the Supreme Court.

This bill provides that the commission **shall** suspend a judge from office, without salary, if the judge pleads or is found guilty of a felony and that the commission shall remove the judge when the conviction becomes final.

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This provision places the suspension power and removal power in the hands of the commission and makes the suspension mandatory.

4. Discipline actions.

a) Retiring or censuring a judge.

Under existing law the Supreme Court on recommendation of the commission may retire a judge for a permanent disability which seriously interferes with the judge's duties or censure a judge for misconduct in office.

This bill places the power to retire or censure a judge **or former judge** in the hands of the commission, subject to review in the Supreme Court. If the judge being retired or censured is a Supreme Court Justice then the review will be by seven appeals court judges drawn by lot.

This bill allows the censure or public admonishment of a judge or **former** judge for actions occurring not more than 6 years prior to the commencement of the judge's current term or of the former judge's last term.

Under existing law censure is provided for willful misconduct in office, persistent failure or inability to perform their duties, habitual intemperance in the use of intoxicants or drugs, and conduct prejudicial to the administration of justice that brings the office into disrepute.

This bill adds a violation of the Code of Judicial Ethics to current list of violations.

b) Private admonishments.

One of the perceived problems with the Commission has been the fact that they have the ability to privately admonish a judge. This bill allows the private admonishment of a judge or former judge who has been found to engage in improper action or dereliction of duty.

The author believes that the criticism the Commission has had in the past should be solved by changing the make-up of the committee so that the judges do not constitute a majority.

c) Supreme Court Review.

The Supreme Court has 120 days to review these decisions, otherwise the commission's decision remains in effect. The

(More)

review can either be sought on the Supreme Court's own accord or upon application by the judge or former judge. The bill provides that the Supreme Court can make an independent, thus de novo, review.

d) Bar judge from future court assignments.

This bill grants the commission the power to bar a former judge who has been censured from receiving an assignment, appointment or reference of work from any California state court.

5. Formal proceedings.

Under this bill, once formal proceedings have been initiated against a judge, all subsequent papers and proceedings shall be public to the same extent as criminal proceedings would be public in court.

In their suggested changes to the Commission, the Judicial Council's Standing Advisory Committee on Judicial Performance Procedures, suggested that in formal proceedings, while all papers should be public, the Commission should have the ability by a 2/3 of the membership of the Commission, to close all or part of the public proceedings. This would be done when the need to protect the privacy of a witness outweighs the need for public disclosure. They would further require that the Commission set forth in writing why any hearing was closed.

SHOULD THE COMMISSION HAVE THE ABILITY TO CLOSE A HEARING BY A TWO-THIRDS VOTE?

6. Civil immunity.

This bill provides that members of the commission, commission staff, and the examiners and investigators employed by the commission are absolutely immune from suit for all conduct within the course of their official duties.

7. The Commission shall make the rules for formal proceedings.

Presently, formal proceedings by the Commission are governed by the California Rules of Court.

This bill provides that the Commission shall make the rules for investigation of judges and for formal proceedings against judges.

If the Commission is to make the rules for formal proceedings against judges, then what rules will apply after this Constitutional Amendment passes and prior to the time the rules are made?

(More)

SHOULD THE RULES OF COURT REMAIN THE RULES FOR FORMAL PROCEEDINGS OF THE COMMISSION?

IF THE COMMISSION IS TO MAKE THE RULES, SHOULD NOT SOME PROVISION FOR INTERIM RULES BE MADE?

8. Miscellaneous

This bill also contains the following provisions:

-Members of the commission shall serve no more than two four year term, or a total of ten years if the member has been appointed to fill a vacancy.

-Positions on the commission will be staggered.

-The commission may disqualify a judge from acting as a judge, without loss of salary, upon notice of formal proceedings charging the judge with misconduct.

-No civil action or adverse employment action may be maintained against a person based on statements presented by the person to the commission.

-The Supreme court has jurisdiction in any civil action or other legal proceeding brought against the Commission by a judge who is a respondent in Commission proceedings.

-The Commission make explanatory statements to the public at any time.

-The Commission's budget shall be separate from the budget of any other state agency or court.

9. Structure of the commission

Under existing law the members of the commission serve both investigative and adjudicatory functions.

In some states the judicial disciplinary body is actually made up of two different commissions. One performs solely the investigative function and the other the adjudicatory function. Other states have only one commission which is divided into subgroups with no subgroup performing both the investigative and adjudicatory functions on any one case. The public, judge and attorney make-up of the subgroups are different in each state. In some cases public members may make-up the majority of the investigative panel in other cases the subgroups may have an equal ratio of all groups.

(More)

SHOULD THE INVESTIGATIVE AND ADJUDICATORY FUNCTIONS OF THE COMMISSION BE SEPARATED?

10. Comparison to SCA 44 and SCA 37.

At this point, SCA 44 (Alquist), which passed this committee on June 22, and this bill are substantially similar with the exception that SCA 44 places the responsibility for the drafting of the Code of Judicial Conduct in the Supreme Court.

It should be noted that SCA 37 (Hart), which passed this committee on April 7 and is currently in the Assembly Committee on Elections, Reapportionment and Constitutional Amendments, has been amended in the Assembly to address some of the issues addressed in SCA 44 and this bill. SCA 37 does not conform to SCA 44 or this bill and most significantly it eliminates all private admonishments.

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EXHIBIT H

DANIEL E. LUNGREN
Attorney General

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JUN 6 1994

June 6, 1994

The Honorable Phillip Isenberg
Chairman, Assembly Judiciary Committee
State Capitol, Room, 6005
Sacramento, CA 95814

RE: Attorney General Daniel Lungren's Letter of Support for ACA 46 (Brown)
Judicial Performance Commission Procedures
Assembly Judiciary Committee Hearing: June 15, 1994, at 9:00 a.m.

Dear Assemblyman Isenberg:

Last Thursday, I met with Mr. Gene Erbin of your staff. In response to his request, I am writing this letter to explain the position of the Attorney General regarding ACA 46, as well as to describe some of the special problems that this office has had to address with respect to the current system of secret judicial discipline in this state.

As you may know, the Attorney General supports both ACA 46 (Brown) as well as a substantially similar proposal in the Senate (SCA 44 [Alquist]). Attorney General Lungren is committed to the vigorous enforcement of standards of public integrity on the part of all of our public officials and believes that greater openness in these proceedings will serve both to enhance both public confidence in the Commission's work and to further the interests of justice. I also note that last Thursday, the Board of Directors of the California District Attorney's Association (C.D.A.A.) also voted to support these measures.

This office has a special role inside the judicial disciplinary system. Under Government Code section 68702, the Commission on Judicial Performance obtains the services of our Criminal Division prosecutors, either during the preliminary investigation (California Rules of Court, rule 904.2), or immediately after the commencement of "formal proceedings."

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(Rule 905.)[1/] We then act as "examiners" [prosecutors] in presenting the case against the accused judge, from the time of the formal hearing before designated special masters (rule 908) until, if necessary, the final disposition of the case in the California Supreme Court (rule 921). At any given time as many as eight to ten of our attorneys throughout the state are involved in Judicial Performance representation; I personally have been assigned to formal disciplinary proceedings as examiner in some eight cases.

Because this entire activity is cloaked with confidentiality (Cal. Const., art. VI, § 18(h)); Rule 902), and because the Commission on Judicial Performance is an important client of this department to whom we have ethical responsibilities, parts of this letter must necessarily be vague. Accordingly, I believe that it would be both unlawful and inappropriate in this letter, or in any later testimony, to identify particular cases, judge's names, locations, courts, the nature of the allegations, and whether or not the matter is still pending, unless the matter is now in the public record. I do feel, however, that the continuing public policy issues raised by the current system of secrecy cannot be intelligently addressed without some broad level of disclosure, and feel that your Committee needs this information to do its work.[2/] It is with some irony that I conclude that the rules of secrecy may to some degree impair your committee's ability to understand the deficiencies of the current system of judicial discipline in this state. As will be seen, the current status of the system of judicial discipline in this state has some troubling aspects.

For reasons that will be explained herein, the Attorney General's Office believes that this bill's proposed opening of all formal judicial disciplinary proceedings, after the initial confidential investigatory stage to weed out groundless or

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1. Formal proceedings are instituted only after a preliminary investigation is conducted (rule 904(3)), after the accused judge is given a reasonable opportunity to respond to the allegations in writing (rule 904.2), and after the Commission has voted that there are sufficient grounds to issue the final accusatory pleading, the Notice of Formal Proceedings. (Rule 905.)

2. I note that in the same spirit, the Commission provides general descriptions of the past year's private admonishments and advisory letters in its Annual Report to illustrate the nature of the misconduct meriting discipline and thus provide general information to the public. Although these admonishments or advisory letters clearly fall within the ambit of confidentiality, the Commission gives descriptions of the cases but does not include names, places, or geographical identifying information.

unsupported allegations and to determine probable cause (rules 900-905), is absolutely vital. This office also feels that this bill's reservation of exclusive procedural jurisdiction to the Supreme Court is also necessary. A system of completely open "formal proceedings" is not only valuable for reasons of "good government," but also will: (1) better protect complaining witnesses from judicial retaliation in these cases, and (2) insure full and accurate fact-finding in the judicial discipline system. It is submitted that the present system of confidentiality in formal proceedings is clearly unworkable and is impairing the ability of the system to accomplish its goals.[3/]

The California Constitution of course currently provides for open formal proceedings in some cases. In 1988, the voters of this state enacted Proposition 92 (SCA 6). In that measure they unequivocally spoke in favor of open judicial disciplinary hearings in these cases if the charges involved "moral turpitude, dishonesty, or corruption." (Cal. Const., art VI, § 18 (f)(3).) That constitutional command has however proven to be illusory. Despite a number of previous Commission on Judicial Performance determinations to conduct open judicial disciplinary hearings under this constitutional criteria, an open hearing has yet to be conducted in this state some six years later. The answer as to why this has happened is not available to the public; it is found in sealed files of the secret litigation that has kept these hearings closed. Judges charged with acts of judicial misconduct found by the Commission to involve moral turpitude, dishonesty, or corruption, and facing such open hearings, have in each case sought and received some form of secret writ relief from other courts of record in this state. This complete frustration of these constitutional provisions concerning open hearings, accomplished by the use of secret judicial proceedings, raises troubling questions regarding the functioning of California's judicial disciplinary procedures. It also raises a disturbing appearance of impropriety: the spectre of judges throughout this state exercising their extraordinary writ jurisdiction in sealed proceedings to intervene and mandate secrecy in disciplinary proceedings involving their judicial brethren.

Perhaps some examples will serve to illustrate the nature of what is occurring in sealed proceedings. In one case involving a Commission order for an open hearing, two different judges granted extraordinary writ relief and ruled that irreparable injury would be done to an accused judge's reputation and reelection prospects if the public was apprised before the next

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3. It should be noted that some 29 states now conduct all formal judicial disciplinary proceedings in public. (Rosenbaum, American Judicature Society, "Practices and Procedures of State Judicial Conduct Organizations," Appendix A, Table 3.)

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election that this judge had been formally accused by the Commission of misconduct involving moral turpitude, dishonesty, or corruption. Inherent in these rulings was the conclusion that the accused judge's political interests outweighed any interest the voters might have before they cast their ballots in learning the truth: that this judge had been charged with serious misconduct. We submit that in mandating open hearings for "moral turpitude" charges, the 1988 electorate necessarily considered and rejected the concept that a judge's reputation and political interests prevailed over the public's right to know in such cases.

In another case of so-called "open hearing litigation," one court issued an opinion that a rule of court pertinent to these issues was unconstitutional. Having done so, the court then declared the opinion secret and ordered it sealed, leaving no future guidance on the issue for other courts or interested parties.

There is also a practical aspect of this issue that concerns the Attorney General's Office. Secret litigation concerning whether or not secrecy will apply to a Commission's formal proceeding is consuming a significant number of attorney hours in this department. In one formal proceeding assigned to this department, writ litigation of the open hearing issue has now been ongoing for over one year. And with serious allegations pending against a sitting judge in such circumstances, there is no real option other than to give in to a secret trial when the possibility of an open hearing will only follow protracted litigation. In a case I am familiar with, at least as many attorney hours have been devoted to confidentiality issues as to the substantive questions of investigation of judicial misconduct and preparation for the formal hearing. Because of the lack of any published appellate precedent regarding open hearings, this secret process has necessarily become lengthy and duplicative. In the currently austere budgetary environment for state government, there is a genuine public policy question as to whether a major expenditure of attorney-hours on judicial secrecy issues is either desirable or necessary.[4]

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4. For all of these reasons, it is our view that changing current law so as to create a *presumption in favor of open hearings* would be a serious mistake. Any proposal short of the entire elimination of closed hearings will unquestionably spawn secret litigation by accused judges in every case where there is a Commission determination that an public hearing is appropriate. Such a presumption would in no way ameliorate the current problems and would instead result in the identical conditions that the judicial disciplinary system now faces.

(1) It is the unanimous opinion of the examiners in this department that complete openness during formal proceedings would serve to better protect our complaining witnesses from harassment or retaliation by the accused judge. Very shortly after the start of formal proceedings, the accused judge learns through the process of discovery who the witnesses against him are and what the substance of their testimony will be. (California Rules of Court, rule 907.5.) On the other hand, the complaining witnesses are not allowed to know the substance of the allegations being made against the judge, who the other witnesses are, what the judge's response has been to the allegations, what decisions are being made by the Commission, or even the findings of the special masters after the hearing as to whether they found this witness' testimony credible. The typical witness for the examiner is a court clerk, court reporter, bailiff, deputy public defender, deputy district attorney, or private practitioner; these people typically must work in the same courthouse with the accused judge throughout the lengthy process of formal proceedings, and sometimes afterwards. Judges, particularly in California's rural counties where many of these cases take place, wield tremendous power and influence in their respective communities. By cooperating with the Commission, complaining witnesses are aware that they place their career or even their livelihood at risk. In addressing judicial disciplinary reform, the Attorney General's Office urges this Committee to consider their interests as well.

The current system of secrecy makes the awkward position of these often courageous persons even more difficult. In view of the existence of discovery procedures, any argument that confidentiality during formal proceedings protects any interests other than those of an accused judge is simply absurd. Accused judges often use the secrecy rules of formal proceedings as both a sword and a shield: they may release or withhold information, depending upon their perceived self-interest, while demanding that the complaining witnesses be held to the statutory requirement of silence and thus not be allowed to publicly defend themselves or correct the record when falsehoods are spread. Without knowing whether there is any substance to examiner's case against the judge, and because of the rules of confidentiality, witnesses are quite understandably often reluctant to get involved. Many witnesses simply have no trust in a secret proceeding and feel a "coverup" under such circumstances is likely. And formal proceeding cases are often settled short of a hearing; the victim/witnesses involved cannot ever be informed of the disposition reached in such a situation.

Experience has also shown that retaliation in these cases against the complainants is commonly encountered. Because of the secrecy rules, there is often general ignorance in the legal community regarding the nature or even the existence of formal

proceedings. This often serves to facilitate any disinformation and retaliation by an accused judge. As an example, in one case a contract public defender was a key complaining witness. When the accused judge learned of the public defender's statements to the examiners, he simply approached the county administrative officer and attempted to have the defender's contract terminated for supposed "incompetency and inefficiency." Because of the secrecy surrounding the case, the county administrative officer had no reason to know about the formal proceedings and thus no reason to know that what was transpiring was direct retaliation by the accused judge.

The district attorney of Colusa County has given me permission to provide the attached letter in which he discusses some of the many dilemmas of being a complaining witness in a Commission proceeding, and the deficiencies of our current "one-way street" system of secrecy. I believe it is illustrative of how confidentiality in formal proceedings is typically used against complaining witnesses and needs to be eliminated. (See attached letter of District Attorney John Poyner, dated May 18, 1994.)

(2) It is further the consensus of the examiners in this department that "opening up" formal proceedings would lead to better, more complete, and more accurate fact-finding in hearings that are currently closed.

Renowned legal scholar Bernard Witkin has noted: "Publicity of court proceedings is a highly regarded common law practice, its chief purpose being (1) to deter witnesses from testifying falsely; (2) to obtain disclosure of other evidence from spectators; (3) to improve the conduct of judge, jury, and counsel by subjecting them to public observation; (4) to allow third persons to determine the effect of litigation upon their own interests; and (5) to educate people generally on the operation of the judicial system. (2 Witkin, California Procedure (3rd ed. 1985), "Courts," § 61, p. 75. [5]

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5. The U.S. Supreme Court has recognized the advantages of public hearings in the general milieu of criminal justice and has stated: "The value of openness lies in the fact that people not actually attending trials can have confidence that standards of fairness are being observed; the sure knowledge that *anyone* is free to attend gives assurance that established procedures are being followed and that deviations will become known. Openness thus enhances the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system." (*Press-Enterprise Co.* v. *Superior Court of Cal.* (1984) 464 U.S. 501, 508.) The same court has stated that, "Without publicity, all other

It is our belief that opening up formal proceedings would actually cause more victims of or witnesses to judicial misconduct to come forward, particularly those witnesses who were previously unaware of the existence of a disciplinary proceeding. We also believe that there is a regrettable tendency for fact-finding that is conducted in secret to be somewhat skewed.[6/]

In summary, we believe that opening up the adjudicative process should result in more truth and accuracy in disciplinary proceedings. This represents still another benefit of eliminating secret hearings.

(3) Finally, we believe that timely and consistent treatment of judicial disciplinary issues can only occur when jurisdiction over all of the interlocutory aspects of such discipline is limited to the Supreme Court, as is already the

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checks are insufficient . . . ." (*Richmond Newspapers, Inc.* v. *Virginia* (1979) 448 U.S. 555, 569.) Accordingly, openness discourages perjury, the misconduct of the participants, and decisions based on secret bias or partiality, which in turn promotes actual fairness as well as public confidence. (*Ibid.*) As an example, someone who learns of publicized proceedings may be able to furnish evidence in support or to contradict "falsifiers." (*Id.* at p. 570, fn. 8.)

6. *Gonzalez* v. *Commission on Judicial Performance* (1983) 33 Cal.3d 359 may be such a situation. In *Gonzalez*, the Commission successfully recommended removal of a judge to the Supreme Court following the Commission's findings of some 21 counts of either "wilful misconduct in office" or "conduct prejudicial to the administration of justice." (Cal. Const., art. VI, § 18(c).) Those sustained charges included, inter alia, use of judicial office to improperly intercede in a criminal case on behalf of a friend, improperly refusing to hear a bail motion in a criminal case after refusing the prosecutor's motion to dismiss, commencing proceedings without waiting for the attorneys, leaving the bench after having instructed the lawyers to continue on with the evidence, conducting a "half-off the sentence plea bargain day," and engaging in a variety of insulting ethnic and sexual remarks directed to jurors and attorneys. *However, these 21 sustained charges had to be "reinstated" by the Commission: the three special masters, in a secret formal hearing lasting seventeen days, had previously found that Judge Gonzalez had not engaged in a single incident of judicial misconduct.* (*Gonzalez, supra*, at p. 364.) Although it is necessarily conjectural, the assigned examiner in *Gonzalez* believes the outcome before the special masters would have been quite different had the matter been presented in a public forum.

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case for the ultimate disciplinary question in these cases. The subject matter of the Commission's constitutional mandate, judges of record who are allegedly abusing their powers of office, is far too important to be left to any forum but the state's highest court. Furthermore, a multiplicity of litigation in the various trial and appellate courts throughout this state can only serve to frustrate the Commission's constitutional mandate to *promptly* and *consistently* address the issue of judicial misconduct.

The purpose in creating the Commission was to provide an innovative, effective, and expeditious alternative to the unwieldy process of impeachment. The public interest in a prompt, effective, and open judicial disciplinary system is at risk of substantial obstruction unless a more streamlined system of adjudication is created. We also believe a time limit should be promulgated that operates to make Commission decisions effective and final if the Supreme Court has not acted within a particular time period, such as 60 days. While we are all sensitive to the heavy workload of the Supreme Court, it should be recognized that these particular issues involve judicial misconduct by judges still on the bench and still exercising judicial power over the rights and property of the citizens of this state. Accordingly, these cases simply must have the highest priority. It is also likely that over a period of time this will not amount to a major portion of the Supreme Court's caseload.

* * * * *

Current law cloaks these matters in greater secrecy than even proceedings involving juveniles. However, there do not appear to be compelling reasons for treating the formal disciplinary proceedings against judges any different than those involving any other public official who owes a duty of honesty and integrity to the public. "The operations of the courts and the judicial conduct of judges are matters of utmost public concern . . . . The operation of the Virginia Commission [a judicial disciplinary commission], no less than the operation of the judicial system itself, is a matter of public interest. . . ." (*Landmark Communications, Inc.* v. *Virginia* (1977) 435 U.S. 829, 839.) While judicial independence is a core value that must be preserved, judicial immunity from public scrutiny and oversight is another matter and will only breed disrespect in the long term.

Confidentiality, during the investigative stage, needs to be retained and at that stage will serve to protect the interests of judges, witnesses, and the public. This office understands that the overwhelming majority of the complaints made about judges will not, and should not, lead to discipline. We also recognize that with few exceptions, California has a judiciary above

reproach. Confidentiality at this early stage serves to protect all of the parties, and particularly the judge, from groundless, unsupported, or malicious charges. Similarly, this office believes that some form of private discipline should be available to the Commission at this stage for isolated instances of misconduct by a judge.

The complete elimination of confidentiality at the stage of formal disciplinary proceedings, however, is long overdue. In so doing, California would join the majority of other states. Any reform short of making all formal proceedings public will likely be coopted in secret litigation as was Proposition 92. Openness in these proceedings will not only promote democratic values, but will better protect complaining witnesses and will promote more complete and accurate results. The Attorney General's Office urges your support for the reforms contained in ACA 46.

Thank you for your time and consideration. Should you have any questions, please do not hesitate to contact me.

Sincerely,

DANIEL E. LUNGREN
Attorney General

Raymond L. Brosterhous

RAYMOND L. BROSTERHOUS II
Deputy Attorney General

Attachment
cc: Assembly Members, Assembly Judiciary Committee

OFFICE OF
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CAROL ASH
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May 18, 1994

Greg Totmen
Executive Director
California District Attorney's Association
1414 "K" Street, Suite 300
Sacramento, CA 95814

Re: S. C. A. 44

Dear Greg;

The purpose of this letter is to let you know, and hopefully will convey, my strong support for S. C. A. 44.

I have twice in the last eight years had to deal with the Commission on Judicial Performance. The experience that I now have convinces me that I would rather put up with the worst Judge in the state than deal with the cut throat, cloak and dagger, political bullshit that is the result of the closed nature of the entire process.

Because of the rules on discovery and confidentiality a Judge is made aware of who the complaining parties and witnesses are and can use such information as a sword with no recourse readily available.

In the last case I was involved with, the only Superior Court Judge was charged with some 36 or so counts of misconduct and all but a few were sustained. He committed suicide before the full Commission's findings were released. Consequently, the public never knew how rotten this Judge really was, and to this day I am precluded from discussing details of the case.

To point out the absurdity of the present system, I offer the following example:

I had disqualified the Superior Court Judge under C.C.P. 170.6 for months and months until the formal proceedings were finally commenced. During the trial, I testified for several hours covering many of the counts the Judge was charged with. At the conclusion of my testimony I decided not to waste my "silver bullet" and to go ahead and file pursuant to C.C.P. 170.1. The Judge objected and, of course, since we didn't get along on anything, the Judicial Council appointed a Judge to hear the matter. That Judge ordered me to file an affidavit stating my grounds (which I would have loved to have done). However, I was

EXHIBIT I

Date of Hearing: June 15, 1994

ASSEMBLY COMMITTEE ON JUDICIARY
Phillip Isenberg, Chair

ACA 46 (Willie Brown) - As Amended: June 13, 1994

ISSUE: SHOULD THE COMMISSION ON JUDICIAL PERFORMANCE BE REFORMED TO INCLUDE A MAJORITY OF PUBLIC MEMBERS AND REQUIRE DISCIPLINARY RECORDS AND PROCEEDINGS TO BE OPEN?

BACKGROUND

History. The Commission on Judicial Performance (CJP) was created in 1960. It is established and governed by Article 6, Sections 8 and 18 of the Constitution, respectively.

These provisions were last amended in 1988 when the voters approved Proposition 92, which added subdivisions (f) and (g) to Section 18. Generally, these provisions authorized (and encouraged) CJP to make formally initiated disciplinary proceedings open to the public. Notwithstanding voter approval of Proposition 92, according to the Attorney General, no CJP disciplinary hearing as yet been opened to the public.

DIGEST

Existing law:

1) Creates a 9-member CJP comprised of the following members:

   - Two judges of the court of appeals, appointed by the Supreme Court.
   - Two superior court judges, appointed by the Supreme Court.
   - One municipal court judge, appointed by the Supreme Court.
   - Two lawyers appointed by the Board of Governors of the State Bar.

   Two citizens who are not judges, retired judges, or

This bill:

1) Creates an 11-member CJP comprised of the following members:

   - One appellate court justice, appointed by the Supreme Court.
   - One superior court judge, appointed by the Supreme Court.
   - One municipal court judge, appointed by the Supreme Court.
   - Two lawyers appointed by the Board of Governors of the State Bar.
   - Six citizens, two each

- continued -

lawyers, appointed by the governor.	appointed by the governor, Speaker of the Assembly, and Senate Rules Committee.
2) With respect to discipline of judges, provides the following: - A judge is disqualified to serve, without loss of salary, while a felony indictment is pending, or a CJP "recommendation" for removal or retirement is pending before the Supreme Court. - The Supreme Court "may" suspend a judge from office, without salary, upon conviction (or a no contest plea) of a felony or any other crime involving "moral turpitude." If the conviction becomes final, the Supreme Court shall remove the judge from office. If the conviction is reversed, the suspension terminates and all suspended salary shall be paid.	2) In addition, provides the following: - A judge "may" be suspended from office, without loss of salary, upon notice by CJP of formal proceedings against the judge for "judicial misconduct." - CJP <u>shall</u> suspend a judge for the reasons that the Supreme Court <u>may</u> currently suspend a judge as described above.
3) Authorizes CJP to <u>recommend</u> the following discipline to the Supreme Court: - Retire a judge for disability. - Censure or remove a judge for actions occurring not more than six years prior to commencement of the his or her current term that constitutes any of the following: a) Willful misconduct. b) Persistent failure or inability to perform. c) Habitual intemperance.	3) Authorizes CJP to <u>impose</u> discipline on judges with a discretionary petition for review to the Supreme Court and CJP to censure or privately admonish <u>former</u> judges.

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d) Conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

Additionally, CJP may privately admonish a judge, subject to a petition for hearing in the Supreme Court.

4) As enacted by Proposition 92, provides the following:

- After CJP conducts a preliminary investigation and votes to initiate a formal proceeding, the following may occur:

  a) The judge may require the formal hearings to be open, unless CJP objects.

  b) The judge may agree to a public censure.

  c) In the pursuit of public confidence and the interests of justice, issue press statements, or, with regard to charges involving moral turpitude, conduct open hearings.

CJP may issue explanatory statements at any time during an investigation when the subject matter is generally "known to the public."

5) Authorizes the Judicial Council to adopt rules by which the CJP shall operate.

4) Repeals existing provisions, as described above, and makes public all formal CJP proceedings.

5) Confers regulatory authority directly on CJP.

6) Also enacts the following changes:

- Grants exclusive jurisdiction to the Supreme Court to hear civil actions brought by judges who are the subject of

- continued -

CJP discipline proceedings.

- Grants an absolute immunity to CJP members and staff for all conduct in the course of their "official duties."

FISCAL EFFECT

This bill will be referred to the Assembly Ways and Means Committee.

COMMENTS

1) The following statistics are found in CJP's 1993 annual report:

   a) Since CJP's inception in 1960, 15 judges have been recommended for retirement or removal. The Supreme Court accepted 13 of these recommendations.

   b) During the past 10 years, 32 judges have resigned or retired with charges pending. Only two of these judges were the subject of criminal charges.

   c) In 1993, CJP received 950 complaints. This total has doubled since 1986.

   d) In 1993, CJP ordered 121 inquiries, 35 preliminary investigations, and instituted nine formal proceedings, none of which were public. At the end of 1993, six judges were the subject of pending formal charges.

   e) In 1993, CJP issued 26 private advisory letters, seven private admonishments, and two public reprovals. Seven judges retired or resigned with charges pending.

   f) Of the 950 complaints received by CJP in 1993, 77% were filed by the families or friends of litigants and 7% were filed by lawyers. The remaining complaints were filed by judges, court employees, jurors, and citizens.

The attached chart displays the outcome of the 930 complaints that were closed by CJP in 1993.

2) The proponents of this bill, principally Mr. Peter Keane, chief attorney, San Francisco Office of the Public Defender, and the Attorney General, whose deputies act as "examiners" (prosecutors) in CJP proceedings against judges, argue that the present system of judicial discipline has lost public confidence and respect.

   The process is dominated by judges, impenetrably secret, too solicitous of judges, and, ultimately, too lenient. Most simply, they argue that no

- continued -

government institution that is perceived as a "cloistered club" and that, operates on the periphery of government may succeed.

They make the following specific arguments:

a) In spite of the passage of Proposition 92 six years ago, all of CJP's discipline hearings remain closed to the public.

Even more perversely, civil actions brought by judges in Superior Court to contest CJP's decision to open a hearing are closed and the records related thereto sealed.

The present system is an arcane and Byzantine system involving layers of secret proceedings atop other layers of secret proceedings. The Attorney General asserts that more time and resources is expended by its office on secret satellite litigation than litigation actually related to the discipline of judges.

b) The absence of exclusive jurisdiction in the Supreme Court to resolve satellite litigation emanating from CJP discipline proceedings results in needless delay, expense, secrecy, and, most importantly, no law.

Satellite litigation must be resolved expeditiously with some degree of finality. Currently, the Attorney General is litigating numerous trial court challenges to the "open proceedings" provisions of Proposition 92. These trial court rulings are sealed. Conflicting rulings are inevitable.

Immediate Supreme Court review of satellite challenges to CJP discipline proceedings would quickly produce a body of definitive law on the critical provisions of CJP's enabling law.

c) The secrecy that enshrouds CJP proceedings permits judges to retaliate against complaining and cooperating witnesses. Under Rule of Court 904.2, CJP notifies a judge of the commencement of an investigation and informs him or her of the identity of the complainant.

Thereafter, in the darkness provided by the secrecy enveloping CJP judges may, and, in fact, do, retaliate. Publicity would deter retaliation.

d) The endemic secrecy at CJP reaches nearly pathological depths. For example, all records relating to the investigation of judges who resign with charges pending remain sealed even after the judge's death.

The District Attorney from Colusa County notes that this prohibition applies to a judge who committed suicide before CJP findings on approximately 36 counts misconduct were released. To this day, the

- continued -

District Attorney is precluded from discussing the case, in which he was involved, or informing persons of the gravity of the judge's behavior. In a sense, his death remains largely unexplained. What purpose is served by this unrelenting secrecy?

e) The CJP possesses too little real authority. Presently, the authority to discipline judges is fractured between three different entities -- CJP, which has authority to investigate, prosecute, and recommend punishment, the Supreme Court, which must actually impose, or reject, discipline, and the Judicial Council, which adopts the regulations under which CJP must operate.

For example, CJP's 1993 annual report states that CJP has asked the Judicial Council to amend CJP's rules to permit it to refer some additional discipline information to "sister" agencies, such as the State Bar. Thus, information relating to a judge who resigns with charges pending and who applies to the State Bar for admission, may be forwarded to the Bar. Is it not logical and efficient to give CJP this type of direct authority?

ACA 46 consolidates this authority under CJP leaving the Supreme Court with the discretion to review otherwise final decisions of CJP. This approach is very similar to the method employed by the State Bar, the discipline decisions of which are only subject to discretionary review by the Supreme Court.

f) There is no need to delay. The solutions are obvious. CJP should be made more public. Public members should be added. Proceedings and records should be made public at the time formal proceedings are commenced.

In conclusion, the proponents argue that there is very little disagreement over the basic and immediate reforms that should be enacted. Immediate reform should include more public members and less secrecy. If other, lesser issues require additional scrutiny, such scrutiny should not be used as an excuse to delay immediate action.

3) The critics (perhaps opponents) of ACA 46 are, generally, the Judicial Council, CJP, and the California Judges Association. It appears that these entities, or the majority of the members of these entities, prefer to wait, study the issue of judicial discipline, and proceed next year with legislation.

In this regard, it should be noted that the Judicial Council has created the Judicial Performance Procedures Standing Advisory Committee to thoroughly assess existing law and recommend changes. Although the Committee is pursuing an abbreviated process, there is little likelihood that it will complete its work in time to legislate this year.

Initial reports from the Committee indicate a willingness to propose

- continued -

meaningful reform, but, as noted above, there is no indication that a final decision will be made sufficiently quickly.

Some representatives of these organizations have indicated a willingness to bifurcate the process, i.e., enact basic reform this year and work studiously to refine the product next year in follow-up legislation.

SUPPORT

Mr. Peter Keane
Attorney General
California District Attorneys Association

OPPOSITION

Unknown

SOCIOECONOMIC JUSTICE INSTITUTE
RESEARCH ◆ EDUCATION ◆ POLICY

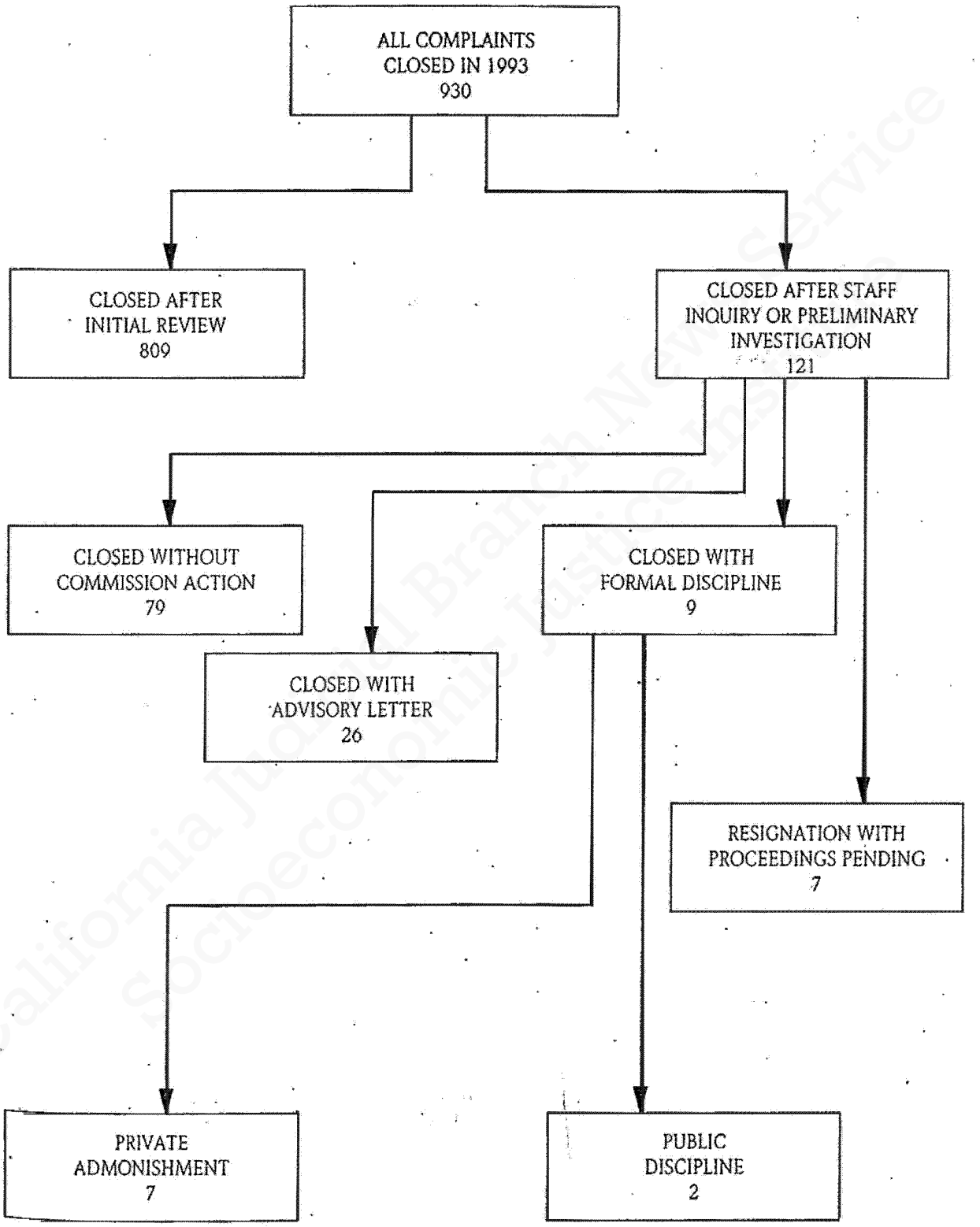

EXHIBIT J

San Francisco Chronicle

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Secret Justice for State's Judges

Panel hands out lenient punishment for acts of misconduct

By William Carlsen and Harriet Chiang
Chronicle Staff Writers

SPECIAL REPORT

California is handing down minimal punishment to judges who have committed acts of professional misconduct, employing a highly confidential system of discipline that shields the judges and the system itself from public accountability.

In a three-month investigation, The Chronicle found that judges who have engaged in repeated acts of misconduct and breaches of ethics codes — from violations of the constitutional rights of defendants to taking gifts from lawyers and litigants — often have been punished privately with simple admonishments or letters of warning.

Most judges defend the state Commission on Judicial Performance, saying the agency's strong discipline serves as an effective deterrent to corruption and misconduct. But a growing group of critics says that when serious charges of misconduct do arise — several dozen times a year among the state's 1,500 judges — the commission often is much too lenient.

"Its name should be changed to the 'Commission for Judicial Protection,'" said Stephen Barnett, a professor at the University of California's Boalt Hall Law School and an expert on the state's judicial system. "The commission bends over backward to protect judges. They operate behind a curtain, unwilling to take public responsibility."

Because the nine commissioners do most of their work in private, it is difficult in most cases for outside analysts to evaluate the penalties imposed. Even the governor and the president are barred from access to commission files when they are considering whether to promote the judges to higher judicial positions.

But each year, the commission publishes an annual summary that provides a general sketch of cases in which it took disciplinary action. In a review of those summaries, The Chronicle found that the panel has not voted to publicly censure or remove a single judge since 1988 — a sharp contrast to the previous nine years, when 19 judges were censured or removed from office. The total since 1980 has been less than half the national average.

The records also show that during the last five years the panel has issued 51 secret admonishments and 172 confidential "advisory letters," sanctions that allow no public disclosure of the judges' identities.

Among those confidential cases listed in commission reports were a number that appear to involve serious judicial misconduct:

■ In one case, a judge "consciously disregarded the law," the commission reported, by declaring that all offenders in one category of cases would receive a 90-day sentence, regardless of the validity of their requests for probation.

■ Another judge improperly contacted police after receiving a traffic ticket — which was promptly dropped. The same judge used official stationery to exempt a car from parking ordinances, frequently ignored the law in sentencing defendants, blocked an appellate review of his ruling by refusing to order a transcript, and sometimes conducted proceedings "in a language other than English."

■ One judge ordered an ailing 83-year-old traffic defendant jailed for six days because the man complained he had no money to pay a $106 fine and had chided the judge for being unfair.

■ Another routinely rushed through the criminal calendar, using procedural short-cuts that deprived defendants of their constitutional rights in order to leave the courtroom early.

■ A judge revealed confidential information to embarrass a party to a lawsuit, twice made racist remarks in other cases, and found a litigant in contempt on inadequate grounds without allowing the person to defend himself.

Gerald Stern, the head of New York's judicial disciplinary panel and a nationally recognized authority on such agencies, said he has been astonished that egregious misconduct by California judges regularly results in private instead of public discipline.

"At our annual national meetings, we mock our California colleagues about some of the cases in their annual reports," Stern said in a recent interview. "They have an excellent, hard-working staff, but I don't understand how their commission can let some of those cases go as private admonishments."

Dan Reeves, an administrative aide to state Senator Gary Hart, D-Santa Barbara, said the legislator was appalled when he saw the kinds of cases that were resulting in secret discipline.

"The number of such cases is remarkable," Reeves said.

In Sacramento, Hart and other legislators are taking a hard look at the commission and are reviewing a range of possible reforms. Last year, a Senate subcommittee headed by Senator Charles Calderon, D-Whittier, became so frustrated with the commission that it briefly voted to cut off the agency's budget.

"I'm not sure it (the commission) is effective at all," Calderon said. "I think it is a mystery to all involved — from the public right on down to the lawyers. We don't know what they do. We don't know how judges are disciplined."

Small but Powerful Agency

When the San Francisco-based commission was first established in 1961, it was envisioned as a court of last resort for a public sometimes victimized by bad judges. Within the next 20 years, every state in the nation set up a similar agency.

Today, with a $1.4 million budget and a staff of 13, the commission is one of the smallest agencies in the state — but also one of the most powerful. It is composed of five judges appointed by the Supreme Court, two attorneys chosen by the State Bar, and two citizens picked by the governor.

Hundreds of complaints about judges pour into the commission every year and the number is rising steadily. Last year, the commission received 950 complaints, a dramatic increase from the 260 received only 13 years ago.

Most experts agree that 95 percent of the complaints are properly dismissed by the commission because they are either unfounded or are claims of legal error that should have been filed with the appeals courts. The commission's handling of the remaining 5 percent, however, has drawn increasingly harsh criticism.

Critics point out that judges themselves dominate the disciplinary process from start to finish, creating the standard of judicial ethics, setting the disciplinary rules, and deciding the punishment.

And the entire system operates under rules of secrecy so tight, they say, that the commission has met publicly on only one case in its 33-year history. It briefly held public hearings in 1979 to determine whether the state Supreme Court

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withheld several rulings for political purposes, but the hearings were quickly closed by court order.

"It's tailor-made to allow judicial misconduct to get by," said Peter Keane, San Francisco's chief deputy public defender and one of the commission's most vocal critics. "The whole process lacks credibility."

California Behind Other States

Nationwide statistics show that California has dropped far behind the rest of the country in meting out discipline.

Since 1980, the commission has voted to publicly censure or remove judges at a rate less than half the national average, according to data from the American Judicature Society. Even when it privately disciplines judges, the commission imposes the punishment on an average one-third less often than other state commissions.

While the number of complaints in California has jumped nearly 400 percent over the last 13 years, discipline imposed by the commission has not kept pace. The commission has imposed about the same number of private and public punishments each year throughout the 13-year period, with the exception of a few years when the number of sanctions briefly doubled.

Commission members strongly defend their record, saying the data showing the low amount of discipline in California simply reflects the high quality of the state's judiciary.

"I think that we're fortunate in California that we have a very clean judiciary," said Christopher Felix, a public member appointed to the panel in 1992 by Governor Wilson.

"Everyone on the commission has worked very conscientiously," he said, noting that he devoted at least 20 days on commission matters last year without pay. "It's a hard job and you have to make some tough calls in a lot of these cases."

For their part, most California judges praise the commission for doing a good job. Some even complain that it is too harsh in its discipline.

"You'll find a lot of judges who feel the commission is nitpicking them to death," said Constance Dove, the executive director of the California Judges Association.

Dove argued that there is a crucial need for private corrective action that does not publicly damage a judge's reputation over minor misconduct.

"The commission is not only in the business of disciplining judges," she said. "The commission is also in the business of salvaging judges. To be effective, they don't have to throw judges off the bench."

"I think the commission has been very vigorous," said Los Angeles Superior Court Judge David M. Rothman, an authority on judicial ethics and the commission's operation. "Although there are cases of judges with problems, I think California is amazingly free of judicial corruption. When people attack the commission — and the Legislature often does — I wait for them to mention the cases."

Critics Point to Many Examples

Experts critical of the commission, however, cite a long list of cases as their evidence that the system has broken down.

The prime example, they say, is one of the biggest judicial scandals in California history: a commission investigation that began in 1992 of 13 San Diego Superior Court judges who reported on their annual financial statements that they received expensive gifts from attorneys and, in some cases, from litigants who came before them in court.

One judge resigned before the full facts could come out and another is putting up a fierce legal fight to keep the case from going public. Four others, all unnamed by the commission, received only private admonishments or confidential warnings. For the rest, the agency said no discipline was warranted.

Critics also point to a report by the Orange County Bar Association last year that blasted a Municipal Court judge in Santa Ana for systematically failing to provide poor defendants with lawyers and accepting guilty pleas when they were confused about the charges against them. As many as 4,500 defendants may have been denied their rights, defense lawyers say.

More than a year after the bar association released its report, the commission has imposed no discipline and is still investigating.

And on every critic's list was the investigation of California Chief Justice Malcolm Lucas earlier this year for taking frequent and prolonged trips away from the Supreme Court, including expensive overseas journeys paid for by groups with petitions before the court.

Ethics experts said the trips raised significant questions. But in January, the commission cleared Lucas of wrongdoing, a decision that drew blistering critiques from across the state and turned up the heat in the debate over the commission's performance.

Even when the commission has seemed tough — in it's "public reprovals" of 12 judges over the last six years — it has drawn heavy fire.

Normally, the commission's most potent weapon is its power to recommend to the state Supreme Court that a judge be publicly censured or removed from office, recommendations that that court has usually followed.

But over the last five years, the commission has chosen instead to discipline judges with public reprovals, a form of judicial plea bargain that does not require high court approval. In effect, a reproval allows a judge to agree to a public reprimand, and in exchange, the commission drops some of the charges. That saves time and money.

If the commission votes to recommend public censure or removal of a judge, the entire record of its hearings and deliberations becomes public after the case goes to the high court. With a reproval, though, the record remains closed.

Because the commission has not recommended either censure or removal of a single judge since 1988, the inner workings of the commission have been completely sealed off from public scrutiny for five years.

"Every public entity and public servant should be accountable," said Keane, a member of the State Bar Board of Governors who drafted a package of commission reforms now being reviewed by the Legislature. "Now, no one knows what's going on. It's like they've set judges aside in a kind of priesthood."

Keane and others say that only major reform will improve the commission's public accountability.

"I think it is time for a change," said Warren Ettinger, a former Pasadena Municipal Court judge who helped draft a recently released comprehensive report on the future of the state court system.

"There comes a point when you ought to let people know what you're doing," Ettinger said. "The public has to be confident that the judges are fair, that the system is going to work."

Tomorrow: How California has resisted judicial reforms approved by other states.

San Francisco Chronicle
THE VOICE OF THE WEST

EDITORIALS

Clinton's Bold Plan To Help the Homeless

THE CLINTON administration is backing up its vow to cut homelessness in his first term by one-third with both money and innovation. One or the other of these vital ingredients has been missing in past prescriptions for the epidemic of dispossessed living on America's streets.

President Clinton's 1995 budget plan includes $1.7 billion for a Housing and Urban Development homeless strategy, twice the federal spending now aimed at the problem.

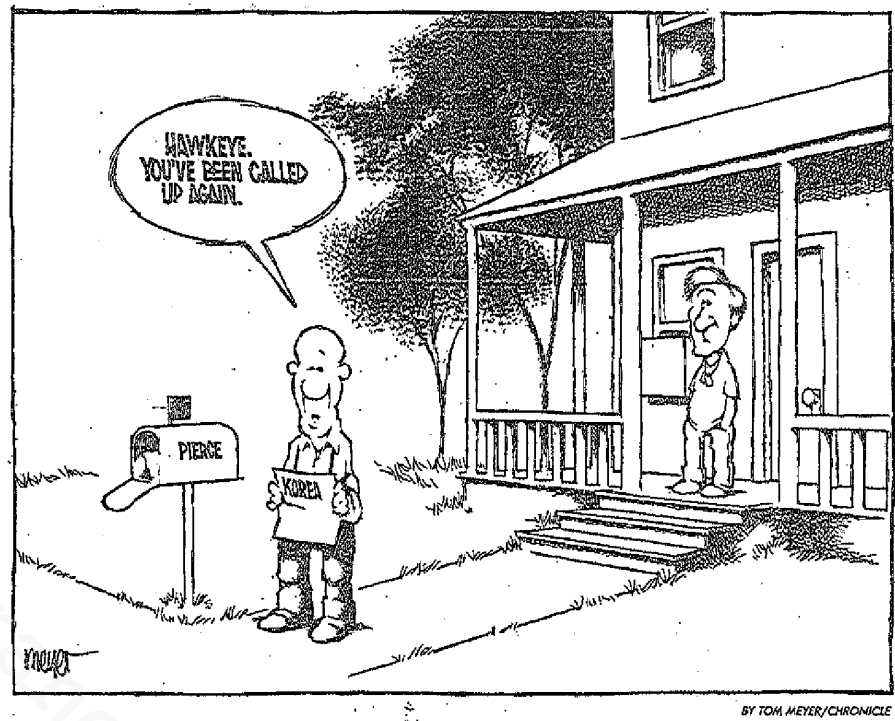
Money and innovation have been missing in proposals to help America's homeless

A number of Bay Area communities, including San Francisco, Oakland and San Jose, would reap the benefits of this new pledge to begin to eradicate homelessness. The financial commitment alone sends the message that Clinton and HUD Secretary Henry Cisneros recognize the immense scale of the problem and the federal government's responsibility in breaking its cycle. On any given night, an estimated 600,000 of our people are in shelters or sleeping on the streets, and 7 million Americans have been homeless at least once.

social and housing programs that would be drawn together for one unified offensive. More than half of the money is designated for established nonprofit groups.

The budget authorization is shaped by a thoughtful plan that looks beyond one-night shelters and revolving trips to jail. The plan builds on many programs already in place for assessing needed services, providing counseling, treatment and training and locating permanent housing. It would set up a three-step process in which the homeless would first go to an emergency facility for temporary shelter and determination of needed services. Next, they would be moved to a center where those services, such as substance abuse treatment, mental health counseling or job training, would be provided. The final step would be finding permanent housing. The plan eliminates the piecemeal approach to the problem and requires that every step of the process — which would be controlled by local communities — be aimed at providing "a decent home and a suitable environment" off the streets.

Art Agnos, HUD's regional director in San Francisco, says the Bay Area is "light years ahead" of other communities in its existing network of services to move homeless people into independent and productive lives. But the shortage of services and permanent housing still is acute, and he envisions a long-term regional approach to



BY TOM MEYER/CHRONICLE

LETTERS TO THE EDITOR

'Dear Old Soldiers: Enough of Bitterness'

Editor — Dear old soldiers, when the president you so despise reminds us that we are the sons and daughters of the world you saved, he seems to know more about the reason for Normandy than you do. He understands that you fought to save democracy, even as we protesters and draft evaders sought to preserve it 25 years later.

Dear old soldiers, would you really have bled, died, or killed in Vietnam when Vietnam so clearly was not World War II? After you had fought so hard for your children's right to practice freedom, justice and the courage of their convictions, how could you expect them to be the "good Germans" that Vietnam demanded? If patrio-

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roofs, playgrounds, toilets, science labs and electrical wiring. I am extremely humbled by the graciousness and generosity of the people of this city. Time again, they have voted to tax themselves in the interest of our children. We in the district are committed to use the dollars wisely and prudently.

Again, thank you San Francisco!

LELAND Y. YEE, president
Board of Education
San Francisco

Non-Voter, Blame Thyself

Editor — Political analyst Mervin Field supposes that non-voters have lost faith — believing that gov-

funding, 80 percent of the money for the program is already in the federal budget, part of a scattered hodgepodge of existing bers will consider the Clinton proposal next week. The nation needs this plan if it is to fight the disgrace of homelessness.

No Secret Justice for Judges

MOMENTUM IS building in the state Legislature for sweeping reform of the secretive and ineffective Commission on Judicial Performance, the agency that disciplines judges for misconduct.

It's about time. In its 33-year history, the commission has held only one public hearing in a disciplinary case against a judge. Since 1988, when a constitutional amendment was passed requiring open hearings, there has not been one.

Reforms would open closed-door hearings on errant judges

What are they hiding? Plenty, according to a recent series by Chronicle staff writers William Carlsen and Harriet Chiang, in which they found a consistent pattern of secrecy and handing down mild, private punishments to judges guilty of serious offenses.

Next week the Assembly and Senate will consider bills — sponsored by Speaker Willie Brown and Senator Alfred Alquist — which would overhaul the system and change the makeup of the nine-member commission, which currently has a voting majority of five judges. The measures would increase the number of private citizens on the panel to a majority. As their most important feature, the bills also would open disciplinary hearings to the public.

We hope the legislation wins swift approval. But it will not be easy.

Just last month a powerful committee of judges, attorneys and one private citizen — appointed by Chief Justice Malcolm Lucas — asked the lawmakers to postpone the reforms until next year, while it holds a series of hearings to determine what changes should be made in the procedures for disciplining errant judges.

Critics quickly accused the new group of trying to obfuscate the real problems and stall effective reform. We agree.

So it was welcome news when Attorney General Dan Lungren, the state's top legal officer, joined the chorus demanding reform to protect the public from corrupt and incompetent jurists.

Judges are public officials, on the public payroll and should not receive special treatment not accorded to the people who appear before them.

Rosty Goes for Broke

REPRESENTATIVE Dan Rostenskowski, indicted on 17 felony counts of embezzlement, fraud, conspiracy and an insatiable appetite, has elected to go out, if necessary, with a bang, not a whimper. Declining to accept the prosecutor's offer of a plea bargain, the crusty, foghorn-voiced chairman of the powerful House Ways and Means Committee vowed to duke it out in court, declaring "I will not make any deals with them. I did not commit any crimes."

Perhaps by Rostenkowski's lights — refracted through the prism of the famed Chicago political machine — his alleged sins constituted merely a way of political life rather than a life of political crime. Or perhaps he calculates that there are not 12 people in Chicago who do not owe a debt to the pork emporium he has run for more than 20 years.

In any case, we all owe a little debt to this consummate political deal-maker for refusing to take a legal deal that would have had him fade into history ingloriously but quietly. Going for broke is not something that comes natural to politicians, even in Chicago. Call it an act of bravery or bravado, it's downright refreshing.

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MAY 27 1994

Judges Panel Wants Delay In Reform

ACA 46 C43

Group named by Lucas plans its own assessment

By William Carlsen
Chronicle Staff Writer

In a quiet and effective bit of lobbying, a powerful committee of judges and lawyers asked the Legislature this week to put off until next year a vote on sweeping reforms of the state's system for disciplining judges.

The 13-member panel, appointed last month by Chief Justice Malcolm Lucas, told legislators in a meeting Wednesday that it plans a series of hearings this summer on changes to the Commission on Judicial Performance, the agency that investigates and disciplines errant judges.

Critics of the commission, who say it is ineffective and too lenient on judges, yesterday blasted the panel's move as a stall aimed at killing any effective reform.

"It's a smoke screen, a sham," said Peter Keane, San Francisco's chief deputy public defender and a State Bar governor who drafted some of the reform measures now before the Legislature. "The judges think that if they can stall and talk it to death, they can defeat reform."

Some legislators agreed yesterday that more time is needed to study the proposed changes to the commission, and they welcomed the panel's request.

Assembly Speaker Willie Brown, D-San Francisco, and Senator Alfred Alquist, D-San Jose, the two lawmakers sponsoring the reform measures, said that they intend to go ahead with legislative hearings on their bills next month.

In recent months, the judicial performance commission has come under intense criticism for being unnecessarily secretive and handing down only mild, private punishment to judges who have committed serious acts of misconduct.

A three-month investigation published by The Chronicle last month revealed that the agency has fallen far behind the rest of the country in imposing discipline, voting to publicly censure or remove judges at a rate less than half the national average since 1980.

The commission is composed of five judges, two lawyers and two public members and has held public hearings in only one judicial discipline case in its 33-year history.

N-6

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Brown's and Alquist's legislation would open commission hearings after formal charges against a judge are filed, eliminate the judge majority on the panel and add more public members.

In April, Lucas appointed six judges, two former judges, one court commissioner, three attorneys and one public member to the panel to make recommendations on changes needed in the commission.

On Tuesday, Los Angeles Superior Court Judge David Rothman, chairman of the panel, sent a letter to Brown with a schedule of seven hearings the group plans to hold across the state this summer on proposed changes. He said the panel intends to come up with findings and recommendations in October.

In an apparent scramble to win legislative delay, Lucas earlier this week also appointed Senator Charles Calderon, D-Whittier, an outspoken critic of the commission, and Assemblyman Phillip Isenberg, D-Sacramento, the powerful chairman of the Assembly judiciary committee, to Rothman's panel.

Rothman added in his letter that the chief justice also plans to appoint a second nonlawyer public member to the panel.

Calderon said yesterday that more time is needed to review commission reforms. "I don't think we can consider all the nuances and sub-issues with the time we have left in this legislative session," he said, noting that the Legislature is now in the middle of work on the budget.

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AB 46 BP

a high school dropout at age eighteen paid his own way

Judgment definitely lacking

If it were not already obvious, the latest lack of discretion by the agency charged with judicial oversight proves the need for reforms.

Even arsonists know when to stop pouring fuel on a fire, but the people who judge the state's judges — mostly fellow judges — ought to be indicted for gross goofiness.

The state Commission on Judicial Performance has been under increasing fire for ineffectiveness and secrecy. The situation has gotten so bad the Legislature is considering reforms supported by members with an astonishing array of ideological and partisan views, some of whom cannot agree on what color Dodger Blue is.

So what did the commission do to polish its image? It suspended a staff lawyer who provided the author of one of the reform bills with the few public reports the commission has issued. The commission's executive director then refused to tell the employee how his actions "violated attorney-client privilege."

That stupidity was compounded by an allegation that the commission had a right to compelled detailed accounts of the employee's off-the-job talks with the bill's author.

It based that destruction of the right to privacy and to seek redress of grievances on McCarthy-era cases in which some public employees were suspended for failing to reveal suspicions about possible communists in government.

Assemblyman Philip Isenberg, D-Sacramento, an attorney and chairman of the Judiciary Committee, said, "It is not only stupid but highly ironic that the commission would discipline one of its senior staff — not for revealing secrets, even under present law, but for revealing public information. This is California, not mainland China. The commission ought to chill out and calm down."

Professor Stephen Barnett of the UC Berkeley Law School, adds, "It now appears that this commission is not just ineffective at policing judges, but is possessed of a witch hunt mentality and a mania for secrecy. ... One would think the last thing the Legislature should do is give the commission, with its present leadership, more money to pursue its strange inclinations."

"Strange inclinations" is too polite. Sheer idiocy is closer to the mark. It makes a mockery of some well-meaning defenders of the system who worry that sensitive professional concerns will be trampled under foot by reforms that obviously have been delayed far too long.

Bakersfield Californian 6/27/94

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ACA 46

San Francisco Chronicle
THE LARGEST DAILY CIRCULATION IN NORTHERN CALIFORNIA
WEDNESDAY, APRIL 20, 1994

Secret Justice for State's Judges

Panel hands out lenient punishment for acts of misconduct

By William Carlsen and Harriet Chiang
Chronicle Staff Writers

SPECIAL REPORT

California is handing down minimal punishment to judges who have committed acts of professional misconduct, employing a highly confidential system of discipline that shields the judges and the system itself from public accountability.

In a three-month investigation, The Chronicle found that judges who have engaged in repeated acts of misconduct and breaches of ethics codes — from violations of the constitutional rights of defendants to taking gifts from lawyers and litigants — often have been punished privately with simple admonishments or letters of warning.

Most judges defend the state Commission on Judicial Performance, saying the agency's strong discipline serves as an effective deterrent to corruption and misconduct. But a growing group of critics says that when serious charges of misconduct do arise — several dozen times a year among the state's 1,500

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Judiciary Panel Criticized — Lenient Treatment of Judges

From Page 1

judges — the commission often is much too lenient.

"Its name should be changed to the 'Commission for Judicial Protection,'" said Stephen Barnett, a professor at the University of California's Boalt Hall Law School and an expert on the state's judicial system. "The commission bends over backward to protect judges. They operate behind a curtain, unwilling to take public responsibility."

Because the nine commissioners do most of their work in private, it is difficult in most cases for outside analysts to evaluate the penalties imposed. Even the governor and the president are barred from access to commission files when they are considering whether to promote the judges to higher judicial positions.

But each year, the commission publishes an annual summary that provides a general sketch of cases in which it took disciplinary action. In a review of those summaries, The Chronicle found that the panel has not voted to publicly censure or remove a single judge since 1986 — a sharp contrast to the previous nine years, when 19 judges were censured or removed from office. The total since 1980 has been less than half the national average.

The records also show that during the last five years the panel has issued 51 secret admonishments and 172 confidential "advisory letters," sanctions that allow no public disclosure of the judges' identities.

Among those confidential cases listed in commission reports were a number that appear to involve serious judicial misconduct:

■ In one case, a judge "consciously disregarded the law," the commission reported, by declaring that all offenders in one category of cases would receive a 90-day sentence, regardless of the validity of their requests for probation.

■ Another judge improperly contacted police after receiving a traffic ticket — which was promptly dropped. The same judge used official stationery to exempt a car from parking ordinances, frequently ignored the law in sentencing defendants, blocked an appellate review of his ruling by refusing to order a transcript, and sometimes conducted proceedings "in a language other than English."

■ One judge ordered an ailing 83-year-old traffic defendant jailed for six days because the man complained he had no money to pay a $100 fine and had chided the judge for being unfair.

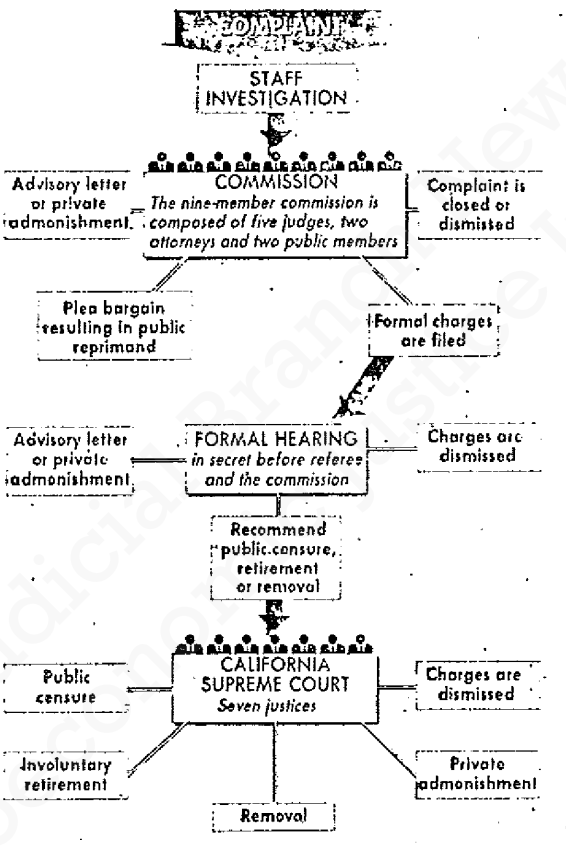
■ Another routinely rushed through the criminal calendar, using procedural short-cuts that deprived defendants of their constitutional rights in order to leave the courtroom early.

■ A judge revealed confidential information to embarrass a party to a lawsuit, twice made racist remarks in other cases, and found a litigant in contempt on inadequate grounds without allowing the person to defend himself.

HOW JUDICIAL PERFORMANCE COMMISSION WORKS

Nearly 1,000 complaints against judges were filed in 1992 with the state's Commission on Judicial Performance. Every year about 95 percent of the complaints are dismissed or closed without action because they are unfounded, unprovable or involve allegations of legal errors by a judge, which only the appellate court system can review. The remaining 5% – about 50 cases in 1992 – involve allegations of serious misconduct or wrongdoing.

Here is what happens when a complaint against a judge is filed:



CHRONICLE GRAPHIC

Gerald Stern, the head of New York's judicial disciplinary panel and a nationally recognized authority on such agencies, said he has been astonished that egregious misconduct by California judges regularly results in private instead of public discipline.

"At our annual national meetings, we mock our California colleagues about some of the cases in their annual reports," Stern said in a recent interview. "They have an excellent, hard-working staff, but I don't understand how their commission can let some of those cases go as private admonishments."

Dan Reeves, an administrative aide to state Senator Gary Hart, D-Santa Barbara, said the legislator was appalled when he saw the kinds of cases that were resulting in secret discipline.

"The number of such cases is remarkable," Reeves said.

In Sacramento, Hart and other legislators are taking a hard look at the commission and are reviewing a range of possible reforms. Last year, a Senate subcommittee headed by Senator Charles Calderon, D-Whittier, became so frustrated with the commission that it briefly voted to cut off the agency's budget.

"I'm not sure it (the commission) is effective at all," Calderon said. "I think it is a mystery to all involved — from the public right on down to the lawyers. We don't know what they do. We don't know how judges are disciplined."

Small but Powerful Agency

When the San Francisco-based commission was first established in 1961, it was envisioned as a court of last resort for a public sometimes victimized by bad judges. Within the next 20 years, every state in the nation set up a similar agency.

Today, with a $1.4 million budget and a staff of 13, the commission is one of the smallest agencies in the state — but also one of the most powerful. It is composed of five judges appointed by the Supreme Court, two attorneys chosen by the State Bar, and two citizens picked by the governor.

Hundreds of complaints about judges pour into the commission every year and the number is rising steadily. Last year, the commission received 950 complaints, a dramatic increase from the 260 received only 18 years ago.

Most experts agree that 95 percent of the complaints are properly dismissed by the commission because they are either unfounded or are claims of legal error that should have been filed with the appeal courts. The commission's handling of the remaining 5 percent, however, has drawn increasingly harsh criticism.

Critics point out that judges themselves dominate the disciplinary process from start to finish, creating the standard of judicial ethics, setting the disciplinary rules, and deciding the punishment.

And the entire system operates under rules of secrecy so tight, they say, that the commission has

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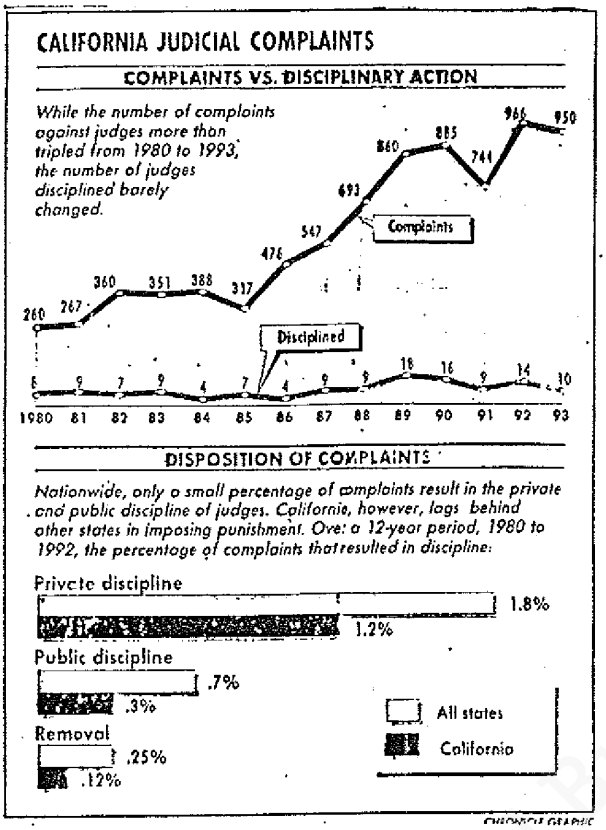

met publicly on only one case in its 33-year history. It briefly held public hearings in 1979 to determine whether the state Supreme Court withheld several rulings for political purposes, but the hearings were quickly closed by court order.

"It's tailor-made to allow judicial misconduct to get by," said Peter Keane, San Francisco's chief deputy public defender and one of the commission's most vocal critics. "The whole process lacks credibility."

California Lags Behind Other States

Nationwide statistics show that California has dropped far behind the rest of the country in meting out discipline.

Since 1980, the commission has voted to publicly censure or remove judges at a rate less than half the national average, according to data from the American Judicature Society. Even when it privately disciplines judges, the commission imposes the punishment on an average one-third less often than other state commissions.

While the number of complaints in California has jumped nearly 400 percent over the last 13 years, discipline imposed by the commission has not kept pace. The commission has imposed about the same number of private and public punishments each year throughout the 13-year period, with the exception of a few years when the number of sanctions briefly doubled.

Commission members strongly defend their record, saying the data showing the low amount of discipline in California simply reflects the high quality of the state's judiciary.

"I think that we're fortunate in California that we have a very clean judiciary," said Christopher Felix, a public member appointed to the panel in 1992 by Governor Wilson.

"Everyone on the commission has worked very conscientiously," he said, noting that he devoted at least 20 days on commission matters last year without pay. "It's a hard job and you have to make some tough calls in a lot of these cases."

For their part, most California judges praise the commission for doing a good job. Some even complain that it is too harsh in its discipline.

"You'll find a lot of judges who feel the commission is nitpicking them to death," said Constance Dove, the executive director of the California Judges Association.

Dove argued that there is a crucial need for private corrective action that does not publicly damage a judge's reputation over minor misconduct.

"The commission is not only in the business of disciplining judges," she said. "The commission is also in the business of salvaging judges. To be effective, they don't have to throw judges off the bench."

"I think the commission has been very vigorous," said Los Angeles Superior Court Judge David M. Rothman, an authority on judicial ethics and the commission's operation. "Although there are cases of judges with problems, I think California is amazingly free of judicial corruption. When people attack the commission — and the Legislature often does — I wait for them to mention the cases."

Critics Point to Many Examples

Experts critical of the commission, however, cite a long list of cases as their evidence that the system has broken down.

The prime example, they say, is one of the biggest judicial scandals in California history: a commission investigation that began in 1992 of 13 San Diego Superior Court judges who reported on their annual financial statements that they received expensive gifts from attorneys and, in some cases, from litigants who came before them in court.

One judge resigned before the

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Critics Say Agency Goes Easy on Justices

From Page A4

full facts could come out and another is putting up a fierce legal fight to keep the case from going public. Four others, all unnamed by the commission, received only private admonishments or confidential warnings. For the rest, the agency said no discipline was warranted.

Critics also point to a report by the Orange County Bar Association last year that blasted a Municipal Court judge in Santa Ana for systematically failing to provide poor defendants with lawyers and accepting guilty pleas when they were confused about the charges against them. As many as 4,500 defendants may have been denied their rights, defense lawyers say.

More than a year after the bar association released its report, the commission has imposed no discipline and is still investigating.

And on every critic's list was the investigation of California Chief Justice Malcolm Lucas earlier this year for taking frequent and prolonged trips away from the Supreme Court, including expensive overseas journeys paid for by groups with petitions before the court.

Ethics experts said the trips raised significant questions. But in January, the commission cleared Lucas of wrongdoing, a decision that drew blistering critiques from across the state and turned up the heat in the debate over the commission's performance.

Punishments Called too Lenient

Even when the commission has seemed tough — in it's "public reprovals" of 12 judges over the last six years — it has drawn heavy fire.

Normally, the commission's most potent weapon is its power to recommend to the state Supreme Court that a judge be publicly censured or removed from office, recommendations that that court has usually followed.

But over the last five years, the commission has chosen instead to discipline judges with public reprovals, a form of judicial plea bargain that does not require high court approval. In effect, a reproval allows a judge to agree to a public reprimand, and in exchange, the commission drops some of the charges. That saves time and money.

If the commission votes to recommend public censure or removal of a judge, the entire record of its hearings and deliberations becomes public after the case goes to the high court. With a reproval, though, the record remains closed.

Because the commission has not recommended either censure or removal of a single judge since 1988, the inner workings of the commission have been completely sealed off from public scrutiny for five years.

"Every public entity and public servant should be accountable," said Keane, a member of the State Bar Board of Governors who drafted a package of commission reforms now being reviewed by the Legislature. "Now, no one knows what's going on. It's like they've set judges aside in a kind of priesthood."

Keane and others say that only major reform will improve the commission's public accountability.

"I think it is time for a change," said Warren Ettinger, a former Pasadena Municipal Court judge who helped draft a recently released comprehensive report on the future of the state court system.

"There comes a point when you ought to let people know what you're doing," Ettinger said. "The public has to be confident that the judges are fair, that the system is going to work."

Tomorrow: How California has resisted judicial reforms approved by other states.

THE COMMISSION

The Commission on Judicial Performance has nine members: five judges appointed by the state Supreme Court, two attorneys chosen by the State Bar and two citizens appointed by the governor. Each member serves a term of four years, and may be re-appointed.

- Chairman: Justice Eugene M. Premo, State Court of Appeal in San Jose. Appointed by the Supreme Court. Term expires: November 1994.
- Vice-Chairwoman: Judge Ina Levin Gyemant, San Francisco Superior Court. Appointed by the Supreme Court. Term expires: November 1996.
- Other members:

Justice William A. Masterson, State Court of Appeal in Los Angeles. Appointed by the Supreme Court. Term expires: June 1997.

Judge Fumiko Hachiya Wasserman, Los Angeles Superior Court. Appointed by Supreme Court. Term expires: March 1995.

Judge Ruth Essegian, Van Nuys Municipal Court. Appointed by the Supreme Court. Term expires: January 1996.

Edward P. George, Jr., attorney, Long Beach. Appointed by State Bar. Term expires: December 1994.

James W. Obrien, attorney, Costa Mesa. Appointed by State Bar. Term expires: December 1996.

Andy Guy, rancher, Lodi. Appointed by George Deukmejian. Term expired: October 1993 (he has agreed to stay on until Governor Wilson picks a new commissioner).

Christopher J. Felix, real estate developer, Orange County. Appointed by Governor Wilson. Term expires: June 1996.

Secrecy Shrouds Judges' Disciplinary Panel

William Carlsen and Harriet Chiang
Chronicle Staff Writers

The Commission on Judicial Performance is easily overlooked as an obscure state agency with a long title, housed in a small South of Market office close by San Francisco's waterfront.

But unlike other agencies, the powerful commission that investigates and disciplines judges is protected by bulletproof glass, locked doors and a thick layer of bureaucratic secrecy.

From its offices in the elegantly refurbished Folger Coffee building to its procedures, the commission is obsessed with secrecy — to such an extreme that some critics say it cannot adequately serve the people of California.

Staff employees are sworn to absolute secrecy. Witnesses interviewed for a complaint and the judges who are the target of investigations are ordered to keep quiet. Questions about cases, even those decided long ago, are met with a terse "no comment." Letters that the commission sends to people who have filed complaints never identify the judge in question by name, but refer only to "a California judge."

When the commission closes a case without action or privately disciplines a judge, the complaining party is informed in equally cryptic language. "No further proceedings are warranted within the limited authority of the commission," the letter might say. Or the commission "took steps deemed appropriate under the circumstances."

Although each of the nine members of the commission is a publicly appointed official, it is impossible to reach some of them. Citing commission rules, others give only vague answers to questions, and some will not respond at all.

State Appeal Court Justice Eugene Premo, the commission's current chairman, declined to answer most questions. "Everything we do as commission members is confidential by law," he said.

Asked about a recent poll by a blue-ribbon task force appointed by state Supreme Court Chief Justice Malcolm Lucas that showed people were losing confidence in the judiciary, Premo responded: "Lawyers, reporters, you name them all — that's just one of the unfortunate aspects of our society. I don't think there's anything new about all of that."

Premo deferred most other questions to Victoria Henley, the director and chief counsel for the commission. Henley, aside from answering technical questions about procedure, deflected most other inquiries.

When asked her opinion on opening up commission hearings to the public and other reforms now before the Legislature, she answered diplomatically: "I don't think I should comment."

When asked for the phone number of the two public members of the commission, Henley explained that she could not release them.

But she agreed to relay interview requests to Andy Guy, who was appointed by former Governor George Deukmejian in 1985, and Christopher Felix, who was appointed by Governor Wilson in 1992.

Felix, an Orange County real estate developer, granted an interview — nearly three weeks after the request was made. Guy, a rancher from Lodi, never responded.

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San Francisco Chronicle

California Trails the Nation In Judging Wayward Judges

By Harriet Chiang and William Carlsen
Chronicle Staff Writers

From Washington to Pennsylvania, states are setting strict new rules for policing and punishing unethical judges: Discipline that once was loosely defined is now spelled out in fine detail. Hearings that were secret have been opened to the public. Judges who controlled the disciplinary process from beginning to end have lost much of their power.

Today, 41 states limit the role of judges in deciding penalties for other judges. Twenty-nine have taken steps to reduce secrecy and open disciplinary hearings.

But California's judicial system has remarkably resistant to change. Judges still hold a majority on the Commission on Judicial Performance, and the commission works under strict rules of secrecy set when it was created 33 years ago. Now a growing list of critics — lawmakers, lawyers and even some judges — say that the system needs to correct its course.

"The time is ripe for reforms," said John Racanelli, a retired state appeals court justice and former chairman of the Commission on Judicial Performance. "We were at the forefront, and now we're doing things that other states are no longer doing."

A three-month Chronicle investigation found that dozens of judges who have committed blatant acts of misconduct in recent years have been allowed to remain on the bench while judges in other states have been severely disciplined and even removed from office for similar offenses. Scores of others who have repeatedly violated ethics rules have received only mild punishment, almost always in private.

Many state judges insist that the system works well. If anything, they say, the commission is too harsh. Led by the 1,500-member California Judges Association, they have worked behind the scenes to block reforms, arguing that the commission effectively disciplines the few jurists who violate ethical standards each year.

In 1988, the judges worked successfully to blunt a measure that would have required the commission to operate more openly. This year, they are opposing reforms pending in the Legislature that would eliminate the judges' majority on the commission, open some disciplinary hearings to the public, and limit gifts to judges.

The judges "have consistently and intentionally kept in place a system of secret adjudication of judicial misconduct in order to cover that misconduct and make sure it is not brought into any kind of public scrutiny," said attorney Peter Keane, a former member of the State Bar board of governors.

State Lags in Reforms

In 1961, California was the first state in the nation to create a commission specifically responsible for investigating and disciplining judges accused of misconduct. Every state in the nation eventually followed suit, but while their systems evolved over the years, critics say, California seems stuck in the past.

Sixteen years have passed since the American Bar Association called for open hearings when formal charges are filed against a judge, a standard that 29 states have adopted.

In Washington state, accusations that a trial court judge sexually molested minors prompted passage of a constitutional amendment in 1989 that opened hearings once formal charges are filed against a judge. In Arkansas, officials in 1990 abolished private punishment of judges.

In Pennsylvania, the state judiciary was battered by one embarrassing scandal after another during the 1980s. When a dozen Philadelphia judges were accused of accepting cash gifts from a local roofers union, the affair drew national attention.

Last year, Pennsylvania voters passed a constitutional amendment creating a new discipline system: There are fewer judges on the panel, more public members, and hearings now are open to the public.

California, however, has not joined the national reform movement.

As a result, critics say, California's system has two glaring weaknesses that most other states have addressed: the secrecy surrounding the workings of the commission and the judges' domination of their own disciplinary process.

Process a Mystery to Public

The secrecy rules were designed to protect judges from the damage that could be caused when a false complaint is made public. But over the decades, critics say, secrecy has become deeply ingrained in the culture of the Commission on Judicial Performance.

Under the rules now, misconduct charges against a judge become public only at the end of the process — after the commission publicly disciplines the judge or recommends to the state Supreme Court that the judge be publicly censured or removed from office.

But in practice, the commission rarely imposes any form of public discipline, resorting far more often to confidential letters of warning or more formal letters of admonishment. In most cases, the entire process remains unknown to the public.

Such secrecy extends even to the president and the governor when they consider appointing judges to higher courts. And it can have serious ramifications for California voters when judges are up for re-election.

In May 1988, Justice Court Judge David Press of San Bernardino County was preparing to run for re-election. But vital information was withheld from the voters and his three opponents: In a se-

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cret proceeding, the commission had recommended that he be publicly censured for nine counts of willful misconduct and other improprieties.

Among other charges, Press allegedly issued an illegal arrest warrant and made improper accusations of fraud against attorneys in court. By requesting time to file an appeal before the Supreme Court, Press was able to keep the charges secret until after the June election.

Voters, unaware of the problem, sent him into the November runoff. But after the misconduct charges were made public, Press lost the Justice Court election to Michael Dest, a local attorney.

"What's frightening," Dest said, "is that he could have won the June election outright without the voters ever knowing about the public censure recommendation."

Behind the walls of secrecy, judges dominate the disciplinary process.

Of the nine commission members, five are judges appointed by the state Supreme Court, two are attorneys appointed by the State Bar association and two are public members appointed by the governor.

California is one of only nine states in which judges still hold a majority on the disciplinary panels. But national experts on judicial discipline say that a system of judges judging judges is fraught with dangers.

"Too many judges become apologists for their colleagues who engage in (ethics) code violations," said Jeffrey Shaman, a teacher of judicial ethics at De Paul University and a senior fellow at the American Judicature Society. "I think it's very important to see balance on these commissions. Self-regulation just doesn't work very well."

Judges Fought Off Reforms

In 1988, lawmakers seemed poised to impose stricter standards on California judges. They debated a proposal that would have amended the state constitution to open all hearings of the nine-member Commission on Judicial Performance.

The California Judges Association responded with a quiet but effective lobbying campaign. The judges were "very active" in opposing early versions of the bill, according to Richard Piedmonte, legislative coordinator for the judges association.

By the time legislators sent the measure to voters, the reforms had been substantially watered down: Judges' disciplinary hearings could be opened only under limited circumstances, and then only at the commission's discretion.

Voters approved the measure overwhelmingly — but six years later, not a single open hearing has been held.

"To call it a reform is an overstatement," said Charles Fennessey, legislative aide to the bill's sponsor, former Senator Ed Davis, R-Valencia. "It's not as though we wanted to open the door — just unlock it."

But the judges, he said, "didn't even want to give an inch."

Opposition to New Bill

This year in Sacramento, a spate of news reports about ethical concerns and blatant acts of misconduct by judges has led to a new — and unprecedented — series of reform proposals.

The most comprehensive measure, introduced by Senator Alfred Alquist, D-San Jose, would reduce the number of judges on the commission and open up disciplinary hearings whenever the commission files formal charges.

Within days after Alquist's bill was introduced in February, the California Judges Association moved into action, convening meetings of its top officers and faxing copies of the bill to members. Their lobbyist visited Alquist's office personally to inform the senator of their opposition.

The association's executive director, Connie Dove, says that opening up the disciplinary process will undermine public trust in the justice system. "Judges getting their knuckles rapped or getting thrown off the bench is very entertaining," she said, "(but) I don't think this helps the confidence in the courts."

The judicial commission itself has joined the judges' group in opposing many of Alquist's proposals. "Such a major overhaul, the commission believes, is not necessary and is potentially counterproductive," executive director Victoria Henley wrote last month in a letter to Alquist.

Another bill would impose on California judges the same strict limits on accepting gifts that apply to other state officials — a $250-a-year limit from any single source and a ban on honoraria for speaking engagements. The bill was approved unanimously by an Assembly subcommittee last week and the author, Assemblyman Burt Margolin, D-Los Angeles, is optimistic it will become law.

But Dove and other association officials say the bill is unnecessary.

Margolin conceded that the judges have enough political clout to cause him problems. "If the judges association decides to oppose the bill," he said, "we may be in for a fight."

Judges Are Lobbying

The judges' turn from law books to legislative calendars has raised some eyebrows, but Piedmonte, legislative coordinator for the judges association, defended the political action. Lobbying by the association is the only means by which judges can have any input, he said.

"Obviously, judges want to be king of their own domain, just as the Legislature wants to run their own," said Michael Belote, a lobbyist for the association. "But it isn't the 'circle the wagons' kind of mentality."

At this point, it is uncertain whether those trying to change the commission have the muscle to push through any substantial changes.

But several lawmakers have vowed to publicly scrutinize the Commission on Judicial Performance — whether or not judges object. A Senate subcommittee that briefly stripped all funding from the commission last year is taking a critical look again this year, said state Senator Charles Calderon, D-Whittier.

"There is no recourse," Calderon said, "other than establishing a commission that's responsive to valid complaints and criticism."

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CALLS FOR REFORM

Several legislative proposals to reform the state Commission on Judicial Performance are now under consideration in Sacramento, including:

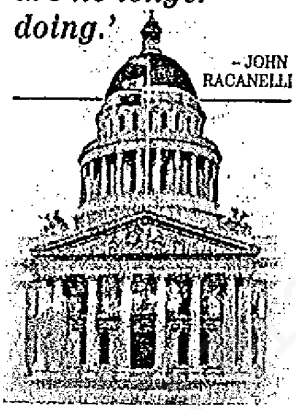
■ A sweeping measure that would end the judges' domination of their own discipline process has been introduced by state Senator Alfred Alquist, D-San Jose. The constitutional amendment would open commission hearings to the public, replace the judge majority on the commission with a majority of public citizens and give the commission power to make its own rules and to remove a judge from the bench.

■ Concerned that judges who have been privately disciplined are being appointed to higher judicial posts, state Senator Gary Hart, D-Santa Barbara, is sponsoring a bill that would require the commission to make confidential information on private discipline available to the president, the governor and the state's commission that reviews judicial appointments.

■ In addition to the legislative activity, a blue-ribbon panel set up by Chief Justice Malcolm Lucas to look at the future of the California court system has also called for more openness and public accountability by the commission.

'The time is ripe for reforms....We were at the forefront, and now we're doing things that other states are no longer doing.'

– JOHN RACANELLI



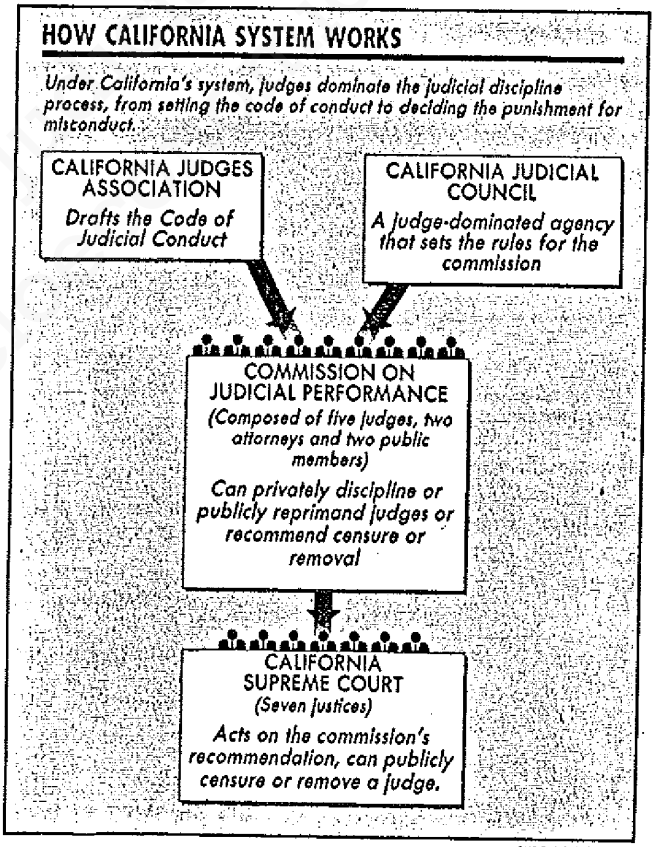
■ In response to complaints about the commission's ineffectiveness, a Senate budget subcommittee voted last year not to finance the agency. The commission's $1.4 million budget was later restored, but state Senator Charles Calderon, a member of the subcommittee, said that it is closely reviewing the commission's budget again this year.

■ Assemblyman Burt Margolin, D-Los Angeles, has introduced a bill that would bar judges from accepting gifts worth more than $250 from any single source during a year. The bill was unanimously passed by an Assembly subcommittee last week. Margolin said he introduced the legislation in response to Chief Justice Malcolm Lucas' frequent and extensive trips away from the court, including overseas conference trips paid for by insurance groups with petitions before the court. In January, the commission cleared Lucas of any wrongdoing.

CHRONICLE GRAPHIC

HOW CALIFORNIA SYSTEM WORKS

Under California's system, judges dominate the judicial discipline process, from setting the code of conduct to deciding the punishment for misconduct.



CHRONICLE GRAPHIC

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San Francisco Chronicle

Similar Scandals — Different Results

By Harriet Chiang
Chronicle Staff Writer
APR 27 1994

The scandals were strikingly similar.

In San Diego, at least 13 judges were investigated for accepting gifts worth thousands of dollars from lawyers or their clients in return for favorable rulings. In Philadelphia, 13 judges were under scrutiny for accepting gifts of up to $500 in cash from the local roofers union.

Just as striking were the outcomes.

In Philadelphia, eight judges were thrown off the bench.

In California, four judges were warned or reprimanded in private letters. Not even the names were released to the public. One resigned while charges were pending, one remains under investigation, and the cases were dropped against the rest.

Legal experts say the scandals illustrate the weaknesses of California's system in disciplining judges — and its resistance to change.

Pennsylvania was spurred to overhaul its entire disciplinary system, reducing the judges' influence in the process and opening hearings to the public. In California, many jurists deny that the affair even amounted to a scandal.

"There's no doubt that Pennsylvania took a strong stand," said Erwin Chemerinsky, who teaches judicial ethics at the University of Southern California Law Center. "For judges to be accepting gifts from those they know are likely to appear before them really compromises the integrity of the system."

During the 1980s, Pennsylvania's judicial system was whipsawed by one scandal after another — including a skirmish in which a state Supreme Court justice accused two colleagues of trying to run him over with an auto. But it was cash payments of a few hundred dollars apiece to members of the Philadelphia bench that shocked the legal community.

In 1985, Pennsylvania's judicial discipline board began investigating at least 13 trial judges in Philadelphia who had accepted payments of up to $500 — some stuffed in Season's Greetings envelopes — from the roofers union. The union had no cases pending before any of the judges.

After a two-year investigation, the Pennsylvania Supreme Court in 1988 removed eight judges from the bench for receiving the payments. In a 43-page opinion, Chief Justice Robert N. C. Nix Jr. said that each judge "has the responsibility of not only avoiding impropriety, but also of avoiding the appearance of an impropriety."

"Justice," he said, "may never be permitted to be for sale."

In San Diego, news of an investigation surfaced in early 1992 with reports that a number of Superior Court judges were being questioned for accepting thousands of dollars worth of gifts — including golf fees, tickets to sporting events, dinners and legal services — from several high-powered San Diego lawyers. The judges reported on their annual financial statements that they received the gifts between 1985 and 1990.

After receiving gifts from one lawyer for several years, two of the judges reportedly had awarded multimillion dollar verdicts in 1989 and 1991 to one of the attorney's clients.

In each case, the lawyer made the unusual decision of waiving a jury trial so that the judges could decide the award — even though juries traditionally are more generous than judges.

Almost a year after the broad inquiry began, the state's Commission on Judicial Performance announced that it had investigated 13 judges. It did not name them, saying only that "a number" of them had been secretly disciplined. News reports disclosed that four of the judges had been disciplined privately.

After several more months of secrecy, the commission announced last June that it was closing the case on one of the judges, Michael Greer, because he was resigning from office.

The commission said that Greer, a former presiding judge of the San Diego Superior Court, faced seven counts, including "willful misconduct in office." Because Greer resigned, however, the investigation was closed and no details were released.

The alleged misconduct was so severe that the commission said it was referring the matter to the State Bar of California. The State Bar would not say whether it is investigating Greer.

Meanwhile, Greer is working as a private judge in the lucrative rent-a-judge business.

Judge G. Dennis Adams is believed to be the only judge still under review in the long-running investigation. For the past year, Adams has put up a furious legal fight to prevent the commission from holding his disciplinary hearing in public.

Greer's resignation clearly disturbed some legal experts, and now even some commission members say that they are frustrated by several cases in which judges were able to manipulate the rules to escape punishment.

"If there is evidence of serious wrongdoing," said public member Christopher Felix, "I don't think a judge should be able to go out the back door, earn big money as a paid-for judge and receive a pension."

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San Francisco, CA
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Chronicle
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Reform Plan For Judicial Oversight Panel

Legislation would open discipline hearings

By Harriet Chiang
Chronicle Legal Affairs Writer

Assembly Speaker Willie Brown will propose sweeping legislation this week that would dramatically reform the state agency that disciplines judges for professional misconduct.

Under the proposed constitutional amendment, now-secret disciplinary hearings would be open to the public. It also would change the makeup of the nine-member Commission on Judicial Performance, eliminating a judges' majority by increasing the number of public citizens. The commission would have the power to make its own rules and to remove a judge from the bench.

The proposal comes in response to "increasing public concern about potential judicial misconduct," said Cary Rudman, Brown's legal counsel. "There may be a substantial number of judicial complaints against judges," he said, "and we want to insure that the system for reviewing those complaints is as objective and autonomous as possible."

The decision by the powerful speaker to sponsor the reform

JUDGES: Page A13 Col 1

JUDGES: Reform Proposal

From Page 1

measure highlights the growing concern among lawyers, lawmakers and the public over the discipline system for the state's 1,500 judges. It also puts pressure on the Legislature to act on an issue that has been strongly opposed by the commission and the state's judges.

The commission has come under increasing attack for handing down minimal punishment to state judges who have acted unethically or engaged in repeated misconduct — from violating the constitutional rights of criminal suspects to accepting gifts from lawyers. Critics say this obscure but powerful agency is shielded by a highly confidential system that allows for little public accountability.

"There's a reasonably strong conviction that the commission needs to be substantially modified," said Assemblyman Phil Isenberg, D-Sacramento, who heads the Judiciary Committee and supports Brown's reform efforts.

Brown's comprehensive bill addresses what legal experts say are two glaring weaknesses of California's system: the secrecy that surrounds the workings of the commission and the judges' domination of their own disciplinary process.

Rudman said the speaker will introduce the measure today or tomorrow, once the legislative council finishes drafting the proposal.

The legislative action follows a three-month investigation by The Chronicle, which found that dozens of judges who have committed blatant acts of misconduct in recent years have been allowed to remain on the bench while judges in other states have been severely disciplined or even removed from office for similar offenses. Scores of others who have repeatedly violated ethics rules have received only mild punishment, always in private.

The two-part series published last month found that while other states have set strict new rules for policing and punishing unethical judges, California has resisted any changes.

State judges have defended the current system, saying there is little corruption on the bench. Led by the California Judges Association, they have worked effectively behind the scenes to block reforms.

"It is pretty clear that while the rest of the nation has inched forward, California has just sat still on this issue," Isenberg said.

Brown's proposed constitutional amendment is similar to a state Senate measure proposed in February by Senator Alfred Alquist, D-San Jose. Alquist's proposed constitutional amendment is scheduled to be heard by the Senate Judiciary Committee next Tuesday.

Brown and Alquist's proposals are moving relatively late in the legislative session, which ends in August. But with these two heavyweights as sponsors, "the measures will receive very serious, rapid consideration," Isenberg said. A constitutional amendment requires passage by a two-thirds vote of the Legislature and majority approval by the voters.

Senate President Pro Tem Bill Lockyer said yesterday that the chances of a constitutional amendment passing are "reasonably good." Lockyer, D-Hayward, said he has not reviewed the details of the reform proposals, but he generally supports a more open discipline system and greater public control.

Commission Director Victoria Henley could not be reached yesterday to comment on Brown's upcoming measure, but the agency has formally stated its opposition to many of Alquist's proposals. The California Judges Association also has voted to oppose the Senate measure.

State Attorney General Dan Lungren has formally said he supports the Alquist measure.

Peter Keane, a member of the State Bar Board of Governors and the author of the Alquist bill, said that the commission is ripe for change because of several well-publicized discipline cases that he and many others cite as evidence that the system has broken down.

The prime example, critics say, is one of the biggest judicial scandals in California history: a commission investigation that began in 1992 of 13 San Diego Superior Court judges who reported receiving expensive gifts from attorneys and, in some cases, litigants who came before them. One judge resigned before the full facts could come out and another is putting up a fierce legal fight to keep the case from going public. Four others received no more than private admonishments or warnings from the commission. For the rest, the agency said no discipline was warranted.

Critics also point to the investigation of California Chief Justice Malcolm Lucas earlier this year for taking frequent and prolonged trips away from the Supreme Court, including expensive overseas journeys paid for by groups with petitions before the court.

Ethics experts said the trips raised significant questions. But in January, the commission cleared Lucas of wrongdoing, a decision that drew harsh criticism from across the state.

Keane said he was "delighted" by Brown's decision to carry the sweeping measure, a move that will provide strong momentum for the reform movement. "There's not much time left," he conceded, "but I'm told by all involved that it can get through if the momentum continues to build."

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Judgment definitely lacking

If it were not already obvious, the latest lack of discretion by the agency charged with judicial oversight proves the need for reforms.

Even arsonists know when to stop pouring fuel on a fire, but the people who judge the state's judges — mostly fellow judges — ought to be indicted for gross goofiness.

The state Commission on Judicial Performance has been under increasing fire for ineffectiveness and secrecy. The situation has gotten so bad the Legislature is considering reforms supported by members with an astonishing array of ideological and partisan views, some of whom cannot agree on what color Dodger Blue is.

So what did the commission do to polish its image? It suspended a staff lawyer who provided the author of one of the reform bills with the few public reports the commission has issued. The commission's executive director then refused to tell the employee how his actions "violated attorney-client privilege."

That stupidity was compounded by an allegation that the commission had a right to compelled detailed accounts of the employee's off-the-job talks with the bill's author.

It based that destruction of the right to privacy and to seek redress of grievances on McCarthy-era cases in which some public employees were suspended for failing to reveal suspicions about possible communists in government.

Assemblyman Philip Isenberg, D-Sacramento, an attorney and chairman of the Judiciary Committee, said, "It is not only stupid but highly ironic that the commission would discipline one of its senior staff — not for revealing secrets, even under present law, but for revealing public information. This is California, not mainland China. The commission ought to chill out and calm down."

Professor Stephen Barnett of the UC Berkeley Law School, adds, "It now appears that this commission is not just ineffective at policing judges, but is possessed of a witch hunt mentality and a mania for secrecy. ... One would think the last thing the Legislature should do is give the commission, with its present leadership, more money to pursue its strange inclinations."

"Strange inclinations" is too polite. Sheer idiocy is closer to the mark. It makes a mockery of some well-meaning defenders of the system who worry that sensitive professional concerns will be trampled under foot by reforms that obviously have been delayed far too long.

Bakersfield Californian 6/27/94

San Francisco Chronicle

EAST BAY EDITION

BAY AREA AND CALIFORNIA

Watchdog Lawyer Reveals Agency Firin

Warning letter from state Commission on Judicial Performance

By William Carlsen
Chronicle Staff Writer

A top investigator for the embattled Commission on Judicial Performance said yesterday that he had been threatened with firing for conversations he had with one of the commission's chief critics.

The disclosure, made in a letter to state lawmakers, came on the eve of legislative hearings into charges that the commission is lax and secretive in its discipline of judges.

The letter was written by commission attorney John Plotz and includes detailed records of secret disciplinary proceedings against him. The files, which provide an unprecedented glimpse into the commission's inner workings, draw a picture of a state agency that has become fixated on internal security at a time when the Legislature is considering reforms aimed at opening up the judicial disciplinary process.

The commission has been under attack in recent months for its record of handing out mild, secret discipline to judges who commit acts of misconduct, employing a disciplinary system that is dominated by judges themselves.

In his letter to the Legislature, Plotz asks lawmakers to pass new protections for commission attorneys, requiring that they can only be fired for "just cause" and not, as they are now, at the complete discretion of the commission.

"Judges are among the best connected and most powerful people in society," he said, adding that for commission attorneys to investigate judges they must be able to do so without "constantly looking over our shoulders."

Plotz said he was threatened with termination because he talked with commission critic Peter Keane, San Francisco's chief deputy public defender, and gave Keane nonconfidential information such as published annual commission reports, court rulings and data on other judicial discipline agencies around the country.

He said that when he mentioned his conversations with Keane to agency director Victoria Henley in February, she accused him of "betraying" the commission and of "disloyalty."

Keane, who serves on the State Bar of California's board of governors, has helped draft a sweeping set of commission reforms that will be taken up in a Senate Judiciary Committee hearing today in Sacramento. He wrote an arti December for the San Fran Daily Journal, a legal paper, was highly critical of the cor sion.

Plotz and Keane have friends since Plotz worked a San Francisco Public Defen office before joining the cor sion as an attorney-investigat 1988.

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EAST BAY EDITION

Reveals Agency Firing Threat

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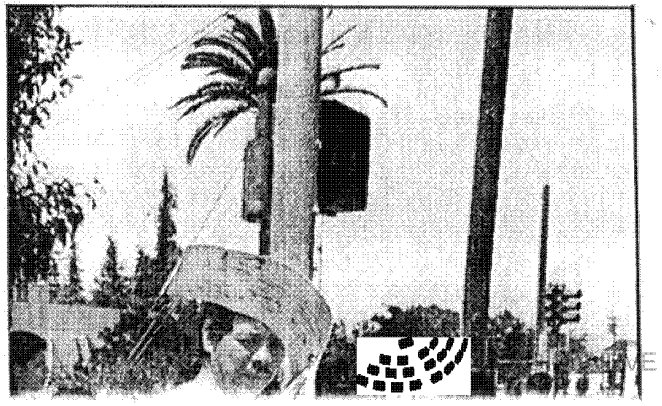
Plotz and Keane have been friends since Plotz worked at the San Francisco Public Defender's office before joining the commission as an attorney-investigator in 1988.

According to Plotz's disciplinary files, Henley consulted with the commission and then held a formal inquiry in March to question Plotz about what information he had passed on to Keane and whether Plotz had violated the agency's strict code of confidentiality.

Plotz said at the inquiry that he had given Keane only public documents and no confidential information. Plotz added that it was well-known to Henley and others in the agency that he was in favor of reforms of the commission and that he felt he was being singled out because of his views.

When Henley pressed him to relate exactly what opinions he expressed to Keane about the commission's inner workings, Plotz refused to answer, saying that his opinions on public issues were pro-

THREAT: *Page A16 Col. 1*



Balky TB Patients May Be Detained

Alameda County wants to build regional quarantine center

about such a program because it might drive infected TB patients underground to avoid being locked up.

If quarantine is necessary, county health officers said they would favor a regional center if it

ted 12 students before her disease was discovered, noted Dr. Robert Benjamin, director of communicable diseases in Alameda County.

THREAT: Watchdog Agency's Warning Letter

From Page A15

tected by the First Amendment and his right to privacy.

On April 19, Henley wrote Plotz a warning letter, saying that Plotz's refusal to answer all of her questions raised "grave concerns" within the commission. "Mr. Keane obtained information from someone who was intimately familiar with the commission's operation and cases," she said.

Plotz's free speech rights, she added, are not absolute and must be balanced against the commission's interest "in its need to preserve confidentiality."

"The commission need not and cannot simply accept your opinion as to the character of the information you have disclosed," she wrote. "I have decided to issue you this written warning for your insubordinate conduct and breach of your duty of frankness, candor and cooperation."

Neither Henley nor Plotz could be reached for comment yesterday. Keane said yesterday that he outraged by Henley and the mission's conduct, adding that Plotz never gave him any confidential information.

In his letter he sent to the commission in March, Keane said that "even a cursory reading of my (Daily Journal) article shows that every word of it comes from public materials.

"Had I written an article praising the commission, John would not be the subject of investiga-

Plotz said he was threatened because he talked with a commission critic

tion," Keane added. "It is because I went to the Legislature that you are jeopardizing John's employment. It is because legislators have read what I wrote and they agree that the commission's operations require reform."

Key legislators involved in the reform proposals said yesterday that they were still studying Plotz's letter and files. But an aide to one of the legislators said Plotz's situation was simply "one of the logical, unfortunate and unnecessary consequences" of the commission's secrecy and provided another reason to reduce the confidentiality of the judicial discipline process.

The Senate Judiciary Committee will hold hearings today on a bill sponsored by Senator Alfred Alquist, D-San Jose, that would open disciplinary hearings after charges against a judge are filed and change the majority of commissioners from judges to private citizens appointed by the governor and Legislature.

The Assembly Judiciary Committee will hold hearings on a similar set of reforms by Assembly Speaker Willie Brown, D-San Francisco.

Meanwhile, the California Judges Association, which has been on record opposing the reforms, voted Friday to support more citizens on the commission and open hearings once formal charges are filed.

Besides the familiar 13 red and white stripes, the flag had a circular "constellation" of 13 stars on a blue background, one for each of the original colonies.

Enduring legend has it that the first flag was made by a Philadelphia matron, Betsy Ross, who presented it to George Washington.

One version says that General Washington did not like the six-pointed stars she proposed and got her to sew five-pointed ones.

Two generations ago, Flag Day in San Francisco was an occasion for patriotic oratory and a band concert in Golden Gate Park.

This year, though, most of the flags flying on Market Street are the "rainbow" variety, heralding the big Lesbian and Gay Freedom Day parade on Sunday.

"We have a lot of historical flags here, and the Betsy Ross flag is a popular item at $14.98," said Mary Hanks, who works at Flags by Yankee Doodle Dandy at 1974 Union Street.

Flag Day is observed in school rooms across the country and is a legal holiday in Pennsylvania.

Pottstown, Pa. has the largest American flag in the world, measuring 260 by 500 feet. Each star is 16 feet from point to point, and each stripe is 20 feet wide.

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EXHIBIT K

BILL ANALYSIS

SENATE COMMITTEE ON JUDICIARY
David Roberti, Chairman
1993-94 Regular Session

SCA 37 (HART)
As introduced
Hearing date: March 22, 1994
Constitution Article VI
MLK

DISCIPLINARY RECORDS OF JUDGES

HISTORY

Source: Author

Prior Legislation: None

Support: The California Judges Association (if amended)
The State Bar (if amended)

Opposition: None known

KEY ISSUE

SHOULD THE GOVERNOR, THE PRESIDENT AND THE COMMISSION ON JUDICIAL APPOINTMENTS HAVE ACCESS TO THE DISCIPLINARY RECORDS OF JUDGES THEY ARE CONSIDERING APPOINTING?

PURPOSE

The Commission on Judicial Performance is a Constitutionally šcreated body which is responsible for disciplining judges. The šdiscipline ranges from a private admonishment to a recommendation šfor removal.

Under existing law, the individuals responsible for appointing or šelevating judges do not have access to the disciplinary records of šthe judges they are considering appointing. Such records are held šas confidential by the Commission on Judicial Performance.

This Amendment would require the Commission on Judicial Performance šprovide the Governor, President and the Commission on Judicial šAppointments, upon request, with the disciplinary records and šadvisory letters of any judge who is under consideration for any šjudicial appointment.

The purpose of this Amendment is to give those responsible for šappointing or elevating judges access to any disciplinary actions štaken against a particular judge.

COMMENT

1. Current law

The Commission on Judicial Performance oversees the discipline of all California judges who violate the Code of Judicial Conduct. The members of the Commission are established in Article 6, section 7 of the California Constitution. The commission is made up of 2 judges from the courts of appeal and superior court, and one municipal court judge, each appointed by the Supreme Court. The Commission also includes two members of the California State Bar who have practiced in California for at least ten years who are appointed by the State Bar, and two citizens not members of the California Bar who have never been judges, who are appointed by the Governor and approved by the Senate.

The Commission on Judicial Performance evaluates any complaints against judges and then decides what if any disciplinary action should be taken. The disciplinary measures available range from recommending to the Supreme Court that a judge be removed to issuing a private admonishment. Article 6 Section 18 subsection (h) of the Constitution allows the Judicial Council to make rules providing for the confidentiality of the Commission on Judicial Performance's proceedings. Although public disciplinary measures can be taken, most disciplinary actions are of a secret nature. These secret disciplinary actions cannot be disclosed to anyone under the confidentiality rules established by the Judicial Council.

The Constitution gives the Judicial Council the power to determine the confidentiality rules relating to the Commission on Judicial Performance in order to mandate that records of disciplinary actions be given to the Governor, the President or the Commission on Judicial Appointments, the Constitution must be amended.

(More)

2. Need for the proposed change

At this time if the Governor, the President or the Commission on Judicial Appointments is considering elevating a judge they do not have the ability to access any non-public disciplinary actions taken by the Commission on Judicial Performance against that Judge. It is asserted by the author that without the ability to learn whether any type of disciplinary action has been taken against a judge, the Governor, the President or the Commission on Judicial Appointments do not have the information necessary to make an informed decision on whether the judge should be elevated.

It is also possible for the Judicial Council to amend the rules governing the Commission on Judicial Performance to create a rule which would allow for these exceptions in their confidentiality rule. This would negate the necessity for an amendment. Although this has not been done, Judicial Council has indicated that the newly formed Judicial Council Advisory Committee on Judicial Performance Procedures may adopt such a rule when they meet.

The author points out however, that even if Judicial Council were to amend their rules now, without a Constitutional Amendment a provision allowing for the release of documents to those who appoint judges in the Judicial Council's rules could later be repealed.

3. Documents to be released

The proposed Amendment provides for the release of "...any disciplinary action, or advisory letters...." Advisory letters are the lowest form of discipline given by the Commission on Judicial Performance. These letters are sometimes given on the condition that the judge would not appeal the action as a plea bargain.

Judicial Council has expressed concern that there are judges who may have agreed not to appeal or just decided not to appeal despite their ability to present exculpatory evidence because they knew the document was confidential and that this amendment could unfairly prejudice these judges.

4. State Bar proposed amendment

Judicial Nominee Evaluation Commission (JNE Commission) is a body of the State Bar which reviews candidates for judicial appointments. The JNE Commission is divided into smaller groups in each county. The members of each group are attorneys from the community. Members of the local bar are asked for
š

(More)

their opinions of the nominees. The responses given by the
šlocal bar are reviewed by the JNE Commission which then
šforwards to the Governor an evaluation of each candidate which
šranks the candidate as unqualified, qualified or extremely
šqualified.

The State Bar has expressed an interest in having the JNE Commission be one of the recipients of the released disciplinary documents. The California Judges Association will not support the Amendment if the JNE Commission is included. The Association feels that the nature of the JNE Commission will allow a great number of people access to these documents thereby increasing the risk that such documents will not be held confidential.

5. Confidentiality issues

This Proposed Amendment does not provide any limitation on the use of these disciplinary documents once they are released to

the Governor, the President, or the Commission on Judicial Appointments. The Commission on Judicial Appointment holds public hearings regarding the qualifications of a judge after an appointment has been made. It is unclear whether this body has the ability to meet in executive session and if they don't whether these documents will then be made public through the public hearing or whether the documents would be of any use to the Commission at all.

SHOULD NOT THE AMENDMENT CARRY WITH IT A BILL ESTABLISHING A PENALTY FOR DOCUMENTS RELEASED TO ONE OF THE NAMED OFFICES, FOR THE PURPOSE OF EVALUATING A JUDGE'S ABILITY, WHICH ARE USED FOR SOME OTHER PURPOSE OR RELEASED TO THE PUBLIC?

WOULD ALLOWING RELEASE OF THE DOCUMENTS TO THE GOVERNOR AND THE PRESIDENT ALONE FULFILL THE PURPOSE OF THIS AMENDMENT?

6. Commission on Judicial Performance proposed amendment

The Commission on Judicial Performance supports the Amendment provided that the following amendment is made. Where the reference is made to " ... the records of any disciplinary actions.." the following language be substituted:

"...the text of any private admonishment, advisory letter or other disciplinary action together with any information which the commission deems necessary to a full understanding of the commission action..."

(More)

This substitution is intended to clarify the documents which will be released.

SHOULD WHICH DOCUMENTS WILL BE RELEASED BE CLARIFIED?

7. The California Judges Association proposed amendment

In addition to expressing their objection to making the JNE Commission a possible recipient of the disciplinary documents, the California Judges Association have requested that the proposed Amendment be amended to state that the judge under consideration is to receive copies of the documents being released to one of the named parties.

SHOULD THE AMENDMENT PROVIDE THAT THE JUDGE IN QUESTION BE SENT COPIES OF ANY OF THE DOCUMENTS RELEASED BY THE COMMISSION ON JUDICIAL PERFORMANCE?

****

EXHIBIT L

Date of Hearing: June 29, 1994

ASSEMBLY COMMITTEE ON JUDICIARY
Phillip Isenberg, Chair

SCA 37 (Hart) - As Amended: June 14, 1994

PRIOR ACTION

Sen. Com. on JUD. 7-0 Sen. Com. on C.A. 4-0 Sen. Floor 38-0

ISSUES: I. **SHOULD OTHERWISE SECRET RECORDS RELATING TO DISCIPLINE OF A JUDGE BE RELEASED TO THE PRESIDENT OR GOVERNOR WHEN CONSIDERING APPOINTMENT OF THE JUDGE TO JUDICIAL OFFICE?**

II. **SHOULD THE COMMISSION'S AUTHORITY TO PRIVATELY ADMONISH JUDGES BE REMOVED AND REPLACED WITH THE AUTHORITY TO PUBLICLY ADMONISH JUDGES?**

BACKGROUND

DIGEST

Existing law authorizes the Commission on Judicial Performance to recommend (to the Supreme Court) that the following discipline action be taken against a judge:

1) Retire a judge for disability.

2) Remove or censure a judge for misconduct.

3) Suspend a judge upon conviction of a felony or crime involving moral turpitude.

Additionally, the Commission may do the following:

1) Privately admonish a judge, the decision of which is subject to discretionary review by the Supreme Court. (According to prevailing Commission practice, a private admonishment must be preceded by a notice of intended private admonishment to the judge.)

2) Publicly reprove a judge, without Supreme Court review, provided the judge consents.

3) Issue (private) advisory letters.

4) Accept a judge's voluntary retirement or resignation with charges pending, (in which case the relevant disciplinary documents remain confidential).

- continued -

The large majority of the documents relating to the Commission's discipline activity is confidential. For example, information pertaining to judges who retire or resign with charges pending is confidential, notwithstanding the judge's retirement or resignation.

This bill:

1) Deletes the authority of the Commission to privately admonish judges. Instead, the Commission will have the authority to publicly admonish judges.

2) Authorizes the Commission, upon request, to release the text of public admonishments, private admonishments, advisory letters, or other disciplinary action (taken against a judge) and all related relevant information to the following persons:

   a) The Governor, with respect to an applicant being considered for judicial office.

   b) The President, with respect to an applicant being considered for judicial office.

   c) The Commission on Judicial Appointments (which confirms nominees to California's Supreme Court and Courts of Appeal), with respect to an applicant being considered for judicial office.

   Information disclosed herein remains confidential and privileged for all other purposes.

FISCAL EFFECT

This bill will be referred to the Assembly Committee on Ways and Means.

COMMENTS

1) According to the Commission's 1993 annual report, in 1993 the Commission received 950 complaints and took the following formal disciplinary actions:

   a) Issued 26 (private) advisory letters.

   b) Issued 7 private admonishments.

   c) Accepted the resignation of 7 judges with charges pending.

   d) Publicly reproved 2 judges.

- continued -

The only Commission documents available to the public are those documents related to the 2 public reprovals identified in d), above.

(The attached chart reveals the Commission's discipline efforts for 1993.)

2) **Author's Statement**. The author is the sponsor of SCA 37, which is designed to do two things:

a) Eliminate the Commission's authority to admonish judges. According to the Commission, 121 private admonishments have been issued by the Commission since the authority to do so was granted the Commission in 1976. As noted above, the Commission issued 7 private admonishments in 1993.

The author argues that the conduct for which the Commission routinely issues private admonishments, in fact, warrants public discipline. For example, in 1993, judges were issued private admonishments for the following conduct:

* The judge took extended lunch hours and, upon his return, exhibited signs of alcohol consumption. His post-lunch courtroom performance deteriorated.

* The judge appeared to "fix" a ticket he received from a police agency. He used official stationery to "exempt" a vehicle from a parking ordinance. He impeded appellate review of a case by refusing to sign an order for a transcript. He made rude remarks and engaged in other intemperate behavior.

* The judge transferred a DUI case of a friend to his court. In a separate matter, he tried the DUI case of his clerk.

* The judge had an attorney taken into custody, without explanation, a hearing, or order, all in violation of law, for seeking clarification of an order. The attorney was released after 4 hours and an apology. In another case, the judge reduced a witness to tears by repeatedly and rudely interrupting her testimony.

* The judge jailed a litigant for contempt without a hearing, findings, or order. The hearing was conducted 2 days later.

* The judge avoided official duties by transferring cases out of his or her department and routinely granting extended continuances. The judge routinely and improperly intervened in personnel matters, which were the responsibility of the court administrator. The judge took punitive action against political adversaries. The judge used court personnel to perform personal errands.

- continued -

* A presiding judge failed to respond to citizen complaints about a court commissioner. An advisory letter was sent. Upon a subsequent, similar failure, a private admonishment was issued, to which the judge expressed indifference.

The author argues that this kind of conduct warrants public admonishment. Thus, he proposes that the Commission's authority to issue private admonishments be removed.

b) Permit appointing officials and entities to obtain relevant information relating to an applicant (or nominee) for judicial office.

The author suggests that the need for this legislation is self-evident. If Commission discipline activity is predominately private, appointing authorities must have access to such information before momentous and, arguably, uninformed decisions are made.

3) The reaction of the Commission and other judicial entities to the first provision of the bill -- the provision that strips the Commission of its authority to issue private admonishments -- is unknown. Presumably, the Commission objects to this diminution of its authority. It may argue that without the authority to "offer" judges private discipline, the Commission's discipline proceedings will become more protracted, expensive, and adversarial. Judges will fiercely contest all charges, if there is little opportunity to "settle" matters privately.

4) It appears that the most recent amendments to the second provision of the bill have removed the opposition of the Judicial Council and the Commission to that provision. The California Judges Association (CJA) requests a single amendment to this provision of the bill. Specifically, CJA requests that the bill be amended to simply require the judge/applicant be given a copy of any information provided the appointing entities enumerated above. In this manner, the judge/applicant may respond to information vital to his or her future.

5) Two technical amendments should be considered.

a) Technically, the Commission on Judicial Appointments does not consider "applicants." Literally, the Commission either confirms (or rejects) a gubernatorial nominee for the appellate bench. [See Article VI, Section 16(d)]

b) The bill defines "private admonishment" as that form of discipline authorized by a 1988 constitutional amendment. The Commission's 1993 annual report states that private admonishments have been issued since 1976. Arguably, the definition in SCA 37 excludes from the bill 12 years of private admonishments. This exclusion appears inadvertent.

SUPPORT

Unknown

OPPOSITION

Unknown

Gene Erbin
445-4560
ajud

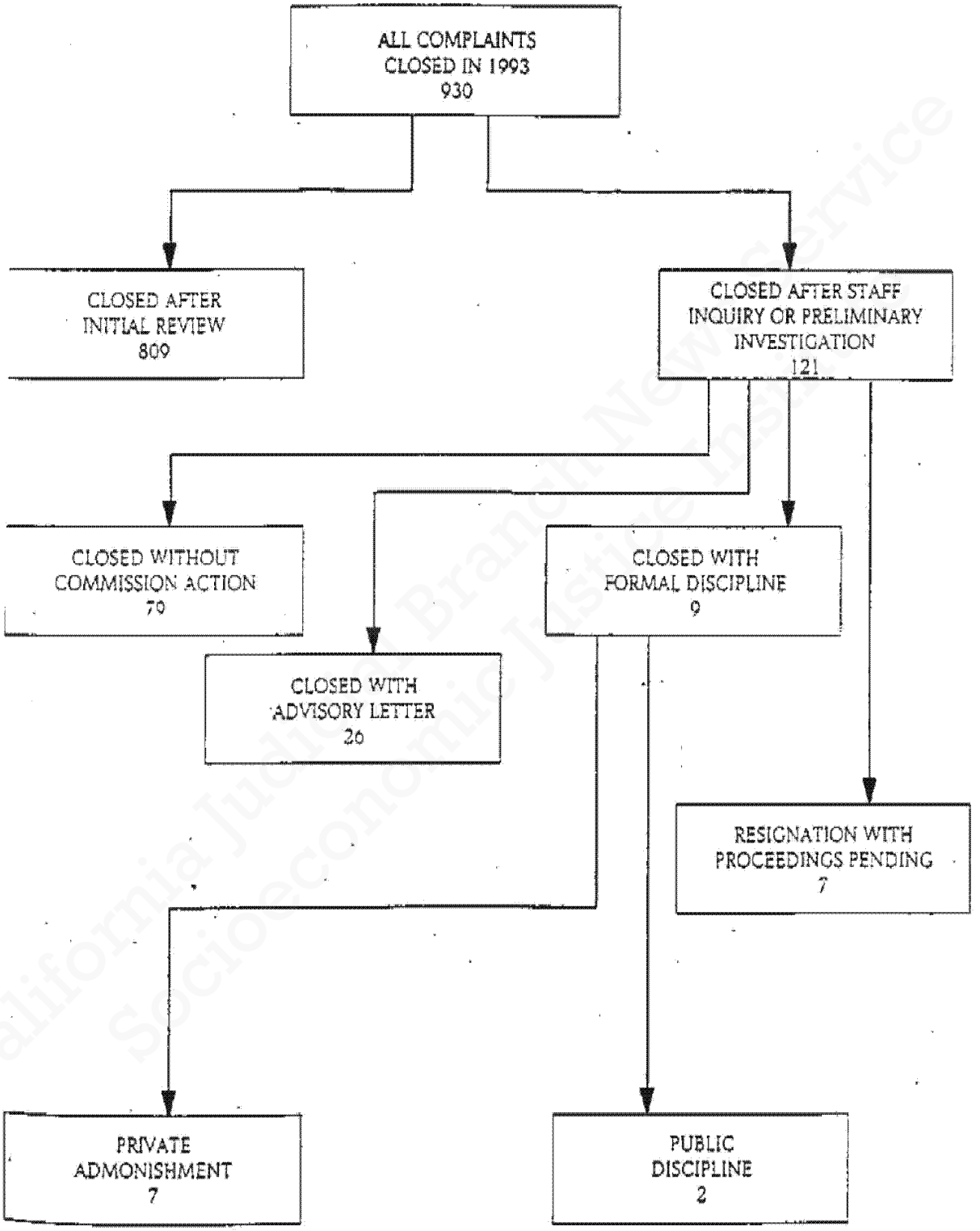


EXHIBIT M

State of California
Commission on Judicial Performance
101 Howard Street, Suite 300
San Francisco, CA 94105
(415) 904-3650
FAX (415) 904-3666

June 28, 1994

The Honorable Phillip Isenberg
Chair, Assembly Judiciary Committee
State Capitol, Room 2174
Sacramento, CA 95814

Re: Senate Constitutional Amendment 37 (Hart)
Assembly Judiciary Committee Hearing:
June 29, 1994

Dear Assemblymember Eisenberg:

The Commission on Judicial Performance continues to support the release of information during the judicial appointment process, as authorized by SCA 37. The bill now proposes, however, to eliminate private discipline and add a new option, the "public admonishment." The Commission offers the following information to your Committee in considering this significant change:

(1) At the Commission's inception in 1960, the only available sanction was removal. For years, the Commission was limited to one extreme remedy for distinctly different levels of misconduct. Additional disciplinary options have been added over time, enabling the Commission to address a range of misconduct. (Public censure was added in 1966; private admonishment in 1976; public reproval in 1988.)

(2) The private admonishment serves an important function: to discipline efficiently for conduct that is improper but not egregiously so. The apparent intent behind its proposed elimination -- to guard against overuse of private discipline -- appears met by SCA 44 (Alquist) and ACA 46 (Brown). These bills call for major changes, including a majority of non-judge members and open hearings. The newly formed Commission should not be confined at the outset to public discipline, which inherently limits its flexibility. It deserves an opportunity to address the full range of potential misconduct with an appropriate range of disciplinary options. (Other disciplinary agencies, such as the State Bar, are authorized to impose private discipline. Thus, they can remedy minor matters without unduly burdening agency resources or efficiency.)

(3) Under the current system, public discipline includes public reprovals (which, under Article VI, section 18(f)(2), require the judge's consent) and public censure (imposed by the Supreme Court). It is not clear how the proposed "public admonishment" would fit into this structure and what new procedures (if any) would be required to invoke it.

The Commission appreciates your consideration of the foregoing.

Very truly yours,

Victoria B. Henley

VICTORIA B. HENLEY
Director-Chief Counsel

VBH:jm/20562.1

VIA FAX

cc: The Honorable Gary Hart
The Honorable Alfred E. Alquist
The Honorable Willie Brown
Membership, Assembly Judiciary Committee

EXHIBIT N

BILL ANALYSIS

SCA 37

Date of Hearing: August 11, 1994

ASSEMBLY COMMITTEE ON ELECTIONS, REAPPORTIONMENT
AND CONSTITUTIONAL AMENDMENTS

Diane Martinez, Chair

SCA 37 (Hart) - As Amended: July 2, 1994

SUBJECT

Commission on Judicial Performance: duties

DIGEST

2/3 vote required. Fiscal Committee: yes.

Under existing law the California Constitution specifies the duties of the Commission on Judicial Performance and authorizes the commission to šprivately admonish a judge found to have engaged in an improper action or a šdereliction of duty, as specified. Under existing law, if the commission šdetermines that formal proceedings should be instituted, it may issue a špublic reproval with the consent of the judge for conduct warranting šdiscipline.

This bill:

1) Would revise the former provision to authorize the commission to publicly admonish a judge found to have engaged in an improper action or a dereliction of duty.

2) Would limit the jurisdiction of legal proceedings brought against the commission by a respondent judge to the Supreme Court, and would make all members and staff of the commission, as specified, absolutely immune from civil liability for all conduct in the course of their official duties.

3) Would prohibit civil actions or adverse employment acts taken against a person by an employer based on statements made to the commission.

4) Would require the commission, upon request, to provide the Governor, the Commission on Judicial Appointments, and the President of the United States with the text of any public or private admonishment, as specified, advisory letter, or other disciplinary action together with any information the commission deems necessary to a full understanding of its action, respecting applicants for appointment to state or federal judicial office, respectively.

5) Would provide that this information shall remain confidential and privileged.

- continued -

FISCAL EFFECT

Unknown. This bill will be referred to the Assembly Committee on Ways and Means.

COMMENTS

1) Author's Statement. The author is the sponsor of SCA 37, which is š designed to do two things:

a) Eliminate the Commission's authority to admonish judges. According to the Commission, 121 private admonishments have been issued by the Commission since the authority to do so was granted the Commission in 1976. The Commission issued the following private admonishments for conduct in 1973:

* The judge took extended lunch hours and, upon his return, exhibited signs of alcohol consumption. His post-lunch courtroom performance deteriorated.

* The appeared to "fix" a ticket he received from a police agency. He used official stationery to "exempt" a vehicle from a parking ordinance. He impeded appellate review of a case by refusing to sign an order for a transcript. He made rude remarks and engaged in other intemperate behavior.

* The judge transferred a DUI case of a friend to his court. In a separate matter, he tried the DUI case of his clerk.

* The judge had an attorney taken into custody, without explanation, a hearing, or order, all in violation of law, for seeking clarification of an order. The attorney was released after 4 hours and an apology. In another case, the judge reduced a witness to tears by repeatedly and rudely interrupting her testimony.

* The judge jailed a litigant for contempt without a hearing, findings, or order. The hearing was conducted 2 days later.

* The judge avoided official duties by transferring cases out of his or her department and routinely granting extended continuances. The judge routinely and improperly intervened in personnel matters, which were the responsibility of the court administrator. The judge took punitive action against political adversaries. The judge used court personnel to perform personal errands.

* A presiding judge failed to respond to citizen complaints about a court commissioner. An advisory letter was sent. Upon a subsequent, similar failure, a private admonishment was issued, to which the judge expressed indifference.

The author argues that the conduct stated above, and other conduct which the Commission routinely issues private admonishments, warrants public discipline. Thus, he proposes that the Commission's authority to issue private admonishments be removed.

- continued -

SCA 37

b) Permit appointing officials and entities to obtain relevant

information relating to an applicant (or nominee) for judicial office.

The author suggests that the need for this legislation is self-evident. If Commission discipline activity is predominately private, appointing authorities must have access to such information before momentous and uninformed decisions are made.

2) The Judicial Council of CA and the Commission on Judicial Performance (CJP) supports the original intent of SCA 37. However, both have expressed concerns regarding the elimination of private admonishment. CJP contends that private admonishment is a useful tool that is available to the Commission. For years, the Commission was limited to one extreme remedy for distinctly different levels of misconduct. Additional disciplinary options have been added over time, allowing the Commission to address a range of misconduct. The private admonishment serves an important function: to discipline efficiently for conduct that is improper but not egregiously so. Although public admonishment may serve the interest of the public, it removes from the Commission the availability to discipline between the different types of conduct.

3) There are two similar measures, ACA 46 (W. Brown) and SCA 44 (Alquist)
š which retain the form of private admonishment, but calls for other major changes which include a majority of non-judge members and open hearings.
CJP states that the newly formed Commission should not be confined at
š the outset to public discipline, which would limit its flexibility. It deserves an opportunity to address the full range of potential misconduct with an appropriate range of disciplinary options.

4) Should the Commission's Authority to privately admonish judges be
š removed and replaced with the authority to publicly admonish judges?

5) Under the current system, public discipline includes public reprovals. How would the proposed public admonishment fit into this structure and what procedures would be required to invoke it?

SUPPORT

California Common Cause
California Newspaper Publishers Association

OPPOSITION

None

- continued -

EXHIBIT O

SENATE COMMITTEE ON
CONSTITUTIONAL AMENDMENTS

ACA 46
Hearing Date: 8/10/94

Senator John Lewis, Chairman

COMMITTEE ANALYSIS

ACA 46 (W.Brown) as amended 8/9/94

SUBJECT: Commission on Judicial Performance

BACKGROUND:

The Commission on Judicial Performance (CJP) was established in 1960. Composed of nine members, five of whom are judges, the CJP investigates charges of willful misconduct in office, persistent failure or inability to perform the duties of a judge, habitual intemperance in the use of intoxicants or drugs, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or other improper actions or derelictions of duty. In conjunction with the California Supreme Court, the commission plays a role in cautioning and disciplining judges.

In recent years the CJP has been criticized for not being tough enough in disciplining judges, allegedly because judges comprise a dominant majority on the commission. For example, no judge has been removed or publicly censured by the CJP since 1988. Another principal criticism is that the commission operates under too broad a veil of confidentiality, denying the public knowledge of a judge's disciplinary record.

ACA 46 is a broad reform measure which seeks significant changes in how the CJP is composed, its authority and responsibilities.

KEY ISSUES:

1. **Composition & Terms of Office**

The California Constitution specifies the membership, terms of office, and appointing powers relative to composition of the Commission on Judicial Performance.

The CJP currently consists of 9 members -- all of whom are limited to a maximum of two 4-year terms.

5 judges -2 appeals court -2 superior court -1 municipal court	App'ted by Supreme Court
2 members, CA State Bar	App'ted by Supreme Court
2 public members	App'ted by Governor & confirmed by Senate majority

- **THIS BILL:**

would change the membership of the commission by creating a majority of public members. Proponents argue that a majority public membership prevents judges from having a controlling interest. This includes potential voting blocks like the lawyers and judges. It also presents a superior perception of fairness and independence while retaining the knowledge and necessary contributions of judges and lawyers. Since most of the CJP's cases involve ethical violations rather than technical legal issues, an attorney background is not necessary to determine whether or not a judge should be disciplined. The new membership would be:

3 judges -1 appeal court -1 superior court -1 municipal court	App'ted by Supreme Court
2 members, CA State Bar (1 from private practice, & 1 from either a D.A.'s or public defender's office)	App'ted by state bar
6 citizens	
-2 each	App'ted by Governor
-2 each	App'ted by Senate Rules
-2 each	App'ted by Assembly Speaker

Members of the CJP are limited to two 4-year terms or 10 years total service if originally appointed to fill a vacancy. Positions will have staggered terms.

2. **Removal from Office**

The Constitution provides that the California Supreme Court, on recommendation of the CJP or on its own motion, **may** suspend a judge, without salary, if the judge pleads or is found guilty of a felony. If the felony conviction becomes final, the judge **shall** be formally removed from office by the Supreme Court.

- THIS BILL:

provides that, subject to review by the Supreme Court, the CJP **shall** suspend, without salary, a judge who pleads or is found guilty of a felony. If the felony conviction becomes final, the judge **shall** be formally removed from office by the CJP.

3. **Retiring or Censuring**

Under existing law the Supreme Court -- on recommendation from the CJP -- may (1) retire a judge for a permanent disability which seriously interferes with the judge's duties or (2) censure a judge for misconduct in office.

- **THIS BILL:**

places in the commission's hands the power to retire or censure a current or former judge, subject to review in the Supreme Court. (If the judge in question is a Supreme Court justice, then the review will be by seven appeals court judges drawn by lot.)

The bill adds "violations of the Code of Judicial Ethics" to the list of actions for which a judge may be censured.

The bill also allows public admonishment or censure of a judge or former judge for actions occurring up to 6 years prior to start of the judge's current term or end of the judge's last term.

This bill provides that the Supreme Court has 120 days to review decisions to retire or censure, otherwise the CJP's decision remains in effect. The review can be generated by the Supreme Court itself or upon petition by the judge or former judge who was the subject of the CJP decision.

This bill provides that a judge is disqualified from acting as a judge, without loss of salary, when there is a petition pending to the Supreme Court to review a commission decision to remove or retire a judge.

4. **Bar from Future Assignments**

THIS BILL provides that the CJP may bar a former judge -- who has been censured -- from receiving assignments, appointments, or references of work from any California state court.

5. **Disbarment**

The Constitution provides that a judge -- who is removed from office -- is suspended from practicing law in California until a court determines otherwise.

- **THIS BILL:**

would allow the State Bar to determine whether a removed judge shall be disbarred unless the Supreme Court has already made that determination. The State Bar may institute attorney disciplinary proceedings against any judge who retires or resigns from office with judicial disciplinary charges pending.

6. **Private Admonishments & Confidentiality**

The Constitution currently provides that the CJP may privately admonish a judge who has engaged in an improper action or dereliction of duty. Under current practices, the CJP rarely makes any of its cautionary or disciplinary action public.

- **THIS BILL:**

would still allow the CJP to privately admonish a judge, relying for fairness on the new composition of the CJP.

This bill would also make public all papers and proceedings once the CJP takes formal action. The papers and proceedings are to be public to the same extent that criminal proceedings would be public in court.

* The Attorney General's Office, which acts as the examiner in cases before the CJP, agrees that the commission hearings should be opened -- after an initial confidential investigatory stage to weed our groundless or unsupported allegations. The AG's Office cites three general reasons for supporting a more open process:

a. The AG's Office asserts that they spend as many attorney hours on confidentiality issues as on substantive questions of judicial misconduct and preparation for formal hearing.

b. Completeness openness during formal proceedings would help better protect complaining witness from harassment or retaliation by the accused judge. Under the current system judges find out -- shortly after proceedings begin -- who the witnesses are. The witnesses, however, are unable to discover what has happened to their complaint, who other witnesses are, what the judge's response is, etc.

c. An open process would better lead to more accurate and complete fact-finding than the currently closed process.

7. Immunity & Legal Proceedings Brought Against the Commission

- **THIS BILL** provides that:

  o the commission, its members, staff and investigators have absolute immunity from suit for all official conduct;

  o the Supreme Court has jurisdiction in any legal proceeding brought against the CJP by a judge who is a respondent in a commission ruling. The Supreme Court has 60 days to rule. Should the Supreme Court fail to render a ruling within that timeframe, the prior determination by the CJP shall be binding.

8. Rules for the Commission's Formal Proceedings.

Under current law, the CJP's formal proceedings are governed by the California Rules of Court.

THIS BILL provides that the CJP shall make the rules for investigation of judges and for formal proceedings against judges.

9. Miscellaneous.

THIS BILL also provides that:

- Commissioners shall serve no more than two 4-year terms, nor more than a total of ten years if initially appointed to fill a vacancy.

- Positions will be staggered.

- The commission may disqualify a judge from acting as a judge, without loss of salary, upon notice of formal proceedings charging the judge with misconduct.

- The commission make offer explanatory statements for its actions or decisions to the public at any time.

- No civil action or adverse employment action may be directed against a person for their statements to the commission.

- The commission's budget shall be separated from the budget of any other state agency or court.

- The California Supreme Court has original jurisdiction in any civil action or legal proceeding brought against the CJP by a judge who is a respondent in a commission proceeding.

VOTE: 2/3 **APPROP**: no **FISC COMM**: yes

SUPPORT:

None received.

OPPOSITION:

None received.

PRIOR ACTION:

Senate Judiciary:	Scheduled for hearing on 8/9/94
Assembly 3rd Reading:	Pass, 78-0 (7/2/94)
Assembly Ways & Means:	Pass, 21-0 (6/29/94)
Assembly Judiciary:	Pass, 10-0 (6/15/94)

EXHIBIT P

CONCURRENCE IN SENATE AMENDMENTS

ACA 46 (W. Brown) - As Amended: August 23, 1994

ASSEMBLY VOTE 78-0 (July 2, 1994) SENATE VOTE 29-1 (August 24, 1994)

Original Committee Reference: JUD.

DIGEST

2/3 vote required.

As passed by the Assembly, this bill:

1) Created an 11-member CJP comprised of the following members:

   - One appellate court justice, appointed by the Supreme Court.
   - One superior court judge, appointed by the Supreme Court.
   - One municipal court judge, appointed by the Supreme Court.
   - Two lawyers appointed by the Board of Governors of the State Bar.
   - Six citizens, two each appointed by the governor, Speaker of the Assembly, and Senate Rules Committee.

2) In addition, provided the following:

   - A judge "may" be suspended from office, without loss of salary, upon notice by CJP of formal proceedings against the judge for "judicial misconduct."
   - CJP shall suspend a judge for the reasons that the Supreme Court may currently suspend a judge as described above.

3) Authorized CJP to impose discipline on judges with a discretionary petition for review to the Supreme Court and CJP to censure or privately admonish former judges.

4) Repealed existing provisions, as described above, and made public all formal CJP proceedings.

5) Conferred regulatory authority directly on CJP.

6) Also enacted the following changes:

   - Granted exclusive jurisdiction to the Supreme Court to hear civil actions brought by judges who are the subject of CJP discipline proceedings.
   - Granted an absolute immunity to CJP members and staff for all conduct in the course of their "official duties."

- continued -

The Senate amendments:

1) Delete the lawyer appointments by the Board of Governors and grant the same appointments to the Governor.

2) Forbid removed judges from accepting further judicial assignments or references and authorize the same punishment for censured judges who retire.

3) Give the Supreme Court the authority to adopt the Code of Judicial Ethics.

4) Incorporate provisions of SCA 37 (Hart), pending in the Assembly, relating to the provision of otherwise confidential information to the President and Governor.

FISCAL EFFECT

Minor costs

COMMENTS

None

FN 012341

EXHIBIT Q

California

SUPPLEMENTAL BALLOT PAMPHLET

This supplemental ballot pamphlet is sent to you separately from the pamphlet containing Propositions 181 through 188 and the statewide candidate statements because the measures contained herein qualified for the ballot after the printing deadline for the principal ballot pamphlet. Please check to be sure you receive two ballot pamphlets for the November 8, 1994 General Election. In order to distinguish between the two, this supplemental pamphlet is printed in blue ink. If you do not receive your main pamphlet, contact your county elections official or call 1-800-345-VOTE.

General Election

NOVEMBER 8, 1994

CERTIFICATE OF CORRECTNESS

I, Tony Miller, Acting Secretary of State of the State of California, do hereby certify that the measures included herein will be submitted to the electors of the State of California at the GENERAL ELECTION to be held throughout the State on November 8, 1994, and that this pamphlet has been correctly prepared in accordance with law.

Witness my hand and the Great Seal of the State in Sacramento, California, this 22nd day of September 1994.

Tony Miller

TONY MILLER
Acting Secretary of State

Secretary of State

SACRAMENTO 95814

Dear Californians:

This is the supplemental ballot pamphlet, containing information about Propositions 189 through 191 for the November 8, 1994 General Election. These measures were placed on the ballot by the Legislature and the Governor after the printing deadline for the principal ballot pamphlet (which contains information about Propositions 181 through 188 and candidate statements).

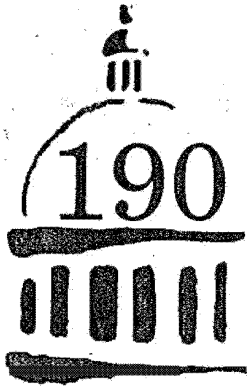
All of those involved in the preparation of this pamphlet are constantly looking for ways to make the California Ballot Pamphlet better. Many suggestions made by voters have been put to use this year. New features this election include expanded statements from candidates for statewide office, an explanation of the job duties of each office, and an explanation of the electoral procedure for justices of the Supreme Court and courts of appeal. This information is contained in the principal ballot pamphlet. We hope these features prove useful and informative as you make your choices in this general election. We invite you to send your comments, suggestions, and new ideas for possible inclusion in future ballot pamphlets. Send your ideas to California Ballot Pamphlet, 1230 J Street, Sacramento, California 95814.

Please vote on November 8!

CONTENTS

	SUMMARY	WHAT YOUR VOTE MEANS	
		YES	NO
189 **BAIL. EXCEPTION. FELONY SEXUAL ASSAULT.** Legislative Constitutional Amendment Put on the Ballot by the Legislature	Amends State Constitution to add felony sexual assault to crimes excepted from right to bail. Other exceptions already include capital offenses and felonies involving violence or threats of bodily harm to others. Fiscal impact: Unknown, but probably not significant, costs to local governments; unknown, but probably not significant, savings to the state.	A Yes vote on this measure means: The circumstances under which courts could deny bail would be broadened to include individuals accused of committing any felony "sexual assault."	A No vote on this measure means: The court could deny bail to individuals accused of certain types of sexual offenses involving violence and serious bodily harm.
190 **COMMISSION ON JUDICIAL PERFORMANCE.** Legislative Constitutional Amendment Put on the Ballot by the Legislature	Transfers disciplinary authority over judges from California Supreme Court to Commission on Judicial Performance; provides for public proceedings; specifies circumstances warranting removal, retirement, suspension, admonishment, or censure of judges; increases Commission's citizen membership. Fiscal impact: Not likely to have a significant fiscal impact on the state.	A Yes vote on this measure means: A majority of the members of the Commission on Judicial Performance would be from the public; all formal charges and proceedings of the commission regarding misconduct by a judge would be open to the public.	A No vote on this measure means: A majority of the members of the Commission on Judicial Performance would be judges; only certain matters before the commission regarding misconduct by a judge would be open to the public.
191 **JUSTICE COURTS.** Legislative Constitutional Amendment Put on the Ballot by the Legislature	Abolishes justice courts; incorporates their operations, judges, and personnel within municipal courts. Authorizes Legislature to provide for organization, jurisdiction of municipal courts and qualification and compensation of municipal court judges, staff. Fiscal impact: Probably no significant fiscal impact on state or local governments.	A Yes vote on this measure means: Justice courts would be eliminated and these courts would become municipal courts; all justice court judges would become full-time municipal court judges.	A No vote on this measure means: Justice courts would continue to serve portions of counties with 40,000 or fewer residents. Justice court judges would continue to divide their time between their own courts and other trial courts.

ARGUMENTS		WHOM TO CONTACT FOR MORE INFORMATION	
PRO	CON	FOR	AGAINST
PROPOSITION 189 WOULD ALLOW JUDGES TO DENY BAIL TO SEXUAL PREDATORS. When an accused rapist or child molester has a record of previous convictions a judge should be able to keep him off the streets until the trial. PROTECT OUR COMMUNITIES! PROTECT OUR CHILDREN! VOTE YES ON 189!	Proposition 189 is unnecessary. Violent felons can be denied bail now. This is just election year pandering by politicians who want to look tough on crime. Unless the accused is a flight risk or has threatened someone specifically, bail should be granted. In America you are innocent until proven guilty.	Assemblyman Cruz M. Bustamante State Capitol, Room 4144 Sacramento, CA 95814 (916) 445-8514	Libertarian Party of California 1-800-637-1776
Proposition 190 will reform California's judicial discipline system, which is comprised of a majority of judges who discipline their peers in secret. Proposition 190 will open formal disciplinary proceedings against judges to the public and will change the membership of the commission so that the public is in the majority.	Voting NO on Proposition 190 will prevent political appointments from dominating the Commission on Judicial Performance, will retain the power to impose judicial discipline in the California Supreme Court, and provide the legislature more time to consider necessary changes in the disciplinary system for judges.	Speaker Willie L. Brown, Jr. Attention: Cary Rudman (916) 445-8077	Quentin L. Kopp 655 Montgomery Street, 16th Floor San Francisco, CA 94111
Voting Yes on 191 will streamline California's court structure and promote the equal administration of justice. Justice court judges have the same jurisdiction, qualifications, and workload as municipal court judges. Using two names wrongly implies that the brand of justice you get depends on the population of your county.	Proposition 191 goes too far. It does NOT simply eliminate justice courts. It would guarantee a job in newly-created municipal courts to every justice court judge and court employee—regardless of whether there are better qualified applicants or even a need for some of these former justice court employees.	Constance Dove or Richard S. Piedmonte California Judges Association 301 Howard Street, Suite 1040 San Francisco, CA 94105 (415) 495-1999	NOT PROVIDED



Commission on Judicial Performance. Legislative Constitutional Amendment.

Official Title and Summary Prepared by the Attorney General

COMMISSION ON JUDICIAL PERFORMANCE. LEGISLATIVE CONSTITUTIONAL AMENDMENT.

- Transfers authority to remove or discipline judges from California Supreme Court to Commission on Judicial Performance.
- Provides for public disciplinary proceedings against judges and former judges and specifies the circumstances warranting their removal, retirement, suspension, admonishment, or censure.
- Increases non-judicial citizen membership on the Commission.
- Specifies authority of Commission to discipline former judges.
- Provides immunities to persons employed by or making statements to the Commission.
- Specifies review processes for Commission determinations and requires the Supreme Court to issue Code of Judicial Ethics.

Summary of Legislative Analyst's Estimate of Net State and Local Fiscal Impact:

- Not likely to have a significant fiscal impact on the state.

Final Votes Cast by the Legislature on ACA 46 (Proposition 190)

Assembly:	Ayes 74	Senate:	Ayes 29
	Noes 1		Noes 1

Analysis by the Legislative Analyst

Background

Under the California Constitution, the Commission on Judicial Performance handles complaints against judges. The commission investigates charges of misconduct by a judge in office or failure or inability of a judge to perform his or her duties.

The commission is composed of nine members. The members include five judges, who are appointed by the California Supreme Court; two members of the State Bar of California, who are appointed by the State Bar's governing body; and two public members, who are appointed by the Governor and approved by the California Senate. Each member is appointed to a four-year term, and no member may serve more than two terms.

The commission receives complaints against judges each year (950 complaints in 1993). The complaints and investigations are handled on a confidential basis. For less serious cases of misconduct, the commission may privately reprimand a judge; the Supreme Court may review such a reprimand. The commission may also publicly reprimand a judge if the judge consents.

In other cases, the commission makes formal charges and a hearing is held. In 1993, nine cases (out of 950 complaints) proceeded to a hearing. The commission may recommend to the Supreme Court that a judge be censured, retired, or removed. Such actions may then be taken by the Supreme Court. Since 1961, the commission has made 32 recommendations to the Supreme Court to censure or remove a judge. The Court upheld the recommendations in 29 cases; one case is pending.

Proposal

This constitutional amendment changes the composition of the commission and makes a number of changes to the procedures for disciplining judges. Among its provisions, the measure increases the membership of the commission from nine to eleven members and increases the number of public members so that they are a majority on the commission. Specifically, the members would include three judges, who would be appointed by the Supreme Court; two members of the State Bar of California, who would be appointed by the Governor; and six public members (two representatives appointed by each of the following: the Governor, the Senate Rules Committee, and the Speaker of the Assembly).

The amendment provides that, when the commission begins formal proceedings against a judge, the charges and all subsequent papers and proceedings shall be open to the public. Also, this measure permits the commission, rather than the Supreme Court, to retire or remove a judge, or to censure a judge or former judge. Such actions could be reviewed by the Supreme Court. In a case against a Supreme Court Justice, a special panel of appellate court judges would review the case. The measure also permits the commission to publicly reprimand a judge without the judge's consent. The commission could disqualify a judge from performing his or her duties when the commission begins a formal proceeding that charges the judge with misconduct or disability. The commission also may bar a *former* judge who has been censured or removed from receiving a judicial appointment or assignment to serve any California state court.

The measure provides that persons who give statements to the commission are protected from civil lawsuits or adverse actions that may be taken against them by their employers as a result of their statements. Also, it protects commission members and employees against lawsuits that may be brought as a result of their work.

Finally, the amendment requires the commission to provide, upon request of the Governor of any state, the President of the United States, and the California Commission on Judicial Appointments, confidential information on disciplinary actions taken against a judge who is an applicant for another judicial appointment.

Fiscal Effect

This measure is not likely to have a significant fiscal impact on the state because its changes are largely procedural in nature.

For the text of Proposition 190 see page 18

190 Commission on Judicial Performance. Legislative Constitutional Amendment.

Argument in Favor of Proposition 190

THE TIME HAS COME TO REFORM CALIFORNIA'S JUDICIAL DISCIPLINE SYSTEM. VOTE "YES" ON PROPOSITION 190.

In 1960, California created the first judicial discipline commission in the United States. It was a model for all 50 states and the District of Columbia. But now California has fallen behind the rest of the nation. A system that was once innovative has become antiquated. The California commission, which is made up of a majority of judges, has held *only one public hearing in the last six years.* Clearly, it is inappropriate to have judges disciplining their peers in a secret environment.

PROPOSITION 190 ENSURES PUBLIC CONTROL OF JUDICIAL DISCIPLINE.

The California commission is currently composed of five judges, two lawyers and two public citizens and there is no requirement that formal disciplinary proceedings be open to the public. Proposition 190 would eliminate judicial domination of the commission in favor of a public majority. Specifically, under Proposition 190, the Commission on Judicial Performance would be made up of three judges, two attorneys and six public members. A PUBLIC MAJORITY WILL ENSURE A FAIR AND FIRM SYSTEM OF JUDICIAL DISCIPLINE.

THE PUBLIC HAS A RIGHT TO KNOW WHEN JUDGES ARE CHARGED WITH MISCONDUCT.

Under Proposition 190, the commission would be required to open *all formal proceedings* against judges to the public. Currently, all hearings and commission documents, including the actual charges against the judge, are secret. WITHOUT KNOWLEDGE OF CHARGES OR PROCEEDINGS, THE PUBLIC CANNOT HAVE CONFIDENCE IN THE JUDICIAL SYSTEM. Just as we require criminal proceedings and attorney discipline proceedings to be open, we should also hold judges to the same standard where serious misconduct is at issue.

PROPOSITION 190 STOPS JUDGES FROM ESCAPING DISCIPLINE BY RETIRING OR RESIGNING WITH CHARGES OF MISCONDUCT PENDING AGAINST THEM.

Proposition 190 will prevent judges charged with misconduct from avoiding discipline by retiring or resigning with charges pending. Judges should be held accountable for improper conduct on the bench. Proposition 190 allows the commission to publicly discipline former judges for conduct which occurred while they held judicial office. This will provide the public with important information about judges who resign with charges pending and then go to work in the private sector as arbitrators or private judges.

Proposition 190 is an important and timely reform measure. Judges are public servants and play a critical role in our society. The public must have confidence and trust in those holding judicial office. PROPOSITION 190 PLACES JUDICIAL DISCIPLINE IN THE HANDS OF A BROAD PANEL OF PUBLIC CITIZENS, JUDGES AND ATTORNEYS AND OPENS ALL FORMAL PROCEEDINGS TO THE PUBLIC. JUST AS OTHER STATES HAVE DONE IN RECENT YEARS, *CALIFORNIA MUST ELIMINATE SECRECY AND ENSURE INTEGRITY IN THE DISCIPLINARY PROCESS.*

VOTE "YES" ON PROPOSITION 190.

WILLIE L. BROWN, JR.
Speaker, California State Assembly

ALFRED E. ALQUIST
California State Senator

MARC POCHE
Associate Justice, California Court of Appeal

Rebuttal to Argument in Favor of Proposition 190

There's no question but that the current system of hearings by the California Commission on Judicial Performance should be changed. There's no argument about that. Creating a requirement of open, public hearings respecting the relatively few formal complaints against California judges, however, is far different from turning the Commission into a politically-appointed body. That's the vice of Proposition 190. Instead simply of changing the Constitution to require open, public hearings of charges against judges (which are relatively few compared to the 2,000 judges in California) Speaker Willie Brown has written a measure which transcends that elemental principle. While it may seem difficult to divorce the desired constitutional revision in the nature of the hearings on judicial discipline from the selection process for the Commission, Californians should realize it is injurious to our separation of powers form of government and the independence of the judicial branch of government to adopt Proposition 190. Rather, as the American Bar Association has stated, the members of the Commission on Judicial Performance should be comprised equally of judges, public members and lawyers in order to balance viewpoints and distribute the power of appointment among the branches of government. Appointments should reflect the diversity of California's population and not be made on the basis of politics or ideology. The Commission's independence must be protected from the appearance of outside interference. We should reject Proposition 190 and re-write it with the public hearing requirement and equal power of appointment among the branches of state government.

QUENTIN L. KOPP
State Senator
(Independent-San Francisco/San Mateo)

JUDGE JOSEPH A. WAPNER
Retired Judge, Los Angeles Superior Court

ARLEIGH WOODS
Presiding Justice, California Court of Appeal

Commission on Judicial Performance. Legislative Constitutional Amendment. 190

Argument Against Proposition 190

DON'T BE FOOLED! This alleged attempt to regulate the judiciary is really an attempt to politicize the Commission on Judicial Performance. This power grab changes the structure of the Commission by allowing politicians to appoint a majority of its members. Eight out of the 11 members would be appointed by politicians, giving them a degree of power over the judicial branch unknown anywhere else in the United States.

The public needs a judicial disciplinary system uninfluenced by partisan politics. Proceedings before the Commission should be opened to the public, but this proposal threatens the independence of the Commission and will divert its focus to the expectations of the appointing parties.

There is a better alternative, which the Legislature ignored. The American Bar Association has just completed a five year study conducted by prominent citizens, judges and lawyers and adopted its first national model for judicial disciplinary proceedings. The model recommends a commission with equal numbers of citizens, judges, and lawyers appointed by the Governor, State Supreme Court and the State Bar. This measure, however, takes the commendable, worthwhile goal of producing an accountable, open system of judicial discipline and turns it into a dangerous, irresponsible attack on the judicial branch of government. Its proposed commission has virtually unchecked power; its so-called "public member majority" in reality will be a majority of people with close political ties to the Governor, the Assembly Speaker and State Senate leadership.

The framers of our Constitution knew that an independent judiciary is one of the greatest safeguards of liberty. While California needs a strong, effective Commission on Judicial Performance, it does not need and can't afford, an ill-conceived, poorly drafted constitutional amendment which gives a handful of insiders unprecedented control over judicial conduct.

The proposal also removes disciplinary powers from the California Supreme Court and transfers such powers to the politicized Commission. Such shift raises serious due process issues and will result in costly and needless litigation at taxpayer expense.

Vote No! California deserves a judiciary that is accountable and independent. Send a message to the Legislature to keep partisan politics out of the judicial disciplinary process. Send them back to the drawing board to examine the work done by leading national authorities and give California a system which will place us in the forefront of judicial discipline.

QUENTIN L. KOPP
State Senator
(I-San Francisco/San Mateo)

JUDGE JOSEPH A. WAPNER
Retired Judge, Los Angeles Superior Court

Rebuttal to Argument Against Proposition 190

The opponents claim that Proposition 190 will create a politicized body. TWENTY-FOUR STATES HAVE CREATED COMMISSIONS WITH EQUAL OR GREATER PUBLIC MEMBERSHIP ON THEIR JUDICIAL DISCIPLINARY COMMISSIONS. These commissions represent a variety of appointing powers. Just as with Proposition 190, these states recognized that a broad base of constitutional appointing powers does not sacrifice the integrity of the Judiciary.

IN FACT, NO STATE HAS ADOPTED THE ABA MODEL. Instead, a number of states have successfully changed to a public majority membership after having commissions dominated by judges. The drafters of the ABA model specifically refused to recommend that disciplinary commissions have a majority of public members because they thought the issues would be too complicated. Everyday, jurors are asked to decide serious legal issues, yet the lawyers and judges who drafted the ABA proposal feared the public would not understand when a judge has acted inappropriately.

PROPOSITION 190 WILL CREATE A MORE INDEPENDENT COMMISSION BY MAKING IT AN INSTITUTION SEPARATE FROM ANY ONE INFLUENCING BODY. Proposition 190 specifically provides for a broad base of appointing powers—the Supreme Court, the Governor, and the Legislature—so that no one branch of government can dominate this important body.

Proposition 190 protects the public by providing for their participation. It is good, sound public policy.

VOTE "YES" ON PROPOSITION 190.

WILLIE L. BROWN, JR.
Speaker, California State Assembly

ALFRED E. ALQUIST
California State Senator

TERRY B. O'ROURKE
Judge, San Diego Superior Court

Proposition 189: Text of Proposed Law

This amendment proposed by Assembly Constitutional Amendment 37 (Statutes of 1994, Resolution Chapter 95) expressly amends the Constitution by amending a section thereof; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO ARTICLE I, SECTION 12

SEC. 12. A person shall be released on bail by sufficient sureties, except for:

(a) Capital crimes when the facts are evident or the presumption great;

(b) Felony offenses involving acts of violence on another person, *or felony sexual assault offenses on another person,* when the facts are evident or the presumption great and the court finds based upon clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to others; or

(c) Felony offenses when the facts are evident or the presumption great and the court finds based on clear and convincing evidence that the person has threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released.

Excessive bail may not be required. In fixing the amount of bail, the court shall take into consideration the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case.

A person may be released on his or her own recognizance in the court's discretion.

Proposition 190: Text of Proposed Law

This amendment proposed by Assembly Constitutional Amendment 46 (Statutes of 1994, Resolution Chapter 111) expressly amends the Constitution by adding a section thereto and amending sections thereof; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENTS TO ARTICLE VI

First—That Section 8 of Article VI thereof is amended to read:

SEC. 8. (a) The Commission on Judicial Performance consists of ~~2 judges of courts of appeal, 2 judges of superior courts~~ *one judge of a court of appeal, one judge of a superior court,* and one judge of a municipal court, each appointed by the Supreme Court; 2 members of the State Bar of California who have practiced law in this State for 10 years, *each* appointed by ~~its governing body~~ *the Governor*; and 2 *6* citizens who are not judges, retired judges, or members of the State Bar of California, ~~appointed by the Governor and approved by the Senate, a majority of the membership concurring~~ *2 of whom shall be appointed by the Governor, 2 by the Senate Committee on Rules, and 2 by the Speaker of the Assembly*. Except as provided in subdivision (b), all terms are *for* 4 years. No member shall serve more than 2 4-year terms, *or for more than a total of 10 years if appointed to fill a vacancy.*

Commission membership terminates if a member ceases to hold the position that qualified the member for appointment. A vacancy shall be filled by the appointing power for the remainder of the term. A member whose term has expired may continue to serve until the vacancy has been filled by the appointing power. *Appointing powers may appoint members who are already serving on the commission prior to March 1, 1995, to a single 2-year term, but may not appoint them to an additional term thereafter.*

(b) To create staggered terms among the members of the Commission on Judicial Performance, the following members shall be appointed, as follows:

~~(1) The court of appeal member appointed to immediately succeed the term that expires on November 8, 1988, shall serve a 2-year term.~~

~~(2) Of the State Bar members appointed to immediately succeed terms that expire on December 31, 1988, one member shall serve for a 2-year term.~~

(1) Two members appointed by the Supreme Court to a term commencing March 1, 1995, shall each serve a term of 2 years and may be reappointed to one full term.

(2) One attorney appointed by the Governor to a term commencing March 1, 1995, shall serve a term of 2 years and may be reappointed to one full term.

(3) One citizen member appointed by the Governor to a term commencing March 1, 1995, shall serve a term of 2 years and may be reappointed to one full term.

(4) One member appointed by the Senate Committee on Rules to a term commencing March 1, 1995, shall serve a term of 2 years and may be reappointed to one full term.

(5) One member appointed by the Speaker of the Assembly to a term commencing March 1, 1995, shall serve a term of 2 years and may be reappointed to one full term.

(6) All other members shall be appointed to full 4-year terms commencing March 1, 1995.

Second—That Section 18 of Article VI thereof is amended to read:

SEC. 18. (a) A judge is disqualified from acting as a judge, without loss of salary, while there is pending (1) an indictment or an information charging the judge in the United States with a crime punishable as a felony under California or federal law, or (2) a ~~recommendation~~ *petition* to the Supreme Court *to review a determination* by the Commission on Judicial Performance ~~for removal or retirement of the~~ *to remove or retire a* judge.

(b) ~~On recommendation of the~~ *The Commission on Judicial Performance may disqualify a judge from acting as a judge, without loss of salary, upon notice of formal proceedings by the commission charging the judge with judicial misconduct or disability.*

(c) The Commission on Judicial Performance ~~or on its own motion, the Supreme Court may~~ *shall* suspend a judge from office without salary when in the United

States the judge pleads guilty or no contest or is found guilty of a crime punishable as a felony under California or federal law or of any other crime that involves moral turpitude under that law. If the conviction is reversed, suspension terminates, and the judge shall be paid the salary for the judicial office held by the judge for the period of suspension. If the judge is suspended and the conviction becomes final, the ~~Supreme Court~~ *Commission on Judicial Performance* shall remove the judge from office.

~~(c) On recommendation of~~

(d) Except as provided in subdivision (f), the Commission on Judicial Performance ~~the Supreme Court~~ may (1) retire a judge for disability that seriously interferes with the performance of the judge's duties and is or is likely to become permanent, ~~and~~ *or* (2) censure *a judge or former judge* or remove a judge for action occurring not more than 6 years prior to the commencement of the judge's current term *or of the former judge's last term* that constitutes ~~wilful~~ *willful* misconduct in office, persistent failure or inability to perform the judge's duties, habitual intemperance in the use of intoxicants or drugs, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute. ~~The Commission on Judicial Performance may~~, *or (3) publicly or* privately admonish a judge *or former judge* found to have engaged in an improper action or dereliction of duty~~, subject to review in the Supreme Court in the manner provided for review of causes decided by a court of appeal~~. *The commission may also bar a former judge who has been censured from receiving an assignment, appointment, or reference of work from any California state court. Upon petition by the judge or former judge, the Supreme Court may, in its discretion, grant review of a determination by the commission to retire, remove, censure, admonish, or disqualify pursuant to subdivision (b) a judge or former judge. When the Supreme Court reviews a determination of the commission, it may make an independent review of the record. If the Supreme Court has not acted within 120 days after granting the petition, the decision of the commission shall be final.*

~~(d)~~

(e) A judge retired by the ~~Supreme Court~~ *commission* shall be considered to have retired voluntarily. A judge removed by the ~~Supreme Court~~ *commission* is ineligible for judicial office, *including receiving an assignment, appointment, or reference of work from any California state court,* and pending further order of the court is suspended from practicing law in this State. *The State Bar may institute appropriate attorney disciplinary proceedings against any judge who retires or resigns from office with judicial disciplinary charges pending.*

~~(e)~~

(f) A ~~recommendation of~~ *determination by* the Commission on Judicial Performance ~~for the~~ *to admonish or* censure ~~, removal or retirement of~~ *a judge or former judge of the Supreme Court or remove or retire* a judge of the Supreme Court shall be ~~determined~~ *reviewed* by a tribunal of 7 court of appeal judges selected by lot.

~~(f) If, after conducting a preliminary investigation, the Commission on Judicial Performance by vote determines that formal proceedings should be instituted:~~

~~(1) The judge or judges charged may require that formal hearings be public, unless the Commission on Judicial Performance by vote finds good cause for confidential hearings.~~

~~(2) The Commission on Judicial Performance may, without further review in the Supreme Court, issue a public reproval with the consent of the judge for conduct warranting discipline. The public reproval shall include an enumeration of any and all formal charges brought against the judge which have not been dismissed by the commission.~~

~~(3) The Commission on Judicial Performance may in the pursuit of public confidence and the interests of justice, issue press statements or releases or, in the event charges involve moral turpitude, dishonesty, or corruption, open hearings to the public.~~

~~(g) The Commission on Judicial Performance may issue explanatory statements at any investigatory stage when the subject matter is generally known to the public.~~

~~(h) The Judicial Council shall make rules implementing this section and providing for confidentiality of proceedings.~~

(g) No court, except the Supreme Court, shall have jurisdiction in a civil action or other legal proceeding of any sort brought against the commission by a judge. Any request for injunctive relief or other provisional remedy shall be granted or denied within 90 days of the filing of the request for relief. A failure to comply with the time requirements of this section does not affect the validity of commission proceedings.

(h) Members of the commission, the commission staff, and the examiners and investigators employed by the commission shall be absolutely immune from suit for all conduct at any time in the course of their official duties. No civil action may be maintained against a person, or adverse employment action taken against a person, by any employer, public or private, based on statements presented by the person to the commission.

(i) The Commission on Judicial Performance shall make rules implementing this section, including, but not limited to, the following:

(1) The commission shall make rules for the investigation of judges. The commission may provide for the confidentiality of complaints to and investigations by the commission.

(2) The commission shall make rules for formal proceedings against judges when there is cause to believe there is a disability or wrongdoing within the meaning of subdivision (d).

(j) When the commission institutes formal proceedings, the notice of charges, the answer, and all subsequent papers and proceedings shall be open to the public for all formal proceedings instituted after February 28, 1995.

(k) The commission may make explanatory statements.

(l) The budget of the commission shall be separate from the budget of any other state agency or court.

(m) The Supreme Court shall make rules for the conduct of judges, both on and off the bench, and for judicial candidates in the conduct of their campaigns. These rules shall be referred to as the Code of Judicial Ethics.

Third—That Section 18.5 is added to Article VI thereof, to read:

SEC. 18.5. (a) Upon request, the Commission on Judicial Performance shall provide to the Governor of any State of the Union the text of any private admonishment, advisory letter, or other disciplinary action together with any information that the Commission on Judicial Performance deems necessary to a full understanding of the commission's action, with respect to any applicant whom the Governor of any State of the Union indicates is under consideration for any judicial appointment.

(b) Upon request, the Commission on Judicial Performance shall provide the President of the United States the text of any private admonishment, advisory letter, or other disciplinary action together with any information that the Commission on Judicial Performance deems necessary to a full understanding of the commission's action, with respect to any applicant whom the President indicates is under consideration for any federal judicial appointment.

(c) Upon request, the Commission on Judicial Performance shall provide the Commission on Judicial Appointments the text of any private admonishment, advisory letter, or other disciplinary action together with any information that the Commission on Judicial Performance deems necessary to a full understanding of the commission action, with respect to any applicant whom the Commission on Judicial Appointments indicates is under consideration for any judicial appointment.

(d) All information released under this section shall remain confidential and privileged.

(e) Notwithstanding subdivision (d), any information released pursuant to this section shall also be provided to the applicant about whom the information was requested.

(f) "Private admonishment" refers to a disciplinary action against a judge by the Commission on Judicial Performance as authorized by subdivision (c) of Section 18 of Article VI, as amended November 8, 1988.

Fourth—That this measure shall become operative on March 1, 1995.

Proposition 191: Text of Proposed Law

This amendment proposed by Senate Constitutional Amendment 7 (Statutes of 1994, Resolution Chapter 113) expressly amends the Constitution by amending sections thereof; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENTS TO ARTICLE VI

First—That Section 1 of Article VI thereof is amended to read:

SEC. 1. The judicial power of this State is vested in the Supreme Court, courts of appeal, superior courts, *and* municipal courts ~~, and justice courts~~. All courts are courts of record.

Second—That Section 5 of Article VI thereof is amended to read:

SEC. 5. (a) Each county shall be divided into municipal court ~~and justice court~~ districts as provided by statute, but a city may not be divided into more than one district. Each municipal ~~and justice~~ court shall have one or more judges. *Each municipal court district shall have no fewer than 40,000 residents; provided that each county shall have at least one municipal court district. The number of residents shall be determined as provided by statute.*

(b) On the operative date of this subdivision, all existing justice courts shall become municipal courts, and the number, qualifications, and compensation of judges, officers, attachés, and employees shall continue until changed by the Legislature. Each judge of a part-time municipal court is deemed to have agreed to serve full time and shall be available for assignment by the Chief Justice for the balance of time necessary to comprise a full-time workload.

~~There shall be a municipal court in each district of more than 40,000 residents and a justice court in each district of 40,000 residents or less. The number of residents shall be ascertained as provided by statute.~~

(c) The Legislature shall provide for the organization and prescribe the jurisdiction of municipal ~~and justice~~ courts. It shall prescribe for each municipal court ~~and provide for each justice court~~ the number, qualifications, and compensation of judges, officers, and employees.

~~(b)~~

(d) Notwithstanding ~~the provisions of~~ subdivision (a), any city in San Diego County may be divided into more than one municipal court ~~or justice court~~ district if the Legislature determines that unusual geographic conditions warrant such division.

Third—That Section 6 of Article VI thereof is amended to read:

SEC. 6. The Judicial Council consists of the Chief Justice and one other judge of the Supreme Court, 3 judges of courts of appeal, 5 judges of superior courts, ~~3~~ *and 5* judges of municipal courts, ~~and 2 judges of justice courts,~~ each appointed by the Chief Justice for a 2-year term; 4 members of the State Bar appointed by its governing body for 2-year terms; and one member of each house of the Legislature appointed as provided by the house.

Council membership terminates if a member ceases to hold the position that qualified the member for appointment. A vacancy shall be filled by the appointing power for the remainder of the term.

The council may appoint an Administrative Director of the Courts, who serves at its pleasure and performs functions delegated by the council or the Chief Justice, other than adopting rules of court administration, practice and procedure.

To improve the administration of justice the council shall survey judicial business and make recommendations to the courts, make recommendations annually to the Governor and Legislature, adopt rules for court administration, practice and procedure, not inconsistent with statute, and perform other functions prescribed by statute.

The Chief Justice shall seek to expedite judicial business and to equalize the work of judges. The Chief Justice may provide for the assignment of any judge to

EXHIBIT R

1994

Voter Information Guide for 1994, General Election

California

SUPPLEMENTAL BALLOT PAMPHLET

This supplemental ballot pamphlet is sent to you separately from the pamphlet containing Propositions 181 through 188 and the statewide candidate statements because the measures contained herein qualified for the ballot after the printing deadline for the principal ballot pamphlet. Please check to be sure you receive two ballot pamphlets for the November 8, 1994 General Election. In order to distinguish between the two, this supplemental pamphlet is printed in blue ink. If you do not receive your main pamphlet, contact your county elections official or call 1-800-345-VOTE.

General Election

NOVEMBER 8, 1994

CERTIFICATE OF CORRECTNESS

I, Tony Miller, Acting Secretary of State of the State of California, do hereby certify that the measures included herein will be submitted to the electors of the State of California at the GENERAL ELECTION to be held throughout the State on November 8, 1994, and that this pamphlet has been correctly prepared in accordance with law.

Witness my hand and the Great Seal of the State in Sacramento, California, this 22nd day of September 1994.

Tony Miller

TONY MILLER
Acting Secretary of State

Secretary of State

SACRAMENTO 95814

Dear Californians:

This is the supplemental ballot pamphlet, containing information about Propositions 189 through 191 for the November 8, 1994 General Election. These measures were placed on the ballot by the Legislature and the Governor after the printing deadline for the principal ballot pamphlet (which contains information about Propositions 181 through 188 and candidate statements).

All of those involved in the preparation of this pamphlet are constantly looking for ways to make the California Ballot Pamphlet better. Many suggestions made by voters have been put to use this year. New features this election include expanded statements from candidates for statewide office, an explanation of the job duties of each office, and an explanation of the electoral procedure for justices of the Supreme Court and courts of appeal. This information is contained in the principal ballot pamphlet. We hope these features prove useful and informative as you make your choices in this general election. We invite you to send your comments, suggestions, and new ideas for possible inclusion in future ballot pamphlets. Send your ideas to California Ballot Pamphlet, 1230 J Street, Sacramento, California 95814.

Please vote on November 8!

CONTENTS

November 8, 1994 Ballot Measures

	SUMMARY	WHAT YOUR VOTE MEANS	
		YES	NO
189 **BAIL EXCEPTION. FELONY SEXUAL ASSAULT.** Legislative Constitutional Amendment Put on the Ballot by the Legislature	Amends State Constitution to add felony sexual assault to crimes excepted from right to bail. Other exceptions already include capital offenses and felonies involving violence or threats of bodily harm to others. Fiscal impact: Unknown, but probably not significant, costs to local governments; unknown, but probably not significant, savings to the state.	A **Yes** vote on this measure means: The circumstances under which courts could deny bail would be broadened to include individuals accused of committing any felony "sexual assault."	A **No** vote on this measure means: The court could deny bail to individuals accused of certain types of sexual offenses involving violence and serious bodily harm.
190 **COMMISSION ON JUDICIAL PERFORMANCE.** Legislative Constitutional Amendment Put on the Ballot by the Legislature	Transfers disciplinary authority over judges from California Supreme Court to Commission on Judicial Performance; provides for public proceedings; specifies circumstances warranting removal, retirement, suspension, admonishment, or censure of judges; increases Commission's citizen membership. Fiscal impact: Not likely to have a significant fiscal impact on the state.	A **Yes** vote on this measure means: A majority of the members of the Commission on Judicial Performance would be from the public; all formal charges and proceedings of the commission regarding misconduct by a judge would be open to the public.	A **No** vote on this measure means: A majority of the members of the Commission on Judicial Performance would be judges; only certain matters before the commission regarding misconduct by a judge would be open to the public.
191 **JUSTICE COURTS.** Legislative Constitutional Amendment Put on the Ballot by the Legislature	Abolishes justice courts; incorporates their operations, judges, and personnel within municipal courts. Authorizes Legislature to provide for organization, jurisdiction of municipal courts and qualification and compensation of municipal court judges, staff. Fiscal impact: Probably no significant fiscal impact on state or local governments.	A **Yes** vote on this measure means: Justice courts would be eliminated and these courts would become municipal courts; all justice court judges would become full-time municipal court judges.	A **No** vote on this measure means: Justice courts would continue to serve portions of counties with 40,000 or fewer residents. Justice court judges would continue to divide their time between their own courts and other trial courts.

ARGUMENTS		WHOM TO CONTACT FOR MORE INFORMATION	
PRO	**CON**	**FOR**	**AGAINST**
PROPOSITION 189 WOULD ALLOW JUDGES TO DENY BAIL TO SEXUAL PREDATORS. When an accused rapist or child molester has a record of previous convictions a judge should be able to keep him off the streets until the trial. PROTECT OUR COMMUNITIES! PROTECT OUR CHILDREN! VOTE YES ON 189!	Proposition 189 is unnecessary. Violent felons can be denied bail now. This is just election year pandering by politicians who want to look tough on crime. Unless the accused is a flight risk or has threatened someone specifically, bail should be granted. In America you are innocent until proven guilty.	Assemblyman Cruz M. Bustamante State Capitol, Room 4144 Sacramento, CA 95814 (916) 445-8514	Libertarian Party of California 1-800-637-1776
Proposition 190 will reform California's judicial discipline system, which is comprised of a majority of judges who discipline their peers in secret. Proposition 190 will open formal disciplinary proceedings against judges to the public and will change the membership of the commission so that the public is in the majority.	Voting NO on Proposition 190 will prevent political appointments from dominating the Commission on Judicial Performance, will retain the power to impose judicial discipline in the California Supreme Court, and provide the legislature more time to consider necessary changes in the disciplinary system for judges.	Speaker Willie L. Brown, Jr. Attention: Cary Rudman (916) 445-8077	Quentin L. Kopp 655 Montgomery Street, 16th Floor San Francisco, CA 94111
Voting Yes on 191 will streamline California's court structure and promote the equal administration of justice. Justice court judges have the same jurisdiction, qualifications, and workload as municipal court judges. Using two names wrongly implies that the brand of justice you get depends on the population of your county.	Proposition 191 goes too far. It does NOT simply eliminate justice courts. It would guarantee a job in newly-created municipal courts to every justice court judge and court employee—regardless of whether there are better qualified applicants or even a need for some of these former justice court employees.	Constance Dove or Richard S. Piedmonte California Judges Association 301 Howard Street, Suite 1040 San Francisco, CA 94105 (415) 495-1999	NOT PROVIDED

Bail Exception. Felony Sexual Assault. Legislative Constitutional Amendment.

Official Title and Summary Prepared by the Attorney General

BAIL EXCEPTION. FELONY SEXUAL ASSAULT. LEGISLATIVE CONSTITUTIONAL AMENDMENT.

- Amends State Constitution to add felony sexual assault offenses to crimes currently excepted from right to bail, which are 1) capital crimes; 2) felonies involving acts of violence when there is a substantial likelihood of harm to others if bail is granted; and, 3) any felony when the accused has threatened another with great bodily harm and the court finds a substantial likelihood that release would result in such harm.
- Requires judicial findings upon clear and convincing evidence of likelihood that release would result in great bodily harm to others.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Unknown, but probably not significant, costs to local governments for jailing individuals denied bail.
- Unknown, but probably not significant, savings to the state because some individuals held without bail and then convicted can receive credit for their jail time, thereby reducing the length of stay in prison.

Final Votes Cast by the Legislature on ACA 37 (Proposition 189)

Assembly:	Ayes 69	Senate:	Ayes 30
	Noes 0		Noes 0

Analysis by the Legislative Analyst

Background

Bail is one means by which a person who is accused of a crime may obtain release from custody after arrest. The bail procedure generally requires the accused person to put up money, property, or other security that will be forfeited if the individual fails to return to court to stand trial.

The California Constitution generally requires the courts to release on bail all persons accused of committing crimes, while they await trial. The courts may deny bail only for those persons who are accused of committing any of the following offenses:

- A crime that is punishable by death.
- A felony offense where the court finds that the accused person has threatened another person with serious bodily harm and there is a substantial likelihood that the accused person would carry out the threat if released.
- A felony offense involving violence against another person, when the court finds that there is a substantial likelihood that the person's release would result in serious bodily harm to others.

For purposes of these provisions, existing statutory law specifies that certain types of sexual offenses are to be considered felony offenses involving violence and serious bodily harm.

Proposal

This constitutional amendment would permit the courts to deny bail for a wider range of sexual offenses. Specifically, this measure would allow the courts to deny bail if a person is accused of committing any felony "sexual assault" offense.

Fiscal Effect

By broadening the circumstances under which bail could be denied, this measure would increase costs to local governments to operate jails because it would increase the number of persons held in jail while they are awaiting trial. These costs are unknown, but probably not significant.

There would be savings to state government, however, if the person for whom bail is denied is later convicted. This is because persons who are held in jail can receive credit for their jail time, thereby reducing their stay if later sentenced to state prison. This would reduce the state's costs of operating the prison system by an unknown, but probably not a significant amount.

For the text of Proposition 189 see page 18

189 Bail Exception. Felony Sexual Assault. Legislative Constitutional Amendment.

Argument in Favor of Proposition 189

KEEP SEXUAL PREDATORS OFF OUR STREETS

Currently, persons accused of crimes are entitled to remain free until their trial unless they are accused of murder or a violent crime—and the judge believes the accused to be a danger to society.

PROPOSITION 189 WOULD ALLOW JUDGES TO DENY BAIL TO SEXUAL PREDATORS—PEOPLE CHARGED WITH FELONY SEXUAL ASSAULT OFFENSES ON ANOTHER PERSON.

30% of those convicted of sex offenses commit another offense within two years of their release—higher than any other crime.

When an accused rapist or child molester has a record of previous convictions a judge should be able to keep him off the streets until the trial.

Protect our communities! Protect our children!

VOTE YES ON PROPOSITION 189.

LET'S KEEP SEXUAL PREDATORS OFF OUR STREETS.

DEDE ALPERT
Assemblywoman, 78th District

MARGARET SNYDER
Assemblywoman, 25th District

ROBERT PRESLEY
State Senator, 36th District

Rebuttal to Argument in Favor of Proposition 189

Nothing in Proposition 189 says that the accused sexual offender must have a record of previous convictions in order for the judge to deny bail. A person accused of a first-time non-violent offense (perhaps "date rape") could be denied bail.

For over 200 years, our laws have held that those accused are innocent until proven guilty. The main reason for bail at all is to give a financial incentive for the accused to show up in court. There's no way to know if someone will attack after being released on bail.

Proposition 189 is really designed to boost the chances of politicians in an election year. Supporters can say they are tough on crime, and thus rake in votes from Californians justly concerned about violence in the streets.

Don't be fooled. Don't tinker with the state constitution to chip away at the presumption of innocence. Vote NO on Proposition 189.

TED BROWN
Chairman, Libertarian Party of Los Angeles County

RICHARD BURNS
Attorney at Law

RICHARD RIDER
Stockbroker/Financial Planner

 Arguments printed on this page are the opinions of the authors and have not been checked for accuracy by any official agency.

Bail Exception. Felony Sexual Assault. Legislative Constitutional Amendment. 189

Argument Against Proposition 189

Proposition 189 is totally unnecessary. Violent felons can be denied bail now. To specifically add "sexual assault offenses" looks like election year pandering to us.

We certainly believe that rapists should be kept off the street. But in America you are innocent until proven guilty. Bail should be granted in most cases—but should be high enough to guarantee that the accused will appear in court.

The U.S. luckily has no history of preventive detention. It's almost impossible to know if someone will cause "great bodily harm to others." An exception would be if the accused criminal specifically threatens the victim or a witness.

Let's be reasonable. Proposition 189 is a waste of time. It allows politicians to tell voters they are tough on crime. It will cost taxpayers money to keep accused people in county jails before their trials. It will deny courts some bail money.

Worst of all, the Legislature placed Propositions 189, 190, and 191 on the ballot over two months past the legal deadline. The November Ballot Pamphlet has already been printed. It will cost taxpayers over $1 million to send out a supplemental ballot pamphlet to over 13 million registered voters. This is downright thievery! Couldn't these propositions wait until the 1996 primary election?

Don't let legislators take advantage of your desire to lock up dangerous criminals. Proposition 189 is only window dressing for their irresponsibility and contempt for taxpayers. We urge you to vote NO.

TED BROWN
Chairman, Libertarian Party of Los Angeles County
RICHARD BURNS
Attorney at Law
RICHARD RIDER
Stockbroker/Financial Planner

Rebuttal to Argument Against Proposition 189

Yes on 189—No to Sexual Predators

This proposition isn't about money or politics, it's about protecting innocent, law-abiding citizens from the lowest and most vicious variety of criminals that prowl our streets—sexual predators.

We have all become prisoners in our own homes because of a "revolving door" criminal justice system. Repeat sex offenders keep breaking the law and being put back on the streets in our communities.

Bail can already be denied to someone who is accused of committing a capital crime, such as kidnapping or murder, if the judge believes that the person is a threat to the public. But there are loopholes in the law with regard to sexual deviants.

No civil liberties would be harmed. The judge would still be required to provide clear and convincing evidence that the person is a danger to society.

The opposition argument callously tries to turn a human tragedy into a profit center. They would propose we tell a grief-stricken parent or spouse, who has just left the hospital with a rape victim, that "we are sorry for your loss, but we didn't want to deny our court system its bail money."

This isn't about profit and loss, it's about making our streets safe for our families and children.

Vote Yes on Proposition 189!

DEDE ALPERT
Assemblywoman, 78th District
MARGARET SNYDER
Assemblywoman, 25th District
CRUZ M. BUSTAMANTE
Assemblyman, 31st District

Commission on Judicial Performance. Legislative Constitutional Amendment.

Official Title and Summary Prepared by the Attorney General

COMMISSION ON JUDICIAL PERFORMANCE. LEGISLATIVE CONSTITUTIONAL AMENDMENT.

- Transfers authority to remove or discipline judges from California Supreme Court to Commission on Judicial Performance.
- Provides for public disciplinary proceedings against judges and former judges and specifies the circumstances warranting their removal, retirement, suspension, admonishment, or censure.
- Increases non-judicial citizen membership on the Commission.
- Specifies authority of Commission to discipline former judges.
- Provides immunities to persons employed by or making statements to the Commission.
- Specifies review processes for Commission determinations and requires the Supreme Court to issue Code of Judicial Ethics.

Summary of Legislative Analyst's Estimate of Net State and Local Fiscal Impact:

- Not likely to have a significant fiscal impact on the state.

Final Votes Cast by the Legislature on ACA 46 (Proposition 190)

Assembly:	Ayes 74	Senate:	Ayes 29
	Noes 1		Noes 1

Analysis by the Legislative Analyst

Background

Under the California Constitution, the Commission on Judicial Performance handles complaints against judges. The commission investigates charges of misconduct by a judge in office or failure or inability of a judge to perform his or her duties.

The commission is composed of nine members. The members include five judges, who are appointed by the California Supreme Court; two members of the State Bar of California, who are appointed by the State Bar's governing body; and two public members, who are appointed by the Governor and approved by the California Senate. Each member is appointed to a four-year term, and no member may serve more than two terms.

The commission receives complaints against judges each year (950 complaints in 1993). The complaints and investigations are handled on a confidential basis. For less serious cases of misconduct, the commission may privately reprimand a judge; the Supreme Court may review such a reprimand. The commission may also publicly reprimand a judge if the judge consents.

In other cases, the commission makes formal charges and a hearing is held. In 1993, nine cases (out of 950 complaints) proceeded to a hearing. The commission may recommend to the Supreme Court that a judge be censured, retired, or removed. Such actions may then be taken by the Supreme Court. Since 1961, the commission has made 32 recommendations to the Supreme Court to censure or remove a judge. The Court upheld the recommendations in 29 cases; one case is pending.

Proposal

This constitutional amendment changes the composition of the commission and makes a number of changes to the procedures for disciplining judges. Among its provisions, the measure increases the membership of the commission from nine to eleven members and increases the number of public members so that they are a majority on the commission. Specifically, the members would include three judges, who would be appointed by the Supreme Court; two members of the State Bar of California, who would be appointed by the Governor; and six public members (two representatives appointed by each of the following: the Governor, the Senate Rules Committee, and the Speaker of the Assembly).

The amendment provides that, when the commission begins formal proceedings against a judge, the charges and all subsequent papers and proceedings shall be open to the public. Also, this measure permits the commission, rather than the Supreme Court, to retire or remove a judge, or to censure a judge or former judge. Such actions could be reviewed by the Supreme Court. In a case against a Supreme Court Justice, a special panel of appellate court judges would review the case. The measure also permits the commission to publicly reprimand a judge without the judge's consent. The commission could disqualify a judge from performing his or her duties when the commission begins a formal proceeding that charges the judge with misconduct or disability. The commission also may bar a *former* judge who has been censured or removed from receiving a judicial appointment or assignment to serve any California state court.

The measure provides that persons who give statements to the commission are protected from civil lawsuits or adverse actions that may be taken against them by their employers as a result of their statements. Also, it protects commission members and employees against lawsuits that may be brought as a result of their work.

Finally, the amendment requires the commission to provide, upon request of the Governor of any state, the President of the United States, and the California Commission on Judicial Appointments, confidential information on disciplinary actions taken against a judge who is an applicant for another judicial appointment.

Fiscal Effect

This measure is not likely to have a significant fiscal impact on the state because its changes are largely procedural in nature.

For the text of Proposition 190 see page 18

190 Commission on Judicial Performance. Legislative Constitutional Amendment.

Argument in Favor of Proposition 190

THE TIME HAS COME TO REFORM CALIFORNIA'S JUDICIAL DISCIPLINE SYSTEM. VOTE "YES" ON PROPOSITION 190.

In 1960, California created the first judicial discipline commission in the United States. It was a model for all 50 states and the District of Columbia. But now California has fallen behind the rest of the nation. A system that was once innovative has become antiquated. The California commission, which is made up of a majority of judges, has held *only one public hearing in the last six years.* Clearly, it is inappropriate to have judges disciplining their peers in a secret environment.

PROPOSITION 190 ENSURES PUBLIC CONTROL OF JUDICIAL DISCIPLINE.

The California commission is currently composed of five judges, two lawyers and two public citizens and there is no requirement that formal disciplinary proceedings be open to the public. Proposition 190 would eliminate judicial domination of the commission in favor of a public majority. Specifically, under Proposition 190, the Commission on Judicial Performance would be made up of three judges, two attorneys and six public members. A PUBLIC MAJORITY WILL ENSURE A FAIR AND FIRM SYSTEM OF JUDICIAL DISCIPLINE.

THE PUBLIC HAS A RIGHT TO KNOW WHEN JUDGES ARE CHARGED WITH MISCONDUCT.

Under Proposition 190, the commission would be required to open *all formal proceedings* against judges to the public. Currently, all hearings and commission documents, including the actual charges against the judge, are secret. WITHOUT KNOWLEDGE OF CHARGES OR PROCEEDINGS, THE PUBLIC CANNOT HAVE CONFIDENCE IN THE JUDICIAL SYSTEM. Just as we require criminal proceedings and attorney discipline proceedings to be open, we should also hold judges to the same standard where serious misconduct is at issue.

PROPOSITION 190 STOPS JUDGES FROM ESCAPING DISCIPLINE BY RETIRING OR RESIGNING WITH CHARGES OF MISCONDUCT PENDING AGAINST THEM.

Proposition 190 will prevent judges charged with misconduct from avoiding discipline by retiring or resigning with charges pending. Judges should be held accountable for improper conduct on the bench. Proposition 190 allows the commission to publicly discipline former judges for conduct which occurred while they held judicial office. This will provide the public with important information about judges who resign with charges pending and then go to work in the private sector as arbitrators or private judges.

Proposition 190 is an important and timely reform measure. Judges are public servants and play a critical role in our society. The public must have confidence and trust in those holding judicial office. PROPOSITION 190 PLACES JUDICIAL DISCIPLINE IN THE HANDS OF A BROAD PANEL OF PUBLIC CITIZENS, JUDGES AND ATTORNEYS AND OPENS ALL FORMAL PROCEEDINGS TO THE PUBLIC. JUST AS OTHER STATES HAVE DONE IN RECENT YEARS, *CALIFORNIA MUST ELIMINATE SECRECY AND ENSURE INTEGRITY IN THE DISCIPLINARY PROCESS.*

VOTE "YES" ON PROPOSITION 190.

WILLIE L. BROWN, JR.
Speaker, California State Assembly
ALFRED E. ALQUIST
California State Senator
MARC POCHE
Associate Justice, California Court of Appeal

Rebuttal to Argument in Favor of Proposition 190

There's no question but that the current system of hearings by the California Commission on Judicial Performance should be changed. There's no argument about that. Creating a requirement of open, public hearings respecting the relatively few formal complaints against California judges, however, is far different from turning the Commission into a politically-appointed body. That's the vice of Proposition 190. Instead simply of changing the Constitution to require open, public hearings of charges against judges (which are relatively few compared to the 2,000 judges in California) Speaker Willie Brown has written a measure which transcends that elemental principle. While it may seem difficult to divorce the desired constitutional revision in the nature of the hearings on judicial discipline from the selection process for the Commission, Californians should realize it is injurious to our separation of powers form of government and the independence of the judicial branch of government to adopt Proposition 190. Rather, as the American Bar Association has stated, the members of the Commission on Judicial Performance should be comprised equally of judges, public members and lawyers in order to balance viewpoints and distribute the power of appointment among the branches of government. Appointments should reflect the diversity of California's population and not be made on the basis of politics or ideology. The Commission's independence must be protected from the appearance of outside interference. We should reject Proposition 190 and re-write it with the public hearing requirement and equal power of appointment among the branches of state government.

QUENTIN L. KOPP
State Senator
(Independent-San Francisco/San Mateo)
JUDGE JOSEPH A. WAPNER
Retired Judge, Los Angeles Superior Court
ARLEIGH WOODS
Presiding Justice, California Court of Appeal

Commission on Judicial Performance. Legislative Constitutional Amendment. 190

Argument Against Proposition 190

DON'T BE FOOLED! This alleged attempt to regulate the judiciary is really an attempt to politicize the Commission on Judicial Performance. This power grab changes the structure of the Commission by allowing politicians to appoint a majority of its members. Eight out of the 11 members would be appointed by politicians, giving them a degree of power over the judicial branch unknown anywhere else in the United States.

The public needs a judicial disciplinary system uninfluenced by partisan politics. Proceedings before the Commission should be opened to the public, but this proposal threatens the independence of the Commission and will divert its focus to the expectations of the appointing parties.

There is a better alternative, which the Legislature ignored. The American Bar Association has just completed a five year study conducted by prominent citizens, judges and lawyers and adopted its first national model for judicial disciplinary proceedings. The model recommends a commission with equal numbers of citizens, judges, and lawyers appointed by the Governor, State Supreme Court and the State Bar. This measure, however, takes the commendable, worthwhile goal of producing an accountable, open system of judicial discipline and turns it into a dangerous, irresponsible attack on the judicial branch of government. Its proposed commission has virtually unchecked power; its so-called "public member majority" in reality will be a majority of people with close political ties to the Governor, the Assembly Speaker and State Senate leadership.

The framers of our Constitution knew that an independent judiciary is one of the greatest safeguards of liberty. While California needs a strong, effective Commission on Judicial Performance, it does not need and can't afford, an ill-conceived, poorly drafted constitutional amendment which gives a handful of insiders unprecedented control over judicial conduct.

The proposal also removes disciplinary powers from the California Supreme Court and transfers such powers to the politicized Commission. Such shift raises serious due process issues and will result in costly and needless litigation at taxpayer expense.

Vote No! California deserves a judiciary that is accountable and independent. Send a message to the Legislature to keep partisan politics out of the judicial disciplinary process. Send them back to the drawing board to examine the work done by leading national authorities and give California a system which will place us in the forefront of judicial discipline.

QUENTIN L. KOPP
State Senator
(I-San Francisco/San Mateo)

JUDGE JOSEPH A. WAPNER
Retired Judge, Los Angeles Superior Court

Rebuttal to Argument Against Proposition 190

The opponents claim that Proposition 190 will create a politicized body. TWENTY-FOUR STATES HAVE CREATED COMMISSIONS WITH EQUAL OR GREATER PUBLIC MEMBERSHIP ON THEIR JUDICIAL DISCIPLINARY COMMISSIONS. These commissions represent a variety of appointing powers. Just as with Proposition 190, these states recognized that a broad base of constitutional appointing powers does not sacrifice the integrity of the Judiciary.

IN FACT, NO STATE HAS ADOPTED THE ABA MODEL. Instead, a number of states have successfully changed to a public majority membership after having commissions dominated by judges. The drafters of the ABA model specifically refused to recommend that disciplinary commissions have a majority of public members because they thought the issues would be too complicated. Everyday, jurors are asked to decide serious legal issues, yet the lawyers and judges who drafted the ABA proposal feared the public would not understand when a judge has acted inappropriately.

PROPOSITION 190 WILL CREATE A MORE INDEPENDENT COMMISSION BY MAKING IT AN INSTITUTION SEPARATE FROM ANY ONE INFLUENCING BODY. Proposition 190 specifically provides for a broad base of appointing powers—the Supreme Court, the Governor, and the Legislature—so that no one branch of government can dominate this important body.

Proposition 190 protects the public by providing for their participation. It is good, sound public policy.

VOTE "YES" ON PROPOSITION 190.

WILLIE L. BROWN, JR.
Speaker, California State Assembly

ALFRED E. ALQUIST
California State Senator

TERRY B. O'ROURKE
Judge, San Diego Superior Court

Justice Courts. Legislative Constitutional Amendment.

Official Title and Summary Prepared by the Attorney General

JUSTICE COURTS. LEGISLATIVE CONSTITUTIONAL AMENDMENT.

- Effective January 1, 1995, eliminates justice courts; elevates existing justice courts to municipal courts; and unifies justice courts within municipal courts. Continues number, qualifications, compensation of judges and personnel, until modified by Legislature.
- Authorizes Legislature to provide for organization and jurisdiction of municipal courts, and to prescribe number, qualifications and compensation of municipal court judges, staff.
- Makes conforming changes to composition of Judicial Council, appellate jurisdiction of Superior Court.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Probably no significant fiscal impact on state or local governments.

Final Votes Cast by the Legislature on SCA 7 (Proposition 191)

Assembly:	Ayes 79	Senate:	Ayes 39
	Noes 0		Noes 0

Analysis by the Legislative Analyst

Background

The California Constitution currently provides for superior, municipal, and justice courts. These courts are referred to as the state's "trial courts."

Superior courts generally have jurisdiction over cases involving felonies, family law (for example, divorce cases), juvenile law, civil law suits involving more than $25,000, and appeals from municipal and justice court decisions. Each of the state's 58 counties has a superior court.

Municipal and justice courts generally have jurisdiction over misdemeanors and infractions and most civil law suits involving disputes of $25,000 or less. Counties are divided into municipal and justice court districts based on population. Municipal court districts have more than 40,000 residents; justice court districts have 40,000 or fewer residents.

As of August 1, 1994, there were 37 justice courts in California. Currently, most justice court judges divide their time between their own courts and other trial courts.

Proposal

This constitutional amendment eliminates justice courts and provides that all justice courts would become municipal courts. In addition, all justice court judges would become full-time municipal court judges. The amendment would become effective on January 1, 1995.

Fiscal Effect

This measure probably would have no significant fiscal impact on the state or local governments. This is because these changes are primarily organizational in nature.

For the text of Proposition 191 see page 20

191 Justice Courts. Legislative Constitutional Amendment.

Argument in Favor of Proposition 191

Proposition 191 finishes a job that the voters of California began when they overwhelmingly approved Proposition 91 in November of 1988. They decided that there should be one standard of equal access to justice in both rural areas and urban areas. Proposition 91 made most of the changes necessary to equalize the justice courts that serve less populous counties with the municipal courts that serve most Californians. Proposition 191 is the culmination of the process of professionalizing and equalizing the administration of justice in rural areas.

Already today:

- The jurisdiction of justice courts is the same as that of municipal courts.
- Justice court judges are subject to the same rules of judicial conduct and discipline as municipal court judges.
- Justice court judges serve terms of the same length and are accountable to the public at the same elections as municipal court judges.

By approving Proposition 91, the voters:

- Put the judgments and decisions rendered in justice courts on an equal footing with those of municipal courts and any other court of record.
- Required justice court judges to have the same legal experience as judges of the municipal courts throughout the state.
- Imposed the requirement that justice court judges work full time for full salary, sitting by assignment as needed anywhere in the state when their home courts do not require the judge's presence.

All of these changes have proven extremely successful. The full time justice court judges' program saved the state the cost of more than two dozen new judgeships!

Proposition 191 neither increases nor decreases the current number of judges, courts, or judicial districts. But the time has come to reflect the full compliance of justice courts with the standards of municipal courts by granting them the same title. The label "municipal court" commands greater respect than the designation "justice court," and will increase respect for the court's authority. As the courts come to grips with the increased work required to put the "3 strikes" felony sentencing legislation into effect, the terms used in our courts should not raise doubts that erect barriers to the use of all available judges.

Under Proposition 191, Californians who appear in any of the 47 remaining justice courts will no longer be given the false impression that they are receiving a second-class brand of justice. Your Yes vote helps California fulfill the voter mandate to provide citizens in our state's less populous counties with courts of equal statute and judges of equal quality to those found in Los Angeles, San Francisco, and other cities.

VOTE YES ON PROPOSITION 191!

ROBERT PRESLEY
State Senator, 36th District

E. MAC AMOS, JR.
President, California Judges Association

CARLOS C. LaROCHE
Judge of the Mariposa Justice Court

Rebuttal to Argument in Favor of Proposition 191

Proponents argue that, under the *"3 strikes"* law on the books (and certainly under the *"3 strikes"* initiative on the ballot as Proposition 184), California will need all of the judges and court personnel it can find.

It is true that these new *"tough on crime"* laws will require thousands of new state employees and perhaps twice as much prison space. The cost of locking up so many people will be astronomical. Under Proposition 184, for example, the defendant need not even have displayed any real threat to the rest of us to get life in prison. The third *"strike"* would be any *"felony"* which might include possession of more than an ounce of marijuana (H&S Code Section 11359) or possession of someone else's prescription drug (H&S Code Section 11350).

Even if we fall for the *"tough on crime"* election talk and pass overly-broad laws that will require thousands of new state employees, there is no reason former *"justice court"* judges and court personnel should be guaranteed some of the jobs.

In the private sector, jobs are not guaranteed. Let them compete for the new positions.

GARY B. WESLEY
Attorney at Law

Justice Courts. Legislative Constitutional Amendment. 191

Argument Against Proposition 191

This measure is a proposal by the Legislature to amend the California Constitution so as to eliminate justice courts and elevate all justice court judges in the State to municipal court judges. It also provides for the retention of all *"officers, attachés, and employees"* of existing justice courts. Justice courts still exist in some small counties in California.

The principal problem with this measure is its elevation of justice court judges to municipal court judges and the retention of all employees. If justice courts are to be eliminated, the judges and employees should have to apply for jobs in the municipal court. Perhaps they will not be needed or sufficiently qualified.

GARY B. WESLEY
Attorney at Law

Rebuttal to Argument Against Proposition 191

The opponent presents no serious argument against Proposition 191. There is no question of lesser qualifications for justice court judges. In 1988, the voters required all justice court judges to have the same experience to qualify for office as is required of municipal court judges, and today every single justice court judge is fully qualified for the municipal court bench. Most, if not all, have twice the experience required—enough to qualify for the superior court as well.

Proposition 191 will neither add nor subtract judges or court employees from the current rosters of the affected courts. It is not intended to do so. Continuation in office of all current court employees is not a burden on state or local government, as the opponent implies. The language in Proposition 191 merely ensures that the level of service provided to the public remains the same and to protect the rights of current employees.

The time has come to complete the job of providing our rural population with the same access to quality justice as provided to urban residents. Proposition 191 is good government. Streamline court structure and put an end to the appearance of second-class justice based on population numbers.

VOTE YES ON PROPOSITION 191

ROBERT PRESLEY
State Senator, 36th District

E. MAC AMOS, JR.
President, California Judges Association

CARLOS C. LaROCHE
Judge of the Mariposa Justice Court

Proposition 189: Text of Proposed Law

This amendment proposed by Assembly Constitutional Amendment 37 (Statutes of 1994, Resolution Chapter 95) expressly amends the Constitution by amending a section thereof; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO ARTICLE I, SECTION 12

SEC. 12. A person shall be released on bail by sufficient sureties, except for:

(a) Capital crimes when the facts are evident or the presumption great;

(b) Felony offenses involving acts of violence on another person , *or felony sexual assault offenses on another person,* when the facts are evident or the presumption great and the court finds based upon clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to others; or

(c) Felony offenses when the facts are evident or the presumption great and the court finds based on clear and convincing evidence that the person has threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released.

Excessive bail may not be required. In fixing the amount of bail, the court shall take into consideration the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case.

A person may be released on his or her own recognizance in the court's discretion.

Proposition 190: Text of Proposed Law

This amendment proposed by Assembly Constitutional Amendment 46 (Statutes of 1994, Resolution Chapter 111) expressly amends the Constitution by adding a section thereto and amending sections thereof; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENTS TO ARTICLE VI

First—That Section 8 of Article VI thereof is amended to read:

SEC. 8. (a) The Commission on Judicial Performance consists of ~~2 judges of courts of appeal, 2 judges of superior courts~~ *one judge of a court of appeal, one judge of a superior court,* and one judge of a municipal court, each appointed by the Supreme Court; 2 members of the State Bar of California who have practiced law in this State for 10 years, *each* appointed by ~~its governing body~~ *the Governor*; and ~~2~~ *6* citizens who are not judges, retired judges, or members of the State Bar of California, ~~appointed by the Governor and approved by the Senate, a majority of the membership concurring~~ *2 of whom shall be appointed by the Governor, 2 by the Senate Committee on Rules, and 2 by the Speaker of the Assembly*. Except as provided in subdivision (b), all terms are *for* 4 years. No member shall serve more than 2 4-year terms, *or for more than a total of 10 years if appointed to fill a vacancy.*

Commission membership terminates if a member ceases to hold the position that qualified the member for appointment. A vacancy shall be filled by the appointing power for the remainder of the term. A member whose term has expired may continue to serve until the vacancy has been filled by the appointing power. *Appointing powers may appoint members who are already serving on the commission prior to March 1, 1995, to a single 2-year term, but may not appoint them to an additional term thereafter.*

(b) To create staggered terms among the members of the Commission on Judicial Performance, the following members shall be appointed, as follows:

~~(1) The court of appeal member appointed to immediately succeed the term that expires on November 8, 1988, shall serve a 2-year term.~~

~~(2) Of the State Bar members appointed to immediately succeed terms that expire on December 31, 1988, one member shall serve for a 2-year term.~~

(1) Two members appointed by the Supreme Court to a term commencing March 1, 1995, shall each serve a term of 2 years and may be reappointed to one full term.

(2) One attorney appointed by the Governor to a term commencing March 1, 1995, shall serve a term of 2 years and may be reappointed to one full term.

(3) One citizen member appointed by the Governor to a term commencing March 1, 1995, shall serve a term of 2 years and may be reappointed to one full term.

(4) One member appointed by the Senate Committee on Rules to a term commencing March 1, 1995, shall serve a term of 2 years and may be reappointed to one full term.

(5) One member appointed by the Speaker of the Assembly to a term commencing March 1, 1995, shall serve a term of 2 years and may be reappointed to one full term.

(6) All other members shall be appointed to full 4-year terms commencing March 1, 1995.

Second—That Section 18 of Article VI thereof is amended to read:

SEC. 18. (a) A judge is disqualified from acting as a judge, without loss of salary, while there is pending (1) an indictment or an information charging the judge in the United States with a crime punishable as a felony under California or federal law, or (2) a ~~recommendation~~ *petition* to the Supreme Court *to review a determination* by the Commission on Judicial Performance ~~for removal or retirement of the~~ *to remove or retire a* judge.

(b) ~~On recommendation of the~~ *The Commission on Judicial Performance may disqualify a judge from acting as a judge, without loss of salary, upon notice of formal proceedings by the commission charging the judge with judicial misconduct or disability.*

(c) The Commission on Judicial Performance ~~or on its own motion, the Supreme Court may~~ *shall* suspend a judge from office without salary when in the United

States the judge pleads guilty or no contest or is found guilty of a crime punishable as a felony under California or federal law or of any other crime that involves moral turpitude under that law. If the conviction is reversed, suspension terminates, and the judge shall be paid the salary for the judicial office held by the judge for the period of suspension. If the judge is suspended and the conviction becomes final, the ~~Supreme Court~~ *Commission on Judicial Performance* shall remove the judge from office.

~~(c) On recommendation of~~

(d) Except as provided in subdivision (f), the Commission on Judicial Performance ~~the Supreme Court~~ may (1) retire a judge for disability that seriously interferes with the performance of the judge's duties and is or is likely to become permanent, ~~and~~ *or* (2) censure *a judge or former judge* or remove a judge for action occurring not more than 6 years prior to the commencement of the judge's current term *or of the former judge's last term* that constitutes ~~wilful~~ *willful* misconduct in office, persistent failure or inability to perform the judge's duties, habitual intemperance in the use of intoxicants or drugs, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute~~. The Commission on Judicial Performance may~~ *, or (3) publicly or* privately admonish a judge *or former judge* found to have engaged in an improper action or dereliction of duty~~, subject to review in the Supreme Court in the manner provided for review of causes decided by a court of appeal~~. *The commission may also bar a former judge who has been censured from receiving an assignment, appointment, or reference of work from any California state court. Upon petition by the judge or former judge, the Supreme Court may, in its discretion, grant review of a determination by the commission to retire, remove, censure, admonish, or disqualify pursuant to subdivision (b) a judge or former judge. When the Supreme Court reviews a determination of the commission, it may make an independent review of the record. If the Supreme Court has not acted within 120 days after granting the petition, the decision of the commission shall be final.*

~~(d)~~

(e) A judge retired by the ~~Supreme Court~~ *commission* shall be considered to have retired voluntarily. A judge removed by the ~~Supreme Court~~ *commission* is ineligible for judicial office*, including receiving an assignment, appointment, or reference of work from any California state court,* and pending further order of the court is suspended from practicing law in this State. *The State Bar may institute appropriate attorney disciplinary proceedings against any judge who retires or resigns from office with judicial disciplinary charges pending.*

~~(e)~~

(f) A ~~recommendation of~~ *determination by* the Commission on Judicial Performance ~~for the~~ *to admonish or* censure ~~, removal or retirement of~~ *a judge or former judge of the Supreme Court or remove or retire* a judge of the Supreme Court shall be ~~determined~~ *reviewed* by a tribunal of 7 court of appeal judges selected by lot.

~~(f) If, after conducting a preliminary investigation, the Commission on Judicial Performance by vote determines that formal proceedings should be instituted:~~

~~(1) The judge or judges charged may require that formal hearings be public, unless the Commission on Judicial Performance by vote finds good cause for confidential hearings.~~

~~(2) The Commission on Judicial Performance may, without further review in the Supreme Court, issue a public reproval with the consent of the judge for conduct warranting discipline. The public reproval shall include an enumeration of any and all formal charges brought against the judge which have not been dismissed by the commission.~~

~~(3) The Commission on Judicial Performance may in the pursuit of public confidence and the interests of justice, issue press statements or releases or, in the event charges involve moral turpitude, dishonesty, or corruption, open hearings to the public.~~

~~(g) The Commission on Judicial Performance may issue explanatory statements at any investigatory stage when the subject matter is generally known to the public.~~

~~(h) The Judicial Council shall make rules implementing this section and providing for confidentiality of proceedings.~~

(g) No court, except the Supreme Court, shall have jurisdiction in a civil action or other legal proceeding of any sort brought against the commission by a judge. Any request for injunctive relief or other provisional remedy shall be granted or denied within 90 days of the filing of the request for relief. A failure to comply with the time requirements of this section does not affect the validity of commission proceedings.

(h) Members of the commission, the commission staff, and the examiners and investigators employed by the commission shall be absolutely immune from suit for all conduct at any time in the course of their official duties. No civil action may be maintained against a person, or adverse employment action taken against a person, by any employer, public or private, based on statements presented by the person to the commission.

(i) The Commission on Judicial Performance shall make rules implementing this section, including, but not limited to, the following:

(1) The commission shall make rules for the investigation of judges. The commission may provide for the confidentiality of complaints to and investigations by the commission.

(2) The commission shall make rules for formal proceedings against judges when there is cause to believe there is a disability or wrongdoing within the meaning of subdivision (d).

(j) When the commission institutes formal proceedings, the notice of charges, the answer, and all subsequent papers and proceedings shall be open to the public for all formal proceedings instituted after February 28, 1995.

(k) The commission may make explanatory statements.

(l) The budget of the commission shall be separate from the budget of any other state agency or court.

(m) The Supreme Court shall make rules for the conduct of judges, both on and off the bench, and for judicial candidates in the conduct of their campaigns. These rules shall be referred to as the Code of Judicial Ethics.

Third—That Section 18.5 is added to Article VI thereof, to read:

SEC. 18.5. (a) Upon request, the Commission on Judicial Performance shall provide to the Governor of any State of the Union the text of any private admonishment, advisory letter, or other disciplinary action together with any information that the Commission on Judicial Performance deems necessary to a full understanding of the commission's action, with respect to any applicant whom the Governor of any State of the Union indicates is under consideration for any judicial appointment.

(b) Upon request, the Commission on Judicial Performance shall provide the President of the United States the text of any private admonishment, advisory letter, or other disciplinary action together with any information that the Commission on Judicial Performance deems necessary to a full understanding of the commission's action, with respect to any applicant whom the President indicates is under consideration for any federal judicial appointment.

(c) Upon request, the Commission on Judicial Performance shall provide the Commission on Judicial Appointments the text of any private admonishment, advisory letter, or other disciplinary action together with any information that the Commission on Judicial Performance deems necessary to a full understanding of the commission action, with respect to any applicant whom the Commission on Judicial Appointments indicates is under consideration for any judicial appointment.

(d) All information released under this section shall remain confidential and privileged.

(e) Notwithstanding subdivision (d), any information released pursuant to this section shall also be provided to the applicant about whom the information was requested.

(f) "Private admonishment" refers to a disciplinary action against a judge by the Commission on Judicial Performance as authorized by subdivision (c) of Section 18 of Article VI, as amended November 8, 1988.

Fourth—That this measure shall become operative on March 1, 1995.

Proposition 191: Text of Proposed Law

This amendment proposed by Senate Constitutional Amendment 7 (Statutes of 1994, Resolution Chapter 113) expressly amends the Constitution by amending sections thereof; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENTS TO ARTICLE VI

First—That Section 1 of Article VI thereof is amended to read:

SEC. 1. The judicial power of this State is vested in the Supreme Court, courts of appeal, superior courts, *and* municipal courts ~~, and justice courts~~. All courts are courts of record.

Second—That Section 5 of Article VI thereof is amended to read:

SEC. 5. (a) Each county shall be divided into municipal court ~~and justice court~~ districts as provided by statute, but a city may not be divided into more than one district. Each municipal ~~and justice~~ court shall have one or more judges. *Each municipal court district shall have no fewer than 40,000 residents; provided that each county shall have at least one municipal court district. The number of residents shall be determined as provided by statute.*

(b) On the operative date of this subdivision, all existing justice courts shall become municipal courts, and the number, qualifications, and compensation of judges, officers, attachés, and employees shall continue until changed by the Legislature. Each judge of a part-time municipal court is deemed to have agreed to serve full time and shall be available for assignment by the Chief Justice for the balance of time necessary to comprise a full-time workload.

~~There shall be a municipal court in each district of more than 40,000 residents and a justice court in each district of 40,000 residents or less. The number of residents shall be ascertained as provided by statute.~~

(c) The Legislature shall provide for the organization and prescribe the jurisdiction of municipal ~~and justice~~ courts. It shall prescribe for each municipal court ~~and provide for each justice court~~ the number, qualifications, and compensation of judges, officers, and employees.

~~(b)~~

(d) Notwithstanding ~~the provisions of~~ subdivision (a), any city in San Diego County may be divided into more than one municipal court ~~or justice court~~ district if the Legislature determines that unusual geographic conditions warrant such division.

Third—That Section 6 of Article VI thereof is amended to read:

SEC. 6. The Judicial Council consists of the Chief Justice and one other judge of the Supreme Court, 3 judges of courts of appeal, 5 judges of superior courts, ~~3~~ *and 5* judges of municipal courts, ~~and 2 judges of justice courts,~~ each appointed by the Chief Justice for a 2-year term; 4 members of the State Bar appointed by its governing body for 2-year terms; and one member of each house of the Legislature appointed as provided by the house.

Council membership terminates if a member ceases to hold the position that qualified the member for appointment. A vacancy shall be filled by the appointing power for the remainder of the term.

The council may appoint an Administrative Director of the Courts, who serves at its pleasure and performs functions delegated by the council or the Chief Justice, other than adopting rules of court administration, practice and procedure.

To improve the administration of justice the council shall survey judicial business and make recommendations to the courts, make recommendations annually to the Governor and Legislature, adopt rules for court administration, practice and procedure, not inconsistent with statute, and perform other functions prescribed by statute.

The Chief Justice shall seek to expedite judicial business and to equalize the work of judges. The Chief Justice may provide for the assignment of any judge to

another court but only with the judge's consent if the court is of lower jurisdiction. A retired judge who consents may be assigned to any court.

Judges shall report to the Judicial Council as the Chief Justice directs concerning the condition of judicial business in their courts. They shall cooperate with the council and hold court as assigned.

Fourth—That Section 11 of Article VI thereof is amended to read:

SEC. 11. The Supreme Court has appellate jurisdiction when judgment of death has been pronounced. With that exception courts of appeal have appellate jurisdiction when superior courts have original jurisdiction and in other causes prescribed by statute.

Superior courts have appellate jurisdiction in causes prescribed by statute that arise in municipal ~~and justice~~ courts in their counties.

The Legislature may permit appellate courts to take evidence and make findings of fact when jury trial is waived or not a matter of right.

Fifth—That Section 15 of Article VI thereof is amended to read:

SEC. 15. A person is ineligible to be a judge of a court of record unless for 5 years immediately preceding selection to a municipal ~~or justice~~ court or 10 years immediately preceding selection to other courts, the person has been a member of the State Bar or served as a judge of a court of record in this State. A judge eligible for municipal court service may be assigned by the Chief Justice to serve on any court.

WHAT A DIFFERENCE A VOTE MAKES!
REGISTER AND VOTE.

WANTED! Polling Place Workers

If you would like to work at a polling place on election day, call your county elections office. Polling place workers are paid to work on election day. Do your part for democracy—call today !!

You may wish to tear out this page and use it to write down your ideas on improving this pamphlet. Send your suggestions to: California Ballot Pamphlet, 1230 J Street, Sacramento, CA 95814. Thank you.

Secretary of State
1230 J Street
SACRAMENTO, CA 95814

This supplemental ballot pamphlet is sent to you separately from the pamphlet containing Propositions 181 through 188 and the statewide candidate statements because the measures contained herein qualified for the ballot after the printing deadline for the principal ballot pamphlet. Please check to be sure you receive two ballot pamphlets for the November 8, 1994 General Election. In order to distinguish between the two, this supplemental pamphlet is printed in blue ink. If you do not receive your main pamphlet, contact your county elections official or call 1-800-345-VOTE.

IMPORTANT NOTICE

The State produces a cassette-recorded version of this ballot pamphlet. These tape recordings are available from most public libraries. If you have a family member or friend who is *visually impaired*, please inform him or her of this service. Cassettes can be obtained by calling your local public library or your county elections official.

In an effort to reduce election costs, the State Legislature has authorized the State and counties having this capability to mail only one ballot pamphlet to addresses where more than one voter with the same surname resides. If you wish additional copies, you may obtain them by calling or writing to your county elections official.

ELECTION MATERIAL

Myron Moskovitz (SBN 36476)
James A. Ardaiz (SBN 60455)
Christopher Cottle (SBN 39037)
William D. Stein (SBN 37710)
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ELAINE M. HOWLE, in her official capacity as CALIFORNIA STATE AUDITOR, and the CALIFORNIA STATE AUDITOR'S OFFICE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

COMMISSION ON JUDICIAL PERFORMANCE,

Petitioner/Plaintiff,

vs.

ELAINE M. HOWLE, in her official capacity as CALIFORNIA STATE AUDITOR, and the CALIFORNIA STATE AUDITOR'S OFFICE,

Respondents/Defendants.

Case No. CPF-16-515308

SUPPLEMENTAL DECLARATION OF STATE AUDITOR ELAINE M. HOWLE

I, Elaine M. Howle, declare as follows:

I have personal knowledge and am competent to testify to the facts alleged in this Declaration.

1. I understand that the Court has suggested that CJP redact the names of judges from their files, before allowing the State Auditor's Office to conduct the audit of CJP as directed by the Joint Legislative Audit Committee. I provide this Supplemental Declaration to

explain why we could not produce a reliable audit if the audited agency's files are altered or tampered with in any way, including redaction.

2. I am the California State Auditor and serve as the head of the California State Auditor's Office. I was appointed to the position of State Auditor by Governor Gray Davis effective August 10, 2000. I serve a fixed four-year term, and I can be removed from office only for cause and only by concurrent resolution of the Legislature. I have been a government auditor for over 34 years.

3. The most essential element in accurate audit work is the collection and review of reliable audit evidence. An auditor's conclusions based on unreliable evidence will themselves be unreliable.

4. California Government Code § 8546.1, subsection (c), provides: "The California State Auditor shall complete any audit in a timely manner and pursuant to the 'Government Auditing Standards' published by the Comptroller General of the United States." I have worked with and am intimately familiar with Government Auditing Standards published by the Comptroller General of the United States. These standards are often called "The Yellow Book".

5. Yellow Book Standard §3.02 provides that "In all matters relating to the audit work, the audit organization and the individual auditor, whether government or public, must be independent". Yellow Book Standard §3.04 provides that "Auditors and audit organizations maintain independence so that their opinions, findings, conclusions, judgments, and recommendations will be impartial and viewed as impartial by reasonable and informed third parties", and "auditors should avoid situations that could lead reasonable and informed third parties to conclude that the auditors are not independent and thus are not capable of exercising objective and impartial judgment on all issues associated with conducting the audit and

reporting on the work".

6. Yellow Book Standard §3.60 requires auditors to use professional judgment, which includes professional skepticism and a critical assessment of evidence. §3.61 provides that "Professional skepticism is an attitude that includes a questioning mind and a critical assessment of evidence. Professional skepticism includes a mindset in which auditors assume neither that management is dishonest, nor of unquestioned honesty".

7. Yellow Book Standard §6.07 requires that auditors reduce "audit risk" to a level that assures that the evidence used is sufficient and appropriate to support reliable findings and conclusions. Yellow Book Standard §6.05 provides that "Audit risk is the possibility that the auditors' findings, conclusions, recommendations, or assurance may be improper or incomplete as a result of factors such as evidence that is not sufficient and/or appropriate, and inadequate audit process, or intentional omissions or misleading information due to misrepresentation or fraud". Yellow Book Standard §6.71b provides that "evidence is not sufficient or not appropriate when (1) using the evidence carries an unacceptably high risk that it could lead the auditor to reach an incorrect or improper conclusion, (2) the evidence has significant limitations, given the audit objectives and intended use of the evidence… . Auditors should not use such evidence as support for findings and conclusions".

8. We must have access to unredacted information, because we have no assurance that redacted information is reliable and accurate. Under Yellow Book Standard §6.72, "Evidence has limitations or uncertainties when the validity or reliability of the evidence has not been assessed or cannot be assessed, given the audit objectives and the intended use of the evidence". Even if a supposedly objective third party performs the redaction, we would be unable to attest to the reliability of the evidence.

9. Allowing CJP to alter its records would be unacceptable, because it would be impossible to know what CJP actually removed. It would allow the audited entity to decide what information would be subject to the audit. Allowing CJP, or any third party, to alter records before providing them to the auditor would significantly increase the risk that our findings and conclusions would be based on insufficient or inappropriate evidence.

10. Over the course of my audit career, I have encountered instances where auditees endeavor to hide information from us by altering or withholding relevant records. This occurred most recently in our audit of services provided by the University of California's Office of the President. This is not the only instance when an auditee has attempted to mislead my audit staff by manipulating evidence. We have encountered hidden records, altered records, incomplete records, and in certain instances, the destruction of records. While these are not common events, they occur frequently enough that we remain skeptical of any evidence we do not personally obtain in its original form.

11. JLAC's Audit Objective 15 specifically requires us to review how the CJP handles complaints when it knows that past complaints have been filed against the same judge. Any review under this Objective would require the team to identify all complaints associated with a specific judge. A redacted record that omits any identification of a judge would make such analysis impossible. Even a modified version of the redaction that replaced judges' names with identification numbers or some similar unique identifier would introduce a prohibitively high amount of audit risk. Essentially, the auditor would be left with no other alternative but to entrust CJP to faithfully, consistently, and accurately replace all identifying information throughout all of its complaint records with replacement identifying information.

12. Alteration of the records would also hinder our ability to group them by complainant and judge to derive any trends in treatment of complainant, judge, court location,

etc. The absence of this information would preclude us from fully addressing Audit Objective 12, in terms of evaluating the outcomes of cases and the discipline imposed by CJP. For example, if the CJP's internal procedures call for particular actions when there are multiple complaints about a judge, we would not be able to assess whether the CJP adhered to those procedures.

13. Further, with over 5,000 complaint records, the amount of work that CJP would need to undertake to anonymize its complaint records would cause a substantial delay in our ability to conduct our audit fieldwork.

14. For the above reasons, redaction would create an audit risk that is not acceptable. Yellow Book Standard §3.25 provides that "Certain conditions may lead to threats that are so significant that they cannot be eliminated or reduced to an acceptable level through the application of safeguards, resulting in impaired independence. Under such conditions, auditors should decline to perform a prospective audit or terminate an audit in progress". Key elements of the auditor's professional judgment and approach to conducting the audit would be critically impaired if CJP is allowed to alter records before providing them to the auditor.

15. Accordingly, we cannot fulfill the mandate that JLAC gave to us if we cannot vouch for the accuracy and reliability of the documents that form the basis for our report about CJP's performance.

16. In addition, any failure on the part of myself or my office to comply with auditing standards could have severe consequences for funding the State receives from the federal government. Every three years, our office is subject to "peer review". This involves outside, independent auditors reviewing our work to ensure that we have complied with

auditing standards. They select, without our input, several audits to review. They examine the work we performed and our work papers to ensure that we have fully complied with standards in terms of the support we cite and the sufficiency and reliability of our evidence and the reasonableness of the conclusions we reached. If we fail our peer review, that could call into question the federal compliance work that we perform, which ensures California's receipt of almost $100 billion in federal funds. For this reason, as well as the general integrity of my office's work and compliance with our enabling statutes, we must strictly comply with audit standards at all times.

17. Redaction would not add any protection to the confidentiality of CJP's documents, because my office strictly maintains the confidentiality of *all* documents deemed "confidential" by the agencies we audit. We do not and will not disseminate such documents to the public or the media. If CJP has determined that certain files and complaints are confidential and cannot be revealed, we will honor CJP's confidentiality, as we have done with every other publicly-created entity we have ever audited. For purposes of our access to information, under the law we are essentially CJP employees. Sharing confidential information with us for audit purposes is not a public disclosure, and we are duty-bound to protect the confidentiality of that information. As I explained in detail in my original Declaration, that is what we have done when examining peace officer personnel records, medical records, financial records, attorney disciplinary records and every other type of legally protected information.

I make this declaration under penalty of perjury in Sacramento, California, under the laws of the State of California.

Dated: 9-19-17

Elaine M. Howle

Elaine M. Howle

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Respondents/Defendants.

Case No. CPF-16-515308

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF STATE AUDITOR'S SUPPLEMENTAL BRIEF

Respondent California State Auditor hereby requests that the Court take judicial notice of the following documents, authenticated in and attached as exhibits C - R to the Declaration of Sherri S. Kaiser, and filed concurrently with this request.

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The documents to be noticed are as follows:

Exhibit C	Ballot pamphlet, California Proposition 10 (1960) (Administration of Justice, Senate Constitutional Amendment No. 14), available at http://repository.uchastings.edu/ca_ballot_props/618.
Exhibit D	Ballot pamphlet, California Proposition 1-a (1966) (Constitutional Revision), available at http://repository.uchastings.edu/ca_ballot_props/694.
Exhibit E	Ballot pamphlet, California Proposition 7 (1976) (Judges, Censure, Removal, Judicial Performance Commission), available at http://repository.uchastings.edu/ca_ballot_props/818.
Exhibit F	Ballot pamphlet, California Proposition 92 (1988) (Commission on Judicial Performance), available at http://repository.uchastings.edu/ca_ballot_props/973.
Exhibit G	California Senate Judiciary Committee Analysis of Assembly Constitutional Amendment No. 46, as amended August 9, 1994.
Exhibit H	Letter from Deputy Attorney General Raymond Brosterhous II to Hon. Phillip Isenberg, Chair of the Assembly Judiciary Committee, dated June 6, 1994.
Exhibit I	Assembly Committee On Judiciary Analysis of Assembly Constitutional Amendment, as amended June 13, 1994.
Exhibit J	Newspaper clippings retrieved from legislative files regarding Assembly Constitutional Amendment No. 46 (1994) and Senate Constitutional Amendment No. 37 (1994)
Exhibit K	Senate Judiciary Committee Bill Analysis of Senate Constitutional Amendment No.37, as introduced.
Exhibit L	Assembly Judiciary Committee Analysis of Senate Constitutional Amendment No.37, as amended June 14, 1994.
Exhibit M	Letter from Victoria B. Henley, Director-Chief Counsel of the Commission on Judicial Performance, to Hon. Phillip Isenberg, Chair of the Assembly Judiciary Committee, dated June 28, 1994.
Exhibit N	Assembly Committee on Elections, Reapportionment, and Constitutional

Amendments Bill Analysis of Senate Constitutional Amendment No. 37, as amended July 2, 1994.

Exhibit O — Senate Committee on Constitutional Amendments Analysis of Assembly Constitutional Amendment No. 46, as amended August 9, 1994.

Exhibit P — Assembly Analysis regarding Concurrence in Senate Amendments to Assembly Constitutional Amendment No. 46, as amended August 23, 1994.

Exhibit Q — Supplemental Ballot Pamphlet, Analysis of State Propositions on the November 1994 Ballot, A Review of Propositions 181 Through 191.

Exhibit R — Voter Information Guide, 1994 General Election, available at http://repository.uchastings.edu/ca_ballot_props/1092.

MEMORANDUM OF POINTS AND AUTHORITIES

The listed documents are public records concerning the legislative history of Proposition 190 (1994) and are therefore subject to judicial notice pursuant to Evidence Code sections 451(a) and 452(c).

Exhibits C, D, E, F, Q, and R are ballot pamphlets. Courts will take judicial notice of ballot pamphlets, which include summaries and arguments for and against propositions. (*St. John's Well Child & Family Center v. Schwarzenegger* (2010) 50 Cal.4th 960, 967, fn. 5; *Vargas v. City of Salinas* (2009) 46 Cal.4th 1, 22, fn. 10 ("The ballot pamphlet . . . as an official government document, is a proper subject of judicial notice.").)

Exhibits G, I, K, L, N, O, and P are Senate and Assembly bill analyses. Relevant and authenticated legislative committee reports are also judicially noticeable. (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 45, fn. 9.)

Exhibit H is a letter from the California Attorney General to the Assembly Judiciary Committee, setting forth his experience with existing law and expressing support for the bill under consideration. Letters from the Attorney General to the Legislature to assist them with their deliberations are judicially noticeable. (*People v. Eubanks* (1996) 14 Cal.4th 580, 591, fn.3.)

Exhibit M is a letter from Petitioner Commission on Judicial Performance to the Chair of the

Assembly Judiciary Committee, expressing concern about a provision of Senate Constitutional Amendment No. 37. Petitioner's concerns were then publicized more widely to additional legislators, resulting in an amendment deleting the provision. See Exhibit N. Absent an objection from Petitioner as to the genuineness of the letter, it is also judicially noticeable as material considered by the Legislature in its decisionmaking process. (*Porter v. Board of Retirement of Orange County Employees Retirement System* (2013) 222 Cal.App.4th 335, 338, 344-345 (taking judicial notice of legislative committee and Department of Finance analyses of proposed bill, prior bill drafts, and letter from bill proponent to member of the Legislature.).)

Finally, the State Auditor offers Exhibit J for judicial notice solely of the existence of the newspaper articles as public records present in the files of the relevant legislative committees, but not for the truth of any facts stated in the articles. For that limited purpose, Exhibit J is judicially noticeable pursuant to California Evidence Code section 452(h), which permits judicial notice of "facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy."

For the foregoing reasons, the State Auditor respectfully requests that the Court take judicial notice of Exhibits C – R of the Declaration of Sherri S. Kaiser, filed concomitantly with this request.

Date: September 22, 2017

Myron Moskovitz

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James A. Ardaiz (SBN 60455)
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Respondents/Defendants.

Case No. CPF-16-515308

PROOF OF SERVICE

DATE: August 4, 2017
TIME: 9:30 a.m.
DEPT: 302
RESERVATION: 06020804-06

I, the undersigned, certify that I am over the age of eighteen years, and am not a party to or interested in the within action; that my business address is 90 Crocker Avenue, Piedmont, California 94611; that on September 22, 2017, I served a copy the following documents:

STATE AUDITOR'S SUPPLEMENTAL BRIEF

SUPPLEMENTAL DECLARATION OF STATE AUDITOR

DECLARATION OF SHERRI KAISER

REQUEST FOR JUDICIAL NOTICE

From the following electronic service address: myronmoskovitz@gmail.com

VIA FILE AND SERVE: By causing an electronic copy of the document to be served through File & ServeXpress at the same time the document was being filed through File & ServeXpress, addressed to all parties appearing on the File & ServeXpress electronic service list. After submitting the document for filing through File & ServeXpress, the vendor will transmit to the Court and all parties a "Filing Receipt" which displays the date and time the above document was submitted for filing, fulfilling this Court's rule 2.11P3.

The name and e-mail address of the person electronically served was:

James M. Wagstaffe Kerr & Wagstaffe LLP 101 Mission Street, 18th Floor San Francisco, CA 94105-1727 e-mail: wagstaffe@kerrwagstaffe.com	[Attorney for Petitioner/Plaintiff COMMISSION ON JUDICIAL PERFORMANCE]

I declare under penalty of perjury under the laws of the State of California that the foregoing is correct.

Dated: September 22, 2017

Cosmin Barbu