IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, [DIVISION]

ALL OF US OR NONE, LEGAL SERVICES FOR PRISONERS WITH CHILDREN, LEAGUE OF WOMEN VOTERS OF CALIFORNIA, and ALISHA COLEMAN

Petitioners,

vs.

DEBRA BOWEN, Secretary of State of the State of California; and JOHN ARNTZ, Director of the Department of Elections, County of San Francisco,

Respondents.

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December 5, 2011

County Clerk/Registrar of Voters (CC/ROV) Memorandum # 11134

TO: All County Clerks/Registrars of Voters

FROM: Lowell Finley
Chief Counsel

RE: Voter Registration: Status of Persons Convicted Under State's New Criminal Justice Realignment Statutes

Voting Status under Realignment of Offenders Convicted of Low-Level Felonies

To determine its impact on voting eligibility, the Secretary of State's office has reviewed the criminal justice realignment legislation (AB 109 and AB 117) passed by the Legislature and signed into law by Governor Brown earlier this year. The conclusions of the analysis are summarized in the advice below. For the legal analysis supporting this advice, please see the attached memorandum.

Under AB 109 and AB 117 (collectively, the Criminal Justice Realignment Act, CJRA or Act) and effective October 1, 2011, there are four scenarios under which a person convicted of a felony can be incarcerated. Under three of the scenarios, the person is ineligible to vote while incarcerated. Under one of the scenarios, the person retains the right to vote while incarcerated. The four scenarios are:

1. **Felony sentence to state prison:** No change. The person has been convicted of a felony and sentenced to state prison. While in state prison, the person is *ineligible to vote*. A person returned to state prison for violating the terms of their parole is also *ineligible to vote.*

2. **Felony sentence to state prison, served in county jail under contract between the state and a county:** No change. The person has been convicted of a felony and sentenced to state prison. Under a contract between the state and a county, the person is serving the state prison sentence in a county jail. While in county jail, the person is *ineligible to vote*.

3. **Felony sentence to county jail:** ***New.*** The person has been convicted of a CJRA-defined low-level felony and sentenced, on or after October 1, 2011, to a term of more than one year in county jail. While in jail, the person is *ineligible to vote*. A person returned to jail for violating the terms of their post release

community supervision, or for violating probation that was granted for the concluding part of the sentence, is also *ineligible to vote*.

4. **Jail commitment as a condition of probation in lieu of felony sentencing:** No change. The person has been convicted of a felony, but the judge has suspended imposition or execution of a felony sentence, instead placing the person on probation with the condition that the person serve one year or less in county jail. While in jail as a condition of this form of probation, the person *retains the right to vote* because the imposition or execution of the felony sentence was suspended.

Also effective October 1, 2011, there are three scenarios under which a person convicted of a felony and sentenced to state prison or county jail may be released, subject to supervision. Under all three scenarios, the person is ineligible to vote while remaining under supervision.

1. **Parole:** No change. A person who was convicted of a felony, sentenced to state prison, and subsequently placed on state-supervised parole upon release from state prison is, until the period of parole ends, *ineligible to vote*.

2. **Post Release Community Supervision: *New*.** A person who was convicted and sentenced to state prison prior to October 1, 2011, for what is now defined by the CJRA as a low-level felony, and is released from state prison to county-supervised post release community supervision is, until the period of supervision ends, *ineligible to vote*.

3. **Court-approved service of the concluding portion of a felony county jail sentence on probation: *New*.** At the time a judge sentences a person to county jail for the conviction of a CJRA-defined low-level felony, the CJRA authorizes the judge to order that the person be released on probation for a specified, concluding portion of the term. This *post*-sentencing probation, which could last more than a year, continues until the end of the full sentence term. Until the period of this form of probation ends, the person is *ineligible to vote*.

Please feel free to contact me directly at (916) 653-7244 or Lowell.Finley@sos.ca.gov if you have any questions concerning this advice or the accompanying legal memorandum.

If you have any questions, please feel free to contact me at Lowell.Finley@sos.ca.gov or (916) 654-4666.

MEMORANDUM

The Voting Status of Offenders Convicted of Low-Level Felonies As Defined by the 2011 Realignment Legislation

INTRODUCTION

In 2011, Governor Brown proposed and the Legislature enacted a historic realignment from state government to local governments of the responsibility and funding for many governmental functions. An important component of that reform package was criminal justice realignment, also referred to as public safety realignment.

Assembly Bill 109, the Realignment Legislation of 2011 Addressing Public Safety, and Assembly Bill 117, the Criminal Justice Realignment Act of 2011 (referred to collectively as the Criminal Justice Realignment Act (CJRA or Act)), changes how felons convicted of defined "low-level" felonies are dealt with during imprisonment and mandatory post-imprisonment supervised release. The CJRA mandates that felons convicted of these "low-level" felonies, with no prior record of conviction for defined "serious" offenses, will serve their sentence in county jail. The CJRA authorizes the sentencing court, in its discretion, to suspend execution of a concluding portion of that sentence, with the remaining portion to be served under the supervision of county probation departments. Additionally, felons serving prison sentences for "low-level" felonies, regardless of prior convictions, are now subject to locally operated and supervised "post-release community supervision," in lieu of state-supervised parole. These changes raise questions about eligibility to vote for convicted felons on "post-release community supervision" rather than parole, as well as for convicted felons either serving a sentence for conviction of a "low-level" felony in county jail or under the supervision of the county probation department.

This memorandum addresses whether the changes made by the CJRA give offenders convicted and sentenced for CJRA-defined low-level felonies, who were formerly disqualified from voting, the right to vote because they are imprisoned in county jail rather than state prison. It also addresses whether offenders who were convicted of these CJRA-defined low-level felonies and confined in state prison, then released into a program of mandatory supervision that is not named "parole," remain disqualified from voting.

The Secretary of State's office concludes that the CJRA does not change the voting status of offenders convicted of CJRA-defined low-level felonies, either because they serve their felony sentences in county jail instead of state prison or because the mandatory supervision that is a condition of their release from prison is labeled

something other than "parole." Offenders convicted of CJRA-defined low-level felonies continue to be disqualified from voting while serving a felony sentence in county jail, while at the discretion of the court serving a concluding portion of that term on county-supervised probation, or while they remain under mandatory "post release community supervision" after release from state prison.

REALIGNMENT LEGISLATION

The following summary provides an overview of the criminal justice realignment legislation passed by the Legislature and signed into law by Governor Brown earlier this year. It is taken from the *2011 Public Safety Realignment Fact Sheet* issued by the California Department of Corrections and Rehabilitation (CDCR) on July 15, 2011, which can be found at www.cdcr.ca.gov/realignment/index.html.

> Earlier this year, Governor Edmund G. Brown Jr. signed Assembly Bill (AB) 109 and AB 117, historic legislation that will enable California to close the revolving door of low-level inmates cycling in and out of state prisons. It is the cornerstone of California's solution for reducing the number of inmates in the state's 33 prisons to 137.5 percent design capacity by May 24, 2013, as ordered by the U.S. Supreme Court.
>
> All provisions of AB 109 and AB 117 are prospective and implementation of the 2011 Realignment Legislation will begin October 1, 2011. ***No inmates currently in state prison will be transferred to county jails or released early***.
>
> Governor Brown also signed multiple trailer bills to ensure the 2011 Realignment secured proper funding before implementation could go into effect.
>
> . . .
>
> **Community, Local Custody**
>
> AB 109 allows non-violent, non-serious, and non-sex offenders to serve their sentence in county jails instead of state prisons. However, counties can contract back with the State to house local offenders.
>
> Under AB 109:
>
> • No inmates currently in state prison will be transferred to county jails.
> • No inmates currently in state prison will be released early.
> • All felons sent to state prison will continue to serve their entire sentence in state prison.

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• All felons convicted of current or prior serious or violent offenses, sex offenses, and sex offenses against children will go to state prison.
• There are nearly 60 additional crimes that are not defined in Penal Code as serious or violent offenses but at the request of law enforcement were added as offenses that would be served in state prison rather than in local custody.
Please see the document "AB 109: Final Crime Exclusion List" for a complete listing of those crimes.

Post-Release (County-Level) Community Supervision

CDCR continues to have jurisdiction over all offenders who are on state parole **prior** to the implementation date of October 1, 2011. Prospectively, county-level supervision for offenders upon release from prison will include current non-violent, non-serious (irrespective of priors) and sex offenders. County-level supervision will **not** include:

• Third-strike offenders- those whose third strike was for a non-violent offense would still be on State parole.
• Offenders whose **current** commitment offense is serious or violent, as defined by California's Penal Code §§ 667.5(c) and 1192.7(c).
• High-risk sex offenders,
• Mentally Disordered Offenders
• Offenders on parole prior to October 1.

Offenders who meet the above-stated conditions will continue to be under state parole supervision.

The county Board of Supervisors will designate a county agency to be responsible for post-release supervision and will provide that information to CDCR by August 1, 2011. CDCR must notify counties of an individual's release at least one month prior. Once the individual has been released CDCR no longer has jurisdiction over any person who is under post-release community supervision. No person shall be returned to prison on a parole revocation except for those persons previously sentenced to a term of life.

Parole Revocations

Starting October 1, 2011, all parole revocations will be served in county jail instead of state prison and can only be up to 180 days.

The responsibility of parole revocations will continue under the Board of Parole Hearings until July 1, 2013, at which time the parole revocation process will become a local court-based process. Local courts, rather than the Board of Parole Hearings, will be the designated authority for

determining revocations. Contracting back to the state for offenders to complete a custody parole revocation is not an option. Only offenders previously sentenced to a term of life can be revoked to prison.

CONVICTED FELON VOTING STATUS UNDER THE CJRA

Article II, section 4 of the California Constitution disqualifies from voting those "imprisoned or on parole for the conviction of a felony."[1]

Prior to the Legislature's enactment of the CJRA, court decisions, guidance issued by the Secretary of State and some Elections Code provisions treated being "imprisoned for the conviction of a felony" as synonymous with being "in prison" because every person convicted of and sentenced to serve a felony sentence was required to serve that sentence in state prison.

However, following the changes mandated by the CJRA, "imprisoned for the conviction of a felony" and "in prison for the conviction of a felony" can no longer be considered synonymous because the CJRA requires every person convicted of and sentenced for what CJRA defines to be less serious felonies to serve that sentence in a county *jail*, not in state *prison*.

Specifically, under the CJRA, persons convicted of certain felonies (designated by the CJRA as "low-level" felonies) and sentenced after the Act's effective date of October 1, 2011, must serve their felony sentences in county jail rather than state prison. Consistent with this change, the CJRA also changes the Penal Code's definition of "felony" to include offenses carrying sentences of imprisonment in county jail for terms longer than one year.[2]

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[1] The full text of article II, section 4 reads: "The Legislature shall prohibit improper practices that affect elections and shall provide for the disqualification of electors while mentally incompetent or imprisoned or on parole for the conviction of a felony."

[2] The Act amended the definition of "felony" by amending subdivision (a) of section 17 of the Penal Code (added language in italics):

(a) A felony is a crime that is punishable with death, by imprisonment in the state prison, *or notwithstanding any other provision of law, by imprisonment in a county jail under the*

(footnote cont'd next page)

provisions of subdivision (h) of Section 1170. Every other crime or public offense is a misdemeanor except those offenses that are classified as infractions.

As amended by the Act, subdivision (h) of Penal Code section 11170 states:

(h) (1) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision where the term is not specified in the underlying offense shall be punishable by a term of imprisonment in a county jail for 16 months, or two or three years.

(2) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision shall be punishable by imprisonment in a county jail for the term described in the underlying offense.

(3) Notwithstanding paragraphs (1) and (2), where the defendant (A) has a prior or current felony conviction for a serious felony described in subdivision (c) of Section 1192.7 or a prior or current conviction for a violent felony described in subdivision (c) of Section 667.5, (B) has a prior felony conviction in another jurisdiction for an offense that has all the elements of a serious felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision (c) of Section 667.5, (C) is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime and as part of the sentence an enhancement pursuant to Section 186.11 is imposed, an executed sentence for a felony punishable pursuant to this subdivision shall be served in state prison.

(4) Nothing in this subdivision shall be construed to prevent other dispositions authorized by law, including pretrial diversion, deferred entry of judgment, or an order granting probation pursuant to Section 1203.1.

(5) The court, when imposing a sentence pursuant to paragraph (1) or (2) of this subdivision, may commit the defendant to county jail as follows:

(A) For a full term in custody as determined in accordance with the applicable sentencing law.

(B) For a term as determined in accordance with the applicable sentencing law, but suspend execution of a concluding portion of the term selected in the court's discretion, during which time the defendant shall be supervised by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation, for the remaining unserved portion of the sentence imposed by the court. The period of supervision shall be mandatory, and may not be earlier terminated except by court order. During the period when the defendant is under such supervision, unless in actual custody related to the sentence imposed by the court, the defendant shall be entitled to only actual time credit against the term of imprisonment imposed by the court.

The CJRA also provides that inmates already serving sentences for conviction of these CJRA-defined low-level felonies in state prison before October 1, 2011, are, upon their release, no longer to be placed on state-administered parole, but instead in a new, parallel system of county-administered, non-custodial supervision named "post-release community supervision."

Finally, the CJRA gives a judge who sentences a person to county jail for the conviction of a CJRA-defined low-level felony the option to order the person to serve a specified, final portion of the term on probation.

Convicted Felons – Voter Eligibility

As of October 1, 2011, there are four scenarios under which a person convicted of a felony can be incarcerated. Under three of the scenarios, the person is ineligible to vote while incarcerated. Under one of the scenarios, the person retains the right to vote while incarcerated. The four scenarios are:

1. **Felony sentence to state prison:** No change. The person has been convicted of a felony and sentenced to state prison. While in state prison, the person is *ineligible to vote*. A person returned to state prison for violating the terms of their parole is also *ineligible to vote*.

2. **Felony sentence to state prison, served in county jail under contract between the state and a county:** No change. The person has been convicted of a felony and sentenced to state prison. Under a contract between the state and a county, the person is serving the state prison sentence in a county jail. While in county jail, the person is *ineligible to vote*.

3. **Felony sentence to county jail:** ***New.*** The person has been convicted of a CJRA-defined low-level felony and sentenced, on or after October 1, 2011, to a term of more than one year in county jail. While in county jail, the person is *ineligible to vote*. A person returned to county jail for violating the terms of post-release community supervision, or for violating probation that was granted for the concluding part of the sentence, is also *ineligible to vote*.

4. **Jail commitment as a condition of probation in lieu of felony sentencing:** No change. The person has been convicted of a felony, but the judge has suspended the imposition or execution of a felony sentence, instead placing the person on probation with the condition that the person serve one year or less in county jail. While in county jail as a condition of this form of probation, the

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person *retains the right to vote* because the imposition or execution of the felony sentence was suspended.

There are now three scenarios under which a person convicted of a felony and sentenced to state prison or county jail may be released, subject to parole, post-release community supervision, or probation. Under all three scenarios, the person is ineligible to vote while remaining under these types of supervision.

1. **Parole:** No change. A person who was convicted of a felony, sentenced to state prison, and subsequently placed on state-supervised parole upon release from state prison is, until the period of parole ends, *ineligible to vote*.

2. **Post-Release Community Supervision:** ***New.*** A person who was convicted and sentenced to state prison prior to October 1, 2011, for what is now defined by the CJRA as a low-level felony, and is released from state prison to county-administered post-release community supervision is, until the period of supervision ends, *ineligible to vote*.

3. **Court-approved service of the concluding portion of a felony county jail sentence on probation:** ***New.*** At the time a judge sentences a person to county jail for the conviction of a CJRA-defined low-level felony, the judge has the option to order that the person be released on probation for a specified, concluding portion of the term. This *post*-sentencing probation, which could last more than a year, continues until the end of the full sentence term. Until the period of this form of probation ends, the person is *ineligible to vote*.

Background

Since statehood, the California Constitution has prohibited voting by felons. Until 1974, a person sentenced to prison following conviction of a felony ("infamous crime" in earlier versions of the Constitution) was banned from voting for life. In 1974, the voters amended article II, section 3 of the Constitution to restore the right to vote to convicted felons after they served their sentences and completed parole. Subsequently renumbered, the language of that amendment remains unchanged in today's Constitution:

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> The Legislature . . . shall provide for the disqualification of electors while . . . imprisoned or on parole for the conviction of a felony. (Cal. Const., art. II, § 4.)[3]

On December 28, 2006, the Secretary of State's office issued CC/ROV #06403, Subject: Prisoner Voting Rights. The key passage states: "the only persons disqualified from voting by reason of Article II, Section 4, are those who are imprisoned in state prison for, or on parole as the result of, a felony conviction." CC/ROV #06403 was issued following the decision of the California Court of Appeal in *League of Women Voters v. McPherson* (2006) 145 Cal.App.4th 1469.

In *McPherson*, the court held that in cases where a person was convicted of a felony but the trial judge suspended the imposition or execution of sentence and instead ordered the person to serve less than one year in county jail as a condition of probation, the person was not imprisoned for the conviction of a felony and was therefore eligible to vote. (*League of Women Voters v. McPherson, supra,* 145 Cal.App.4th at 1475; see *Stephens v. Toomey* (1959) 51 Cal.2d 864, 870-871.) The court's holding and rationale remain good law. Conviction for a felony, standing alone, does not make a person ineligible to vote. For disenfranchisement to result, conviction must be followed by the court's imposition of a felony sentence of imprisonment. The court formulated its order, however, as a short, simple rule of thumb that did not incorporate the court's rationale. It ordered issuance of a peremptory writ of mandate, directing the Secretary of State "to issue a memorandum informing the county clerks and elections officials that the only persons disqualified from voting by reason of article II, section 4 are those who have been imprisoned in state prison or who are on parole as a result of the conviction of a felony." (*Id.*, at 1486.) CC/ROV #06403 tracked the language of the court's order. The court's order and the CC/ROV accurately reflected the law at the time they were issued. As explained below, they no longer do.[4]

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[3] As noted above, the full text of article II, section 4 reads: "The Legislature shall prohibit improper practices that affect elections and shall provide for the disqualification of electors while mentally incompetent or imprisoned or on parole for the conviction of a felony."

[4] Since CC/ROV #06403 was issued, the Secretary of State has issued two additional documents on the subject of felon disenfranchisement. A brochure entitled "Vote in 2010!" states that, among the qualifications to vote, a person must not be "in prison or on parole for the conviction of a felony." A second brochure entitled "A Voting Guide for Currently or Formerly Incarcerated Californians" states that, to vote, a person must "[n]ot be in prison or on parole as a result of a felony conviction" or "serving a state

(footnote cont'd next page)

The Governor's Budget for 2011-2012, under the heading "Local Jurisdiction for Lower-Level Offenders and Parole Violators," proposed to re-direct certain defined low-level felony offenders, convicted and sentenced to terms of imprisonment, from state prison to county jails. The Governor's Budget proposed that "offenders without any current or prior serious or violent or sex convictions would become the responsibility of local jurisdictions," serving their felony sentences in county jail rather than state prison. (*Id.*, p. 23.)

As outlined above, there is an important difference between these county jail inmates, who have been convicted and sentenced for a felony, and the county jail inmates in the *McPherson* case, who were convicted of a felony but <u>not</u> sentenced for that felony and instead were placed in county jail as a condition of probation.

Under the heading "Realign Adult Parole to the Counties," the Governor's Budget proposed a similar change for parolees:

> *This proposal would shift the responsibility for adult parole to the counties.* Since these offenders typically live in the community from which they left, county law enforcement and probation are usually more knowledgeable about the offender, suggesting *local supervision of parolees* is a better policy and public safety option. (P. 23, italics added.)

"Imprisoned" is not synonymous with "in prison."

Webster's Third New International Dictionary (1981) defines "imprison" as "to put in prison: confine in a jail."

As this definition shows, "imprisoned" is a broader term than "in prison" because it is not specific as to the place of confinement – it can mean "imprisoned" in a state prison for a felony conviction or "imprisoned" in a county jail for a felony conviction. By contrast, "in prison" is narrower because it is specific to the place of confinement, in this case meaning "state prison," not "county jail."

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prison term in a county jail under contract between state and local officials." For purposes of the present analysis, it is important to note that inmates housed in a county jail pursuant to such contracts with the CDCR have been sentenced to state prison and remain under CDCR jurisdiction.

The Elections Code contains a number of provisions regarding the voting status of felons that incorporate the Constitution's phrase "imprisoned or on parole for the conviction of a felony" verbatim or with minor variations. Section 2150(a)(9)[5] requires the affidavit of registration to show "[t]hat the affiant is currently not imprisoned or on parole for the conviction of a felony." Section 2201 requires a county elections official to cancel a voter's registration "[u]pon proof that the person is presently imprisoned or on parole for conviction of a felony." Section 2212 requires that, based on court records, "[t]he elections official shall, during the first week of April and the first week of September in each year, cancel the affidavits of those persons who are currently imprisoned or on parole for the conviction of a felony." Sentencing a person convicted of a CJRA defined low-level felony to county jail is consistent with the dictionary definition of imprison.

Several other sections of the Elections Code, however, substitute the words "in prison" for the Constitution's term "imprisoned." Section 2101 states that "[a] person entitled to register to vote shall be a United States citizen, a resident of California, not *in prison* or on parole for the conviction of a felony, and at least 18 years of age at the time of the next election." (Emphasis added.) Section 2016 requires printed literature or media announcements made in connection with programs to encourage voter registration to contain the following statement: "A person entitled to register to vote must be a United States citizen, a resident of California, not *in prison* or on parole for the conviction of a felony, and at least 18 years of age at the time of the next election." (Emphasis added.) Section 2300 establishes a publicly-available Voter Bill of Rights that defines a "valid registered voter" as "a United States citizen who is a resident in this state, who is at least 18 years of age and not *in prison* or on parole for conviction of a felony, and who is registered to vote at his or her current residence address." (Emphasis added.) Construed literally, these provisions would not apply to a person serving a sentence in county jail for the conviction of a felony.

When the Elections Code sections using the "in prison" terminology were adopted, there was no practical difference under California law between being "imprisoned" for a felony conviction and being "in prison" for a felony conviction. That is because everyone imprisoned for the conviction of any felony was required to serve that sentence in state prison.

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[5] All statutory references are to the Elections Code unless otherwise noted.

Beginning October 1, 2011, however, the Criminal Justice Realignment Act requires that "low-level felony offenders" – persons CJRA defines as being convicted of specified non-serious, non-sexual, non-violent felonies – who are sentenced to a term of incarceration serve their felony sentences in county jail. Under the Act, these individuals are "*imprisoned* for the conviction of a felony," but they are not "*in prison* for the conviction of a felony."

Parole and Post-Release Community Supervision are functionally equivalent.

Webster's Third New International Dictionary (1981) defines parole as "a conditional and revocable release of a prisoner serving an indeterminate or unexpired sentence in a penal or correctional institution."

Under this definition, Post-Release Community Supervision (PRCS) – a program enacted as a part of the CJRA – is functionally equivalent to parole in the California criminal justice system.

All of the Elections Code voter disqualification provisions discussed above with respect to felony imprisonment also state that a voter is disqualified while "on parole." In addition to those provisions, section 14240(a)(5) permits a poll worker to challenge a person's eligibility to vote on several grounds, including that the person seeking to vote in the polling place is "currently on parole for the conviction of a felony." Before the CJRA, this Elections Code language aligned directly with the terminology and structure of the correctional and rehabilitative system established in the Penal Code. Every felon released from state prison on condition of supervision was "on parole" in a system with "parole officers," administered by the California Department of Corrections and Rehabilitation. All decisions on whether to grant, deny or revoke parole were made by the Board of Parole Hearings.

The pre-CJRA parole system remains unchanged for state prison inmates serving sentences for conviction of more serious felonies. For state prison inmates serving sentences for CJRA-defined low-level felonies, however, the Act creates a parallel program of supervised release. Beginning October 1, 2011, these inmates are no longer released into state-supervised "parole." Instead, they are released into the new, county-administered PRCS program. Like traditional parole, PRCS is mandatory and subject to a detailed supervision agreement. It is the functional equivalent of parole. Absent clear indicia of intent otherwise, PRCS should be viewed, from the standpoint of the electoral

franchise, as indistinguishable from parole: released felons in either status remain ineligible to vote.

Just as determining the voting status of an inmate convicted and sentenced for a felony is not simply a matter of determining whether the inmate is literally "in prison," determining the voting status of a former felony inmate is not simply a matter of determining whether the former inmate is literally "on parole." For example, a person released from federal prison after being convicted and sentenced for a federal felony is released into "supervised release." It is well established that former federal inmates are ineligible to vote in California while they are in the federal supervised release program, even though the program does not use the term "parole."

Several provisions of the CJRA make it clear that PRCS is the functional equivalent of parole. Penal Code section 3000(a)(1) provides in part: "A sentence resulting in imprisonment in the state prison pursuant to Section 1168 or 1170 shall include a period of parole supervision or postrelease community supervision, unless waived, or as otherwise provided in this article."
Penal Code section 3003(e) provides in part: "The following information, if available, shall be released by the Department of Corrections and Rehabilitation to local law enforcement agencies regarding a paroled inmate or inmate placed on postrelease supervision pursuant to Title 2.05 (commencing with Section 3450) who is released in their jurisdictions . . ." Penal Code section 3450(a)(5) provides: "Realigning the postrelease supervision of certain felons reentering the community after serving a prison term to local community corrections programs, which are strengthened through community-based punishment, evidence-based practices, and improved supervision strategies, will improve public safety outcomes among adult felon parolees and will facilitate their successful reintegration back into society." Penal Code section 3451(c)(2) provides in part: "The department shall also inform persons serving a term of parole for a felony offense who are subject to this section of the requirements of this title and of his or her responsibility to report to the county agency responsible for serving that parolee. Thirty days prior to the release of any person subject to postrelease supervision by a county, the department shall notify the county of all information that would otherwise be required for parolees under subdivision (e) of Section 3003." Penal Code section 3452 provides in part: "(a) Persons eligible for postrelease community supervision pursuant to this title shall enter into a postrelease community supervision agreement prior to, and as a condition of, their release from prison. Persons on parole transferred to postrelease community supervision shall enter into a postrelease community supervision agreement as a condition of their release from state prison. (b)

A postrelease community supervision agreement shall specify the following . . ." These are just some examples indicating that PRCS is the functional equivalent of parole. [6]

Express legislative intent is required to overturn long-established principles of law.

California courts have long recognized that "[i]t should not 'be presumed that the Legislature in the enactment of statutes intends to overthrow long-established principles of law unless such intention is made clearly to appear either by express declaration or by necessary implication.'" (*Theodor v. Superior Court* (1972) 8 Cal.3d 77, 92, quoting *County of Los Angeles v. Frisbie* (1942) 19 Cal.2d 634, 644 [122 P.2d 526]; accord *Fuentes v. Workers' Comp. Appeals Bd.* (1976) 16 Cal.3d 1, 6-7.) As recently as 2008, the Court of Appeal expressed this principle in terms directly applicable to the construction of the CJRA:

> If the Legislature intended to effect a substantial change in the law by removing an entire class . . . from [a law's] coverage, it can and surely would do so expressly. An intention to legislate by implication will not be presumed. (*Canister v. Emergency Ambulance Service* (2008) 160 Cal.App.4th 388, 400-401.)[7]

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[6] The CJRA also provides for a new option of post-sentencing probation. At the time a judge sentences a person to county jail for the conviction of a CJRA defined low-level felony, the judge has the option to suspend execution of a concluding portion of the term selected and instead order the person to serve the concluding portion of the term on probation. (Pen. Code § 1170(h)(5)(B).) This concluding period of probation, which could last more than a year, continues until the end of the full sentence term. This form of probation is more akin to traditional parole than to the post-conviction, pre-sentencing probation, conditioned on serving a year or less in county jail, that judges had before the CJRA went into effect and continue to have. A person released on probation pursuant to this new felony sentencing option is, like a parolee, continuing to serve their felony sentence although no longer in custody. Until the period of this form of probation ends, the person is ineligible to vote.

[7] Accord, *Krater v. City of Los Angeles* (1982) 130 Cal.App.3d 839, 845; *Fuentes v. Workers' Comp. Appeals Bd.*, *supra*, 16 Cal.3d at p. 7; *Ramos v. City of Santa Clara* (1973) 35 Cal.App.3d 93, 97 ["subsequent legislation is not presumed to effectuate a repeal of the existing law in the absence of that expressed intent"].

In the case of the CJRA, the Legislature gave no indication that it intended realignment to remove an entire class of convicted felons – CJRA-defined low-level felony offenders – from the coverage of laws that disqualify convicted felons from voting while serving their sentences or on conditional, revocable supervised release. Indeed, there is no indication that the Legislature ever considered the issue. In the entire body of realignment and related budget trailer bills enacted by the Legislature, there is not a single reference to the felon ineligibility provision of article II, section 4 of the California Constitution. Other than conforming amendments to add references to the newly amended Penal Code section 1170(h) to a number of Elections Code sections that already defined certain offenses as felonies, there is not a single word about elections, electors, the electoral franchise, voting, voter registration, voters, qualification or disqualification of voters, voting privileges, or rights. The Legislative Counsel's digests and legislative committee reports for those bills are equally silent with regard to article II, section 4 and do not even mention the conforming amendments to the Elections Code. Thus, the legislation itself, as well as the official material available to the legislators who voted to adopt it, contained no indication, express or otherwise, of any intent to change anyone's eligibility to vote from what it had been under prior law. It is difficult to imagine that the Legislature would act to enfranchise thousands of previously ineligible convicted felons without indicating any intention to do so.

On the contrary, language in many of the realignment provisions indicates that the Legislature considered a felony sentence to serve a term in county jail to be the equivalent of a felony sentence to serve a term in state prison. Previously, "felony" was defined as an offense carrying a punishment of incarceration in state prison. (Former Pen. Code § 17(a).) The Act amended that definition to include offenses carrying a punishment of one of several available sentences of more than one year in county jail. (Pen. Code § 17(a), as amended, cross-referencing Pen. Code § 1170(h) [where there is no term specified in the underlying offense, a sentence to county jail for 16 months or 2 or 3 years].)

In addition, the Assembly Budget Committee Analysis, concurring in Senate amendments to AB 109, Chapter 15, Statutes of 2011, the first of the two realignment bills, shows that the definitional change was part and parcel of the overall realignment project:

> Make various changes to Low Level Offender statutes as follows:
>
> a) Redefine a felony to include imprisonment in a county jail for more than a year;
>
> b) Change all enumerated penalty code sections to include the phrase "pursuant to subdivision (h) of Penal Code

Section (PC) 1170;"

c) Amend PC Section 1170 to include (h), which provides 16 months, two, or three years if the punishment is specified to be served in county jail unless the person has a prior violent, serious, or sex offense (in which case they serve time in state prison); and,

d) Provide that counties can contract with the state to house felony offenders.

Similarly, language in the Act describes inmates released from state prison into the new post release community supervision program as "parolees." For example, Penal Code section 3450(a)(5) provides: "Realigning the postrelease supervision of certain felons reentering the community after serving a prison term to local community corrections programs, which are strengthened through community-based punishment, evidence-based practices, and improved supervision strategies, will improve public safety outcomes among adult felon parolees and will facilitate their successful reintegration back into society." This usage is consistent with the original description of the realignment proposal in the Governor's Budget for 2011-2012, discussed above, proposing to "Realign Adult Parole to the Counties."

A statutory interpretation that avoids possible unconstitutionality is favored.

The California Constitution requires the Legislature to "provide for the disqualification of electors while . . . imprisoned or on parole for the conviction of a felony." (Cal. Const., art. II, § 4.)

California courts presume, as a principle of statutory construction, that the Legislature intends to enact constitutionally valid statutes. (*Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 229; *In re Kay* (1970) 1 Cal.3d 930, 942.) This presumption requires adoption of "an interpretation that, consistent with the statutory language and purpose, eliminates doubts as to the provision's constitutionality." (*Id.*) The presumption has been applied in a case raising statutory construction issues very similar to those posed by the CJRA. The appellant in that case argued that parole provisions amended as part of the Uniform Determinate Sentencing Law were intended to enfranchise parolees. The Court of Appeal rejected the argument, stating that construing the statutes to enfranchise parolees would be constitutionally impermissible under article II, section 4 of the Constitution. (*Flood v. Riggs* (1978) 80 Cal.App.3d 138, 153 fn.19.)

The enactment of the CJRA requires that the term "in prison" in the Elections Code provisions described above be construed to mean "imprisoned." That construction is consistent with the language of article II, section 4 of the Constitution, with the other Elections Code sections that use the term "imprisoned," and with the intent of the CJRA. An alternative, literal construction of those code sections to apply them only to a person who is in prison would allow persons convicted of felonies to vote, simply because they were sentenced to imprisonment in county jail rather than state prison. That literal construction would raise equally serious doubts about the constitutionality of the CJRA, as would any construction that would allow voting by felons released from state prison into PRCS rather than parole.

Courts will not blindly accept terminology or characterizations employed in legislation when they obfuscate the true effect of the legislation. (Cf., *Weekes v. City of Oakland* (1978) 21 Cal.3d 386, 392 [court must determines the character of a tax from its incidents, not the designation given to it by the Legislature].) An attempt, for example, to amend the Penal Code solely by renaming state prisons as "State Detention Centers" and state parole as "State Supervised Release," while stating an intent that felons imprisoned in State Detention Centers or on State Supervised Release should be entitled to register and vote because they are not "in prison or on parole for the conviction of a felony" under Elections Code section 2101 would be very unlikely to pass constitutional muster.

The differences between the changes in this hypothetical example and the changes the Legislature made in the CJRA are differences of degree, not kind. For the felonies covered by the CJRA, the offenses and terms of imprisonment are unchanged. Only the place of imprisonment is changed, from a state prison to a county jail, for those receiving felony sentences on or after October 1, 2011. Correspondingly, the fact that post-release supervision is mandatory and subject to a detailed supervision agreement remains unchanged. Only the governmental entity responsible for supervision after release from prison changes, from the state to a county, for those released from prison who were serving sentences imposed before October 1, 2011, for the same offenses. Of course, unlike the hypothetical example, the Legislature expressed no intent for the changes made by the CJRA to affect anyone's eligibility to vote. Serious constitutional doubts would be raised if the Secretary of State or local elections officials construed the CJRA, together with the pre-existing Elections Code provisions, as granting the right to vote to persons convicted of the same felonies and sentenced to terms of the same length, simply because they are imprisoned in county jail instead of state prison. Similarly, serious constitutional doubts would be raised if the Act, together with the pre-existing Elections Code provisions, were construed to grant the right to vote to felons released from prison, simply because the program into which they were released had

been renamed from parole to "Post-Release Community Supervision" and placed under county rather than state control.

The Criminal Justice Realignment Act does not disenfranchise anyone who would have been eligible to vote under prior law.

In *McPherson*, the Court of Appeal declined to construe election law to disenfranchise otherwise eligible voters without clear evidence that the Legislature intended the statutes it enacted to have that effect.

> [I]n the absence of any clear intent by the Legislature or the voters, we apply the principle that " '[t]he exercise of the franchise is one of the most important functions of good citizenship and no construction of an election law should be indulged that would disenfranchise any voter if the law is susceptible of any other meaning.' " (*McPherson*, 145 Cal.App.4th at 1482, citation omitted.)

McPherson does not conflict with the canon of statutory construction, discussed above, that long-established principles of law should not be overturned unless the Legislature has clearly shown it intends to do so "either by express declaration or by necessary implication." (*Theodor v. Superior Court, supra,* 8 Cal.3d at 92, quoting *County of Los Angeles v. Frisbie*, *supra*, 19 Cal.2d at 644; accord *Fuentes v. Workers' Comp. Appeals Bd., supra,* 16 Cal.3d at 6-7.) The construction of the CJRA adopted here does not disenfranchise anyone who would have been eligible to vote under prior law. As before, a person convicted of a CJRA-defined low-level felony and sentenced to a term of imprisonment that exceeds the maximum misdemeanor punishment of one year in county jail is ineligible to vote while serving that term. The only significant difference is the facility in which the person is imprisoned. Similarly, a person released from state prison who remains ineligible to vote during a term of PRCS administered by a county would, under prior law, also have been ineligible to vote during a term of parole supervised by the state. On the other hand, a construction of the Act that ignored these parallels would enfranchise thousands of convicted felons that were disenfranchised under prior law with no indication from the Legislature that it intended this result when it adopted the Act.

CONCLUSION

For all the reasons stated above, the Secretary of State's office concludes that the CJRA did not change the voting status of offenders convicted of CJRA-defined low-level felonies, either because they serve their felony sentences in jail instead of prison or

because the mandatory supervision that is a condition of their release from prison is labeled something other than "parole."

Under the CJRA's new provisions, any person convicted of a CJRA-defined low-level felony is disqualified from voting while serving a sentence to county jail, while on probation authorized by the sentencing judge in lieu of serving the concluding part of such a felony county jail sentence, or while under "post-release community supervision" after release from prison.

As in the past, a person remains eligible to vote despite having been convicted of a felony, if they are in county jail as a condition of probation ordered by a judge who elects to suspend the imposition or execution of sentence, and a person convicted of a felony remains ineligible to vote while serving a felony sentence in state prison or while on parole.

EXHIBIT 2

C

Court of Appeal, First District, Division 1, California.
LEAGUE OF WOMEN VOTERS OF CALIFORNIA et al., Petitioners,
v.
Bruce McPHERSON, as Secretary of State, etc., et al., Respondents.

No. A114988.
Dec. 21, 2006.

Background: Three nonprofit organizations and three individuals confined in local facilities as condition of felony probation petitioned for writ of mandate to compel Secretary of State and county director of elections to accept affidavits of registration to vote from all individuals, otherwise qualified to vote, who were confined in local jails as condition of felony probation, and to ensure that these individuals were duly registered and able to vote in future elections.

Holdings: The Court of Appeal, Stein, J., held that:
(1) case fell within limited category where appellate court properly exercises original jurisdiction;
(2) constitutional provision disqualifying electors who were "imprisoned or on parole for the conviction of a felony" did not disenfranchise persons confined in local jails as condition of felony probation; and
(3) provision did not disenfranchise persons convicted of felony, but sentenced to term in county jail in connection with "wobbler" offenses.

Writ issued.

West Headnotes

[1] Courts 106 206(1)

106 Courts
106VI Courts of Appellate Jurisdiction
106VI(A) Grounds of Jurisdiction in General
106k206 Original Jurisdiction in General
106k206(1) k. California. Most Cited Cases

Writ of mandate petition seeking to compel Secretary of State and county director of elections to allow individuals confined in local jails as condition of felony probation to vote fell within limited category where appellate court properly exercises original jurisdiction; proceeding concerned meaning of pertinent constitutional provision, and for years Secretary of State took position that provision disenfranchised only certain persons, but after requesting and receiving opinion from Attorney General, Secretary of State took opposite position. West's Ann.Cal. Const. Art. 2, § 4.

[2] Elections 144 90

144 Elections
144IV Qualifications of Voters
144k87 Forfeiture of Citizenship and Disfranchisement
144k90 k. Conviction of Crime. Most Cited Cases

Constitutional provision disqualifying electors who were "imprisoned or on parole for the conviction of a felony" did not disenfranchise persons confined in local jails as condition of felony probation; two groups were distinct, as unlike those imprisoned in state facility, those confined as condition of felony probation were under jurisdiction of court and were not imprisoned as result of felony conviction. West's Ann.Cal. Const. Art. 2, § 4.
See 3 Witkin & Epstein, Cal. Criminal Law (3d ed. 2000) Punishment, § 178; 7 Witkin, Summary of Cal. Law (10th ed. 2005) Constitutional Law, §§ 233, 247; Cal. Jur. 3d, Elections, § 45.

[3] Constitutional Law 92 584

92 Constitutional Law
92V Construction and Operation of Constitutional Provisions
92V(A) General Rules of Construction
92k584 k. Intent in General. Most Cited

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Cases

(Formerly 92k13)

The aim of constitutional interpretation is to determine and effectuate the intent of those who enacted the constitutional provision at issue.

[4] Constitutional Law 92 584

92 Constitutional Law
92V Construction and Operation of Constitutional Provisions
92V(A) General Rules of Construction
92k584 k. Intent in General. Most Cited Cases

(Formerly 92k13)

Constitutional Law 92 592

92 Constitutional Law
92V Construction and Operation of Constitutional Provisions
92V(A) General Rules of Construction
92k590 Meaning of Language in General
92k592 k. Plain, Ordinary, or Common Meaning. Most Cited Cases

(Formerly 92k14)

When a constitutional provision was enacted by initiative, the intent of the voters is the paramount consideration, and to determine the voters' intent, courts look first to the constitutional text, giving words their ordinary meanings.

[5] Constitutional Law 92 584

92 Constitutional Law
92V Construction and Operation of Constitutional Provisions
92V(A) General Rules of Construction
92k584 k. Intent in General. Most Cited Cases

(Formerly 92k13)

Where a provision in the Constitution is ambiguous, a court ordinarily must adopt that interpretation which carries out the intent and objective of the drafters of the provision and the people by whose vote it was enacted.

[6] Constitutional Law 92 584

92 Constitutional Law
92V Construction and Operation of Constitutional Provisions
92V(A) General Rules of Construction
92k584 k. Intent in General. Most Cited Cases

(Formerly 92k13)

New provisions of the Constitution must be considered with reference to the situation intended to be remedied or provided for.

[7] Statutes 361 212.1

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k212 Presumptions to Aid Construction
361k212.1 k. Knowledge of Legislature. Most Cited Cases

The enacting body is deemed to be aware of existing laws and judicial constructions in effect at the time legislation is enacted.

[8] Statutes 361 325

361 Statutes
361IX Initiative
361k325 k. Constructions, Operation and Effect of Initiated Acts. Most Cited Cases

Principle, that enacting body is deemed to be aware of existing laws and judicial constructions in effect at the time legislation is enacted, applies to legislation enacted by initiative.

[9] Elections 144 10

144 Elections
144I Right of Suffrage and Regulation Thereof in General
144k8 Statutory Provisions Conferring or Defining Right
144k10 k. Construction and Operation. Most Cited Cases

In the absence of any clear intent by the Legis-

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lature or the voters, the exercise of the franchise is one of the most important functions of good citizenship, and no construction of an election law should be indulged that would disenfranchise any voter if the law is reasonably susceptible of any other meaning.

[10] Constitutional Law 92 611

92 Constitutional Law
92V Construction and Operation of Constitutional Provisions
92V(A) General Rules of Construction
92k608 Construction by Governmental Entities
92k611 k. Legislative Construction. Most Cited Cases
(Formerly 92k20)

When the Legislature is charged with implementing an unclear constitutional provision, the Legislature's interpretation of the measure deserves great deference.

[11] Elections 144 90

144 Elections
144IV Qualifications of Voters
144k87 Forfeiture of Citizenship and Disfranchisement
144k90 k. Conviction of Crime. Most Cited Cases

Constitutional provision disqualifying electors who were "imprisoned or on parole for the conviction of a felony" does not disenfranchise persons convicted of felony, but sentenced to term in county jail in connection with "wobbler" offenses; although where court suspends imposition of sentence and places defendant on probation, crime is a felony, because court has suspended imposition of sentence, the defendant has not been "convicted" for purposes of provision and accordingly is entitled to vote. West's Ann.Cal. Const. Art. 2, § 4; West's Ann.Cal.Penal Code §§ 17, 18.

[12] Criminal Law 110 27

110 Criminal Law
110I Nature and Elements of Crime
110k27 k. Felonies and Misdemeanors. Most Cited Cases

Where an offense is punishable by imprisonment in state prison, but also is punishable, in the alternative, by a county jail sentence, its status as a felony can be changed only by a judgment imposing a punishment other than imprisonment in the state prison. West's Ann.Cal.Penal Code §§ 17, 18.

West Codenotes
Prior Version Recognized as Unconstitutional West's Ann.Cal. Const. Art. 2, § 3. ****587** American Civil Liberties Union, Maya L. Harris, Margaret C. Crosby, Brian A. Lambert, Anupama K. Menon, Social JusticeLaw Project, Peter Sheehan, for Petitioners.

Bill Lockyer, Attorney General of the State of California, Stacy Boulware Eurie, Senior Assistant Attorney General, Jonathan K. Renner, Supervising Deputy Attorney General, Leslie R. Lopez, Deputy Attorney General, for Respondent Bruce McPherson, as Secretary of State.

Dennis J. Herrera, San Francisco City Attorney, Wayne Snodgrass, San Francisco, Chad Jacobs, Ann M. O'Leary, for Respondent John Arntz, as San Francisco Director of Elections.

STEIN, J.

***1473** This is a proceeding for writ of mandate brought by three nonprofit organizations with interests in voting rights, prisoner rights, or both, and three individuals confined in local facilities as a condition of felony probation. Petitioners seek an order compelling the Secretary of State and the San Francisco Director of Elections to accept affidavits of registration to vote from all individuals, otherwise qualified to vote, who are confined in local jails pursuant to a sentence imposed under Penal Code sections 17 and 18 or as a condition of felony probation, and to perform all ministerial tasks necessary to ensure that these individuals are duly re-

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gistered and able to vote in future elections.

[1] This case falls within the limited category where an appellate court properly exercises original jurisdiction. (*Jolicoeur v. Mihaly* (1971) 5 Cal.3d 565, 570, 96 Cal.Rptr. 697, 488 P.2d 1, fns. 1 & 2.) It concerns the meaning of article II, section 4 of California's Constitution: "The Legislature shall prohibit improper practices that affect elections and *shall provide for the disqualification of electors while* mentally incompetent or *imprisoned or on parole for the conviction of a felony*." (Emphasis added.) For many years the Secretary of State took the position that the emphasized language disenfranchises only persons who, as a result of a felony conviction, are serving a ***1474** sentence in state prison or are on parole from a felony conviction. FN1 In December 2005, however,****588** after requesting and receiving an opinion from the Attorney General on the question, the Secretary of State took the opposite position. The Secretary of State notified local officials, including the Director of San Francisco's Department of Elections, that the constitutional provision also applies to persons incarcerated in a local detention facility for the conviction of a felony, including persons serving that term as a condition of probation. (Secretary of State Bruce McPherson, letter to all county clerks/registrars of voters, Dec. 28, 2005.)

FN1. For example:

In 1976, two years after article II, section 4 was adopted, the Secretary of State explained to the state's county clerks and registrars of voters, "[A]ny convicted felon who is presently in State prison or on parole is not eligible to register or vote regardless of the felony involved. (Do not confuse 'probation' with 'parole'. A person on probation *may* register to vote.)" (Secretary of State March Fong Eu, letter to County Clerks and Registrars of Voters, Apr. 30, 1976.)

In 1979 the Secretary of State, interpreting this court's opinion in *Flood v. Riggs* (1978) 80 Cal.App.3d 138, 145 Cal.Rptr. 573 (*Flood*) (discussed *post*), wrote to the Fairfield Elections Supervisor that the constitutional provision "does not [disenfranchise] a person convicted of a felony and who is on probation. It speaks only to those felons imprisoned or undergoing an unexpired term of parole. The Secretary of State has also taken the position that the conviction must be for a felony which results in confinement in a state prison. Therefore, persons convicted of a felony but ... sent to the county jail are not ineligible to register to vote." (Secretary of State March Fong Eu, letter to Elections Supervisor Mary Widger, May 29, 1979.)

In 2004, the Secretary of State responded to an inquiry from San Francisco's Legal Services for Prisoners with Children that "it is the law and therefore the position of the Secretary of State, that only those persons who are in prison or on parole for the conviction of a felony may be disqualified as electors." (Secretary of State Kevin Shelley, letter to Program Director Dorsey E. Nunn & Staff Attorney Cassie M. Pierson, Nov. 5, 2004.)

Petitioners maintain that the construction of article II, section 4 adopted by the Attorney General and the Secretary of State is overbroad. In their view, section 4 does not disenfranchise persons confined in a local facility as a condition of felony probation or sentenced under Penal Code sections 17 and 18 to anything other than imprisonment in state prison. FN2 Respondent John Arntz, Director of San Francisco's Department of Elections, points out that there are sound administrative reasons for adopting petitioners' interpretation. He asserts, however, that he and other elections officials lack the power and means to determine whether any par-

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ticular person is or is not entitled to register to vote, relying on lists of persons provided by the clerks of the state's superior courts. He therefore requests that in lieu of directing county elections officials to accept the applications of persons entitled to vote, we direct the Secretary ***1475** of State to notify the clerks of the superior courts of this court's interpretation of article II, so that they will limit the names on their lists to conform to that interpretation.

> FN2. Petitioners concede that article II, section 4 applies to persons sentenced to a term in state prison who serve that term in county jail under contract between state and local officials.

We agree that article II, section 4 does not apply to persons on felony probation. Where the court suspends imposition of sentence and places a defendant on probation, the defendant has not suffered a conviction for purposes of article II, section 4. In addition, where a probationer is ordered to serve time in a local facility because either imposition or execution of sentence has been suspended, he or she has not been imprisoned for the conviction of a felony, but has been confined as a condition of probation. Finally, where by virtue of Penal Code section 18, a felony offense is punishable by fine or imprisonment in county jail, and the trial court, pursuant to Penal Code section 17, subdivision (b)(1), enters judgment imposing something other than imprisonment in state prison, the crime is a misdemeanor for purpose of article II, section 4. We therefore grant the relief requested by petitioners, as modified by the request of John Arntz, and direct the Secretary of State to inform the state's county clerks, superior court clerks and registrars of voters, that article II, section 4 disenfranchises only persons imprisoned in state prison or on parole for the conviction of a felony.

BACKGROUND

The first California Constitution, adopted in 1849, permanently disenfranchised****589** all persons "convicted of any infamous crime." (Cal. Const. of 1849, art. II, § 5, adopted in Cal. Const. of 1879 as art. II, § 1.) FN3 As this court recognized in *Truchon v. Toomey* (1953) 116 Cal.App.2d 736, 254 P.2d 638 (*Truchon*), the term "conviction" does not have a fixed meaning. It could be, and has been, interpreted narrowly as the *fact* of conviction; i.e., the return of a verdict of guilt, such as when a conviction triggers the power of the governor to pardon. It also could be, and has been, interpreted to apply only to those proceedings which have been finally completed. (*Id.* at pp. 740–744, 254 P.2d 638.) New York had interpreted the term in its most comprehensive sense (i.e., to require both a verdict and a final judgment) in connection with its own constitutional provision directing the legislature to " 'enact laws excluding from the right of suffrage all persons convicted of ... any infamous crime.' " (*People v. Fabian* (1908) 192 N.Y. 443, 446, 453 [85 N.E. 672, 673, 676].) This court, agreeing with the reasoning of the New York court, concluded that a broad interpretation is called for when disabilities such as disenfranchisement result from a conviction. It reasoned, further, that the people of California must have been of similar mind to the people of New York "when ***1476** they placed in the Constitution of 1849 practically the same provision." (*Truchon, supra,* at p. 744, 254 P.2d 638.)

> FN3. Hereafter, all references to article II are to the California Constitution.

Six years after *Truchon,* the California Supreme Court, in *Stephens v. Toomey* (1959) 51 Cal.2d 864, 338 P.2d 182, agreed that persons against whom a verdict of guilt has been entered, but *imposition* of sentence suspended, have not been "convicted" and thereby disenfranchised. (*Id.* at pp. 871, 874, 338 P.2d 182.) The court held that where judgment is entered, but *execution* of sentence is suspended, the defendant has suffered a conviction even though the judgment is provisional or conditional in nature. (*Id.* at pp. 870–871, 338 P.2d 182.) As at that time the constitutional prohibition attached upon conviction, the defendant, who had been convicted with execution of sentence sus-

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pended, was subject to it. If, however, he successfully completed probation, the proceedings were expunged from the record, and the case were to be dismissed, "[i]t is assumed that he will at that time be entitled to the relief he now seeks. But that time has not arrived and the petition is therefore premature." (*Id.* at p. 875, 338 P.2d 182.)

In 1960, the Legislature sought to amend article II, section 1 to substitute the term "felony" for the term "infamous crime," and to restore the right to vote to most individuals convicted of a felony when they had paid the penalties imposed by law. (Assem. Const. Amend. No. 5 (1960 Reg. Sess.), appearing on the Nov. 8, 1960 ballot as Prop. 8.) The proposed amendment also addressed the situation of those on probation, providing for disenfranchising all persons " 'while paying the penalties imposed by law, including any period of probation or parole.' " Proposition 8 was not passed by the voters and the proposed amendment was never adopted. A decade later, the 1970 California Constitution Revision Commission recommended changes to a number of constitutional provisions affecting voters. Among them was a revision that would clarify that the disqualification of felons would apply while the person "is actually under sentence, or other court order." The Commission explained, " 'Under court order' was used rather than 'under sentence' because there are certain limited circumstances in which a court disposition after conviction is not technically a ****590** sentence" (Cal. Const. Revision Com. Proposed Revision (Mar. 1970) p. 18), presumably recognizing that the existing constitutional provision did not disenfranchise persons on court-ordered probation. The Legislature did not follow the recommendation, but in 1972 placed a proposition before the voters to repeal article II, section 1, replacing it with a new article II, section 3. The new section recited: "[T]he legislature shall prohibit improper practices that affect elections and shall provide that no severely mentally deficient person, insane person, person convicted of an infamous crime, nor person convicted of embezzlement or misappropriation of public money shall exercise the privileges of an elector in this State." (Prop. 7 for the Nov. 7, 1972 election.) The ***1477** proposition passed, and the phrase "convicted of an infamous crime" therefore continued to describe those among the disenfranchised. Persons merely "under court order," but not "under sentence," retained their voting rights.

In the meantime, the courts were grappling with the meaning of the phrase "infamous crime." The phrase had been interpreted, judicially, to include conviction of any felony (e.g., *Truchon, supra,* 116 Cal.App.2d at p. 738, 254 P.2d 638). Penal Code section 2600 already denied the right to vote to all felons imprisoned in state prison,[FN4] and Penal Code section 3054 denied the vote to paroled persons,[FN5] but article II, section 1 permanently disenfranchised those who had been "convicted" of an infamous crime. In 1966, the Supreme Court decided *Otsuka v. Hite* (1966) 64 Cal.2d 596, 51 Cal.Rptr. 284, 414 P.2d 412 (*Otsuka*). To preserve article II, section 1 against equal protection challenge, the Supreme Court construed "infamous crime" to mean only crimes involving moral corruption and dishonesty. (*Id.* at p. 599, 51 Cal.Rptr. 284, 414 P.2d 412.) The court rejected the argument that the purpose of denying offenders the right to vote was to impose an additional punishment on them, finding instead that "[t]he manifest purpose is to preserve the purity of the ballot box, which is the only sure foundation of republican liberty, and which needs protection against the invasion of corruption, just as much as against that of ignorance, incapacity, or tyranny." (*Id.* at p. 603, 51 Cal.Rptr. 284, 414 P.2d 412.) The court also found that California properly denied the right to vote to all felons actually incarcerated in state prison. (*Id.* at p. 606, fn. 5, 51 Cal.Rptr. 284, 414 P.2d 412.)

FN4. Penal Code section 2600 provided in relevant part, "A sentence of imprisonment in a state prison for any term suspends all the civil rights of the person so sentenced ... during such imprisonment. But the Adult Authority may restore to said person

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during his imprisonment such civil rights as the authority may deem proper, except the right to ... exercise the privilege of an elector."

FN5. Penal Code section 3054 provided in pertinent part, "The Adult Authority may permit paroled persons civil rights, other than the right to ... exercise the privilege of an elector, during the term of such parole."

In 1973, with the 1972 amendment to the Constitution before it, the Supreme Court in *Ramirez v. Brown* (1973) 9 Cal.3d 199, 107 Cal.Rptr. 137, 507 P.2d 1345 (*Ramirez*) again considered whether the Constitution permitted the state permanently to disenfranchise any person who had been convicted of an "infamous crime." Citing developments in the law of equal protection, the court concluded that the California provision violated the Fourteenth Amendment to the United States Constitution because denying the right of suffrage to all ex-felons did not provide the least restrictive method of protecting the purity ****591** of the ballot box against abuse by morally corrupt and dishonest voters. (*Id.* at pp. 202, 206, 211, 217, 107 Cal.Rptr. 137, 507 P.2d 1345.) The court declined the ***1478** invitation to reaffirm the constitutionality of the statutes denying suffrage to all felons incarcerated or on parole, as that question was not before it. (*Id.* at p. 217, fn. 18, 107 Cal.Rptr. 137, 507 P.2d 1345.) FN6

FN6. *Ramirez, supra,* 9 Cal.3d 199, 107 Cal.Rptr. 137, 507 P.2d 1345, was reversed by the United States Supreme Court in *Richardson v. Ramirez* (1974) 418 U.S. 24, 94 S.Ct. 2655, 41 L.Ed.2d 551. It is perhaps significant that the United States Supreme Court did *not* conclude that disenfranchising all persons convicted of infamous crimes was consistent with the equal protection guarantees set forth in section 1 of the Fourteenth Amendment to the United States Constitution. It instead construed section 2 of the Fourteenth Amendment to except the disenfranchisement of felons from the protections afforded by section 1. (*Id.* at pp. 54–55, 94 S.Ct. 2655.) Section 2 provides: "Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state." In brief, section 2 imposes a penalty on states that deny the vote to male citizens 21 years or older, except for those who participated in rebellion or crime, by reducing that state's congressional delegation. The Supreme Court construed the phrase so that it not only removed a class of persons from being counted in determining whether a state was subject to the penalty of subdivision 2, but also removed the same class from the protections afforded by section 1. The matter was remanded to the California Supreme Court to consider the petitioners' alternative contention, which had not previously been reached, that there was such a lack of uniformity in the enforcement of the law as to work a separate denial of equal protection. By that time, the constitutional provision in question had been repealed and replaced with the current provision. The California Supreme Court therefore dis-

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missed the proceedings as moot. (*Ramirez v. Brown* (1974) 12 Cal.3d 912, 914, 117 Cal.Rptr. 562, 528 P.2d 378.)

The Legislature responded to the *Ramirez* decision by adopting a proposal to amend the constitutional provision (set forth in article II, section 3 by the 1972 amendment) FN7 for consideration at the November 5, 1974 election (Assem. Const. Amend. No. 38 (1973–1974 Reg. Sess.)). The Legislature expressed its intent to conform the laws of the state to the decision in *Ramirez, supra,* 9 Cal.3d 199, 107 Cal.Rptr. 137, 507 P.2d 1345, but not to "affect in any manner the existing constitutional, statutory, and decisional law of this state governing the right of suffrage of persons whose terms of imprisonment and parole for the conviction of a felony have not expired." (Assem. Bill No. 1128 (Reg.Sess.1973–1974).) The proposal, set forth in Proposition 10, was passed at the election on November 4, 1974. The Legislature then amended section 3, later renumbered article II, section 4, to read as it does today, changing the critical phrase from "convicted of an infamous crime" to "imprisoned or on parole for the conviction of a felony." (As amended Nov. 5, 1974, renumbered ***1479**Art. 2, § 4 on June 8, 1976.) This court, in *Flood, supra,* 80 Cal.App.3d at p. 155, 145 Cal.Rptr. 573, later found that article II, section 4 disenfranchised persons convicted of any felony ****592** "while serving a sentence of imprisonment or while undergoing an unexpired term of parole." FN8

FN7. The Legislature also proposed to amend article XX, section 11, which called for implementing laws to exclude specified persons from specified rights or privileges, including the right to vote.

FN8. As mentioned, *ante,* in footnote 2, the Secretary of State cited the opinion in *Flood, supra,* 80 Cal.App.3d 138, 145 Cal.Rptr. 573, in support of the conclusion that the constitutional provision does not disenfranchise probationers. (Secretary of State March Fong Eu, letter to Elections Supervisor Mary Widger, May 29, 1979, *supra*.)

The Legislature also repealed the statutes that disenfranchised persons serving a prison sentence or on parole, although this court found the repeal of those sections in no way affected the disqualification of imprisoned or paroled felons. (*Flood, supra,* 80 Cal.App.3d at p. 153, fn. 19, 145 Cal.Rptr. 573.) The Legislature later enacted Elections Code section 2101, providing that persons "in prison or on parole for the conviction of a felony" are not entitled to register to vote. (See also Elec.Code, §§ 2106 & 2300.) FN9 For over three decades the Secretary of State acted on the understanding that article II, section 4 applied only to persons convicted of a felony and imprisoned in state prison or on parole from state prison. As a result, the Secretary received and processed registration applications submitted by persons who had been adjudicated felons but were confined in a local facility as a condition of probation.

FN9. Elections Code section 2101 provides: "A person entitled to register to vote shall be a United States citizen, a resident of California, not in prison or on parole for the conviction of a felony, and at least 18 years of age at the time of the next election."

Elections Code section 2106 recognizes that an eligible voter must not be in prison or on parole for conviction of a felony.

Elections Code section 2300, subdivision (a)(1)(B) identifies a "valid registered voter" as "a United States citizen who is ... not in prison or on parole for the conviction of a felony."

In November 2005 the Secretary of State requested an opinion from the state's Attorney General, asking whether "a person who is incarcerated in

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a local detention facility, such as a county jail, for the conviction of a felony [is] eligible to vote?” (88 Ops.Cal.Atty.Gen. 207 (2005).) The office of the Attorney General, departing from its own prior understanding of the meaning of the constitutional provision,FN10 issued an opinion that the longstanding interpretation of the constitutional language was wrong.

FN10. In 1972 the Attorney General issued an opinion recognizing that “ ‘conviction’ within the meaning of article II, section 1 of the Constitution and resulting in disenfranchisement requires both a verdict of guilty *and* the imposition of sentence pursuant to such verdict.” (55 Ops.Cal.Atty.Gen. 125, 126 (1972).) The following year the Attorney General again recognized that for purposes of disenfranchisement, the word “conviction” refers to a verdict of guilt followed by a final judgment which has been affirmed on appeal. (57 Ops.Cal.Atty.Gen. 374, 377 (1973).)

The Attorney General concluded that article II, section 4 disenfranchises not only persons convicted of a felony while serving a sentence of imprisonment in state prison or while undergoing an unexpired term of parole, but ***1480** also felons confined in a local jail as a condition of probation, making no distinction between cases where imposition of sentence has been suspended and those where sentence has been imposed but execution of sentence has been suspended. (88 Ops.Cal.Atty.Gen., *supra*, at p. 207.) The Attorney General reasoned that this conclusion flows from the dictionary definition of “imprisoned” in the phrase disqualifying “electors while mentally incompetent or *imprisoned or on parole for the conviction of a felony*.” Citing Webster's Third New International Dictionary (2002) page 1137, the Attorney General asserted that the term means “to put in prison: confine in a jail.” (****593**88 Ops.Cal.Atty.Gen. 207, *supra,* at p. 209.) The Attorney General noted further that although the Legislature had expressed its intent to grant the right to vote to felons after they had completed their sentences (*id*. at pp. 209–211), “[n]o indication may be found in the 1974 ballot pamphlet that the electorate intended to grant voting rights to those who were still in custody.” (*Id*. at p. 211.)

On December 28, 2005, after receiving the Attorney General's opinion, the Secretary of State issued a memorandum to all county clerks and registrars of voters, explaining that county elections officials must cancel the voter registration of all persons imprisoned or on parole for the conviction of a felony. The memorandum counseled, “Where the sentence is physically served is immaterial with respect to voting eligibility, the fact of a felony conviction is what triggers the restriction on the felon's voting rights.” (Secretary of State Bruce McPherson, letter to all county clerks/registrars of voters, Dec. 28, 2005, *supra,* p. 1.)

Petitioners responded by filing their petition for writ of mandate.

DISCUSSION

Confinement as a Condition of Felony Probation

[2] By focusing solely on the word “imprisoned,” and on a dictionary definition of that term, the Attorney General's opinion ignored a critical distinction between the situation of persons confined to jail as a condition of felony probation and that of persons imprisoned in state prison. The former are under the jurisdiction of the court. The latter are not. The jurisdiction of the court over the defendant does not end with an adjudication of guilt, nor is the defendant imprisoned at that time as a result of a verdict or plea of guilt. The court retains jurisdiction over the defendant until it orders execution of sentence and directs that the defendant be delivered into the custody of the Director of Corrections. (Pen.Code, § 1202a; *People v. Banks* (1959) 53 Cal.2d 370, 384–385, 1 Cal.Rptr. 669, 348 P.2d 102.) Upon conviction of a felony, the court may suspend imposition or execution of sentence and order ***1481** the conditional release of the defendant under the supervision of the probation of-

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ficer. (Pen.Code, § 1203, subd. (a).) Apart from the term of imprisonment in state prison that the Legislature has decreed be served for the conviction of a felony offense, the trial court has independent authority to cause a defendant who has been convicted of a felony and is eligible for probation, to be imprisoned in a local facility as a condition of probation. "The court may, in connection with granting probation, impose either imprisonment in a county jail or a fine, both, or neither." (Pen.Code, § 1203.1, subd. (a)(2).) The defendant who has been placed on probation, therefore, is imprisoned by the court in a local facility as a condition of probation, not as a result of the conviction of a felony. If a probationer violates the terms of probation, the court has the power "to reimprison the probationer in the county jail...." (Pen.Code, § 1203.1, subd. (j).) In such a case, the defendant again is confined for violating the terms of his or her probation, not for the conviction of a felony. Such a defendant is imprisoned as a result of the felony conviction only if probation is revoked or terminated, the court orders imposition and/or execution of judgment and the defendant is delivered to the Department of Corrections and Rehabilitation.

[3][4][5][6] The Attorney General's opinion also ignored decades of judicial construction without regard for the history of the constitutional provision or the purpose of the 1974 amendment. The aim of constitutional interpretation is to determine and ****594** effectuate the intent of those who enacted the constitutional provision at issue. (*Bighorn–Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205, 212, 46 Cal.Rptr.3d 73, 138 P.3d 220 (*Bighorn–Desert*); *Richmond v. Shasta Community Services Dist.* (2004) 32 Cal.4th 409, 418, 9 Cal.Rptr.3d 121, 83 P.3d 518 (*Richmond*); *Thompson v. Department of Corrections* (2001) 25 Cal.4th 117, 122, 105 Cal.Rptr.2d 46, 18 P.3d 1198 (*Thompson*).) When the constitutional provision was enacted by initiative, the intent of the voters is the paramount consideration. (*Davis v. City of Berkeley* (1990) 51 Cal.3d 227, 234, 272 Cal.Rptr. 139, 794 P.2d 897.) To determine the voters' intent, courts look first to the constitutional text, giving words their ordinary meanings. (*Bighorn–Desert, supra,* at p. 212, 46 Cal.Rptr.3d 73, 138 P.3d 220; *Richmond, supra,* at p. 418, 9 Cal.Rptr.3d 121, 83 P.3d 518.) But where a provision in the Constitution is ambiguous, a court ordinarily must adopt that interpretation which carries out the intent and objective of the drafters of the provision and the people by whose vote it was enacted. (*Mosk v. Superior Court* (1979) 25 Cal.3d 474, 495, 159 Cal.Rptr. 494, 601 P.2d 1030, superseded on other grounds in *Adams v. Commission on Judicial Performance* (1994) 8 Cal.4th 630, 650, 34 Cal.Rptr.2d 641, 882 P.2d 358.) New provisions of the Constitution must be considered with reference to the situation intended to be remedied or provided for. (*The Recorder v. Commission on Judicial Performance* (1999) 72 Cal.App.4th 258, 269, 85 Cal.Rptr.2d 56; *In re Quinn* (1973) 35 Cal.App.3d 473, 483, 110 Cal.Rptr. 881.)

[7][8][9] ***1482** The phrase "imprisoned or on parole for the conviction of a felony," as it appears in article II, section 4, is ambiguous. Before the amendment, the critical question had been whether the defendant had been *convicted*. As discussed above, the term "conviction," for purposes of disenfranchisement of felons, long had been construed to mean *judgment* of conviction.[FN11] "The enacting body is deemed to be aware of existing laws and judicial constructions in effect at the time legislation is enacted. [Citation.] This principle applies to legislation enacted by initiative. [Citation.]" (*People v. Weidert* (1985) 39 Cal.3d 836, 844, 218 Cal.Rptr. 57, 705 P.2d 380.) It follows that unless the voters intended to impose a new construction on the term "conviction," article II, section 4 should not be construed to apply to persons placed on probation without imposition of sentence, for the simple reason that those persons have not been convicted of a felony. Moreover, in the absence of any clear intent by the Legislature or the voters, we apply the principle that " '[t]he exercise of the franchise is one of the most important functions of good citizenship, and no construction of an election law should be in-

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dulged that would disenfranchise any voter if the law is reasonably susceptible of any other meaning.' " (*Otsuka, supra,* 64 Cal.2d at pp. 603–604, 51 Cal.Rptr. 284, 414 P.2d 412.)

FN11. The same construction of the term is recognized in other laws, including those adopted by initiative. For example, on November 7, 2000, the voters approved Proposition 36, which effected a change in the sentencing law so that a defendant convicted of a nonviolent drug possession offense generally is sentenced to probation instead of state prison or county jail. Proposition 36 applies to defendants convicted on or after July 1, 2001. For those purposes, "conviction" means adjudication of guilt and the judgment thereon. (*In re DeLong* (2001) 93 Cal.App.4th 562, 564, 570, 113 Cal.Rptr.2d 385.)

In addition, where, under earlier versions, it was enough that the defendant had been convicted of an "infamous crime," article II, section 4 requires both a conviction of a felony *and* that the defendant be imprisoned or on parole as a result of the ****595** conviction. Accordingly, while the Secretary of State asserts that in adopting article II, section 4, the electorate sought to punish persons with felony status, the constitutional provision does no such thing. The majority of persons on felony probation are not incarcerated in any facility, even if they suffer some period of confinement as a condition of probation. The constitutional provision does not affect them even under the Secretary of State's interpretation. Moreover, nothing in the Legislative and ballot materials indicates an intent to disenfranchise persons who were entitled to vote at the time Proposition 10 was placed before the voters.

While the legislative and ballot materials do not indicate an intent to disenfranchise probationers, there are positive indications of an intent *not* to disenfranchise them. After the decision in *Ramirez, supra,* 9 Cal.3d 199, 107 Cal.Rptr. 137, 507 P.2d 1345, the only persons disqualified from voting were those disqualified by statute: persons serving a prison sentence for the conviction of a felony and persons on parole. The Legislature placed Proposition 10 before the electorate on ***1483** November 4, 1974, to conform the laws of the state to the decision in *Ramirez,* but not to "affect in any manner the existing constitutional, statutory, and decisional law of this state governing the right of suffrage of persons whose terms of imprisonment and parole for the conviction of a felony have not expired." (Assem. Bill No. 1128, (1973–1974 Reg. Sess.) § 15.) FN12 The Legislature had considered, but did not propose, language that would have extended the disqualification to persons while "under court order," apparently referring to persons on felony probation. (See Assem. Const. Amend. No. 38, (1973–1974 Reg. Sess.)) The voters were informed by the legislative analyst that the Constitution at that time did not "allow the Legislature to restore the vote to convicted felons 'when their prison sentences, including time on parole, have been completed.' " The argument in favor of the proposition emphasized the importance of the right to vote, pointed out that existing law was being applied in an inconsistent manner (presumably referring to different interpretations of what constituted an "infamous crime"), maintained there was no need to restrict the right to vote as a means of protecting the integrity of the ballot box and asserted that denying ex-felons the right to vote punished them unfairly and deterred their reintegration into society. The argument against the proposition emphasized the deterrent effect of permanently denying felons the right to vote.

FN12. Assembly Bill No. 1128, (1973–1974 Reg. Sess.), which expressed the legislative intent and was adopted by the Legislature, amended portions of the Elections Code to clarify the regulatory election process. The Governor later vetoed the bill, but it nonetheless provides some "impression" of the Legislature's intended meaning. (*Flood, supra,* 80 Cal.App.3d at pp. 152–153, 145 Cal.Rptr.

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573.)

The Legislature, then, placed Proposition 10 before the voters to enable them to restore a right to vote that did not then exist. By voting in favor of Proposition 10, the voters expressed an intent to restore that right. To construe article II, section 4 to take away an existing right to vote—the right enjoyed by persons who have been found or have pleaded guilty of a felony but who have not been sentenced to prison—would be inconsistent with the intent of both those who drafted the amendment and those who approved it. Similarly, after the decision in *Ramirez, supra,* 9 Cal.3d 199, 107 Cal.Rptr. 137, 507 P.2d 1345, persons on probation following suspension of execution of sentence were entitled to vote. Again, in voting in favor of Proposition 10, the electorate sought to ****596** increase the class of persons entitled to vote, not to decrease it.

[10] There are additional reasons for adopting petitioners' construction. A finding that article II, section 4 applies only to those in state prison or on parole is consistent with the use of the term "parole" in the disenfranchising phrase. Only persons who have been sentenced to a term in state prison can be "on parole for the conviction of a felony." A finding that article II, section 4 applies only to those in state prison or on parole from state prison also is ***1484** consistent with the language of the Elections Code, which, as mentioned above, provides that persons "*in prison* or on parole for the conviction of a felony" are not entitled to register to vote. (Elec.Code, § 2106, italics added; see § 2300 .) "[I]t is well settled that when the Legislature is charged with implementing an unclear constitutional provision, the Legislature's interpretation of the measure deserves great deference. [Citations.]" (*People v. Birkett* (1999) 21 Cal.4th 226, 244, 87 Cal.Rptr.2d 205, 980 P.2d 912.) Furthermore, it is not uncommon for probation to be revoked summarily, and a probationer thereby confined, pending a hearing on whether the probationer has in fact violated a condition of probation. The probationer may post bail and be released from confinement pending a revocation hearing. Even if the court later determines that probation was violated, it retains the power to restore probation, but may impose a new condition of confinement. A conclusion that the probationer was qualified to vote during any periods of freedom from confinement, but disqualified during any period where he or she actually was confined, would impose an impossible burden on the court and county clerks and elections officials.

Finally, a finding that the phrase refers only to those imprisoned in state prison or on parole is not inconsistent with the ordinary meaning of the term "imprisoned." The Attorney General's 2005 opinion itself recognized that the term could mean confinement in any facility, or it could be limited to mean only confinement in a prison, such as state prison. As the Attorney General pointed out, one definition of the term in Webster's Third New International Dictionary is "to put in prison: confine in a jail." (88 Ops.Cal.Atty.Gen., *supra,* at p. 207.) Nonetheless, the same dictionary defines "prison" several ways, including as "an institution for the imprisonment of persons convicted of major crimes or felonies: a penitentiary as distinguished from a reformatory, local jail, or detention home." The term "imprisonment" has no fixed meaning in practice. For example, Penal Code section 19 provides that a misdemeanor is "punishable by imprisonment in the county jail not exceeding six months." But it also has been held that serving a probationary period in the county jail does not amount to serving a term of imprisonment in a penal institution. (*People v. Wallach* (1935) 8 Cal.App.2d 129, 133, 47 P.2d 1071.) In short, there is no "ordinary meaning" of the term that would be violated by limiting it to confinement in state prison for purposes of article II, section 4.

For all of the above reasons, we conclude that article II, section 4 does not disenfranchise persons who by plea or verdict have been adjudicated guilty of a felony, but who are on probation under the jurisdiction of the court after the court has suspended

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imposition or execution of sentence.

1485 *Sentencing Under Penal Code Sections 18 and 17, Subdivision (b)

[11] The remaining question is the effect of the constitutional provision on persons convicted of a felony, but sentenced to **597 a term in county jail. The question arises because of the discretion given the courts in connection with “wobblers”; i.e., crimes punishable either as felonies or as misdemeanors. Penal Code section 18 provides, “every offense which is prescribed by any law of the state to be a felony punishable by imprisonment in any of the state prisons or by a fine, but without an alternate sentence to the county jail, may be punishable by imprisonment in the county jail not exceeding one year or by a fine, or by both.” Penal Code section 18, therefore, confers discretion on the trial courts to sentence adjudicated felons to something other than a term in state prison. Penal Code section 17, subdivision (b) provides in relevant part, “When a crime is punishable, in the discretion of the court, by imprisonment in the state prison or by fine or imprisonment in the county jail, it is a misdemeanor for all purposes under the following circumstances: [¶] (1) After a judgment imposing a punishment other than imprisonment in the state prison.”

[12] The Secretary of State concedes that once the court exercises its discretion under section 17, subdivision (b), and imposes a punishment other than imprisonment in state prison, the crime in question is deemed a misdemeanor and article II, section 4 does not affect the defendant's right to vote. The Secretary of State contends, however, that until the court actually imposes sentence, the crime remains a felony. The contention is correct. Where an offense is punishable by imprisonment in state prison, but also is punishable, in the alternative, by a county jail sentence, “its status can be changed only by ‘a judgment imposing a punishment other than imprisonment in the state prison.’ [Citations.] ... ‘The necessary inference to be drawn from the language of section 17 of the Penal Code [is] that “when a crime [is] punishable by fine or imprisonment in a county jail, in the discretion of the court, it shall be deemed a misdemeanor for all purposes *after a judgment imposing a punishment other than imprisonment in the state prison,*” [and] *the offense remains a felony* except when the discretion is actually exercised and the prisoner is punished only by a fine or imprisonment in a county jail.’ ” (*People v. Williams* (1945) 27 Cal.2d 220, 228–229, 163 P.2d 692, emphasis in the original.) As a result, where the court suspends imposition of sentence and places the defendant on probation, the crime is a felony. However, because the court has suspended imposition of sentence, the defendant has not been convicted for purposes of article II, section 4, and the defendant, accordingly, is entitled to vote. In addition, because the defendant is on probation under the jurisdiction of the court, the defendant is not imprisoned as the result of a felony conviction, and for that separate reason again is entitled to vote.

***1486 DISPOSITION**

Let the peremptory writ of mandate issue directing respondent, the Secretary of State, to issue a memorandum informing the county clerks and elections officials that the only persons disqualified from voting by reason of article II, section 4 are those who have been imprisoned in state prison or who are on parole as a result of the conviction of a felony.

In order to ensure timely implementation of this decision, absent further order of this court, this opinion will be final as to this court on January 10, 2007. (Cal. Rules of Court, rule 24(b)(3).)

We concur: MARCHIANO, P.J., and SWAGER, J.

Cal.App. 1 Dist.,2006.
League of Women Voters of California v. McPherson
145 Cal.App.4th 1469, 52 Cal.Rptr.3d 585, 06 Cal. Daily Op. Serv. 11,737

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EXHIBIT 3

To the Members of the California State Assembly:

I am signing Assembly Bill 109.

California's correctional system has to change, and this bill is a bold move in the right direction. For too long, the State's prison system has been a revolving door for lower-level offenders and parole violators who are released within months—often before they are even transferred out of a reception center. Cycling these offenders through state prisons wastes money, aggravates crowded conditions, thwarts rehabilitation, and impedes local law enforcement supervision.

Under this bill, the State will continue to incarcerate offenders who commit serious, violent, or sexual crimes; but counties will supervise, imprison, and rehabilitate lower-level offenders.

By its terms, Assembly Bill 109 will <u>not go into effect</u> until the creation of a community corrections grant program and an appropriation of funding.

I will not sign any legislation that would seek to implement this measure without the necessary funding. In this regard, I intend to work closely with, and consult, police chiefs, sheriffs, chief probation officers, district attorneys and representatives of the counties and courts to ensure that any funding bill which makes Assembly Bill 109 operative is sufficient to protect public safety.

Regrettably, the measure that would provide stable and constitutionally protected funding for public safety has not yet passed the Legislature. In the coming weeks, and for as long as it takes, I will vigorously pursue my plan to balance the State's budget and prevent reductions to public safety through a constitutional guarantee. I will also continue to partner with counties and law enforcement on this important effort.

Sincerely,

Edmund G. Brown Jr.

EXHIBIT 4

Appendices

Appendix 1: Table of "Subdivision (h)" Sentencing Statutes

These statutes state that the felony sentence for the covered offense is "pursuant to Subdivision (h) of Section 1170", or contain equivalent wording.

These are sentencing statutes, not necessarily the statutes that define the crime. For example, Veh. Code § 22350 states the sentence for fourth-offense felony drunk driving, but does not define the crime of drunk driving, which is in Veh. Code § 23152. Likewise, Pen. Code § 476 defines forgery of a check, but the punishment for that forgery is in Pen. Code § 473.

To be a County Jail Felony, the offense must be a Subdivision (h) felony.

But not quite all Subdivision (h) felonies are County Jail Felonies.

At least three mandatory PC 290-registerable offenses are included in this list, Pen. Code §§ 288.2, 647.6, and 653f, subd. (c), all of which AB 109 made Subdivision (h) felonies. However, because it is a PC-290-registerablere offense, under Subdivision (h)(3) an executed sentence must be served in State Prison.

And, several felonies that are normally, or often, serious felonies are included in this list because they were made Subdivision (h) felonies by AB 109. This include, at least, Pen. Code § 12303, and Veh. Code §§ 23104, 23105, and 23109.10.

Also, some felonies that are not ordinarily serious or violent may be so under the particular circumstances of their commission.

Likewise, the court may order PC-290-registration for any offense it finds was committed for certain sexual purposes, and states why it is ordering registration, under Pen. Code § 290.006.

Note, also, that many County Jail Felonies are also wobblers, that is, they can be punished, in the court's discretion, as felonies or as misdemeanors.

Appendix 1.

Business and Professions Code

§ 585	§ 2315, subd. (b)	§ 11023
§ 650 , subd. (g)	§ 4324, subds. (a) and (b)	§ 11286, subd. (b)
§ 654.1	§ 5536.5	§ 11287
§ 655.5,subd. (f)	§ 6126, subd. (b)	§ 11320
§ 729,subds. (b)(3), (4), and (5)	§ 6153	§ 16755, subd. (a)(2)
§ 1282.3, subds. (b)(1) and (b)(2)	§ 6788	§ 17511.9, subd. (b)
§ 1701,	§ 7028.16	§ 17550.19, subd. (b)
§ 1701.1, subd. (a)	§ 7739	§ 22430, subd. (d)
§ 1960	§ 10238.6	§ 25618
§ 2052, subd. (a)	§ 11020, subd (b)	

Civil Code

§ 892, subds. (a) and (b)	§ 1812.217	§ 2985.3
§ 1695.8	§ 2945.7	
§ 1812.125, subd. (a)	§ 2985.2	

Corporations Code

§ 2255,subd. (c)	§ 12672	§ 28880
§ 2256	§ 12675	§ 29102
§ 6811	§ 22002,subd. (c)	§ 29550, subds. (a) and (b)
§ 6814	§ 25540, subds. (a), (b), and (c))	§ 31410
§ 8812	§ 25541, subds. (a) & (b)	§ 31411
§ 8815	§ 27202	§ 35301

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Education Code

§ 7054, subd. (c)

Elections Code

§ 18002	§ 18502	§ 18568
§ 18100, subds. (a) and (b)	§ 18520	§ 18573
§ 18101	§ 18521	§ 18575
§ 18102	§ 18522	§ 18578
§ 18106	§ 18523	§ 18611
§ 18200	§ 18524	§ 18613
§ 18201	§ 18540, subds. (a) & (b)	§ 18614
§ 18203	§ 18544, subd. (a)	§ 18620
§ 18204	§ 18545	§ 18621
§ 18205	§ 18560	§ 18640
§ 18310	§ 18561	§ 18660
§ 18311	§ 18564	§ 18661
§ 18400	§ 18566	§ 18680
§ 18403	§ 18567	

Financial Code

§ 3510	§ 5305	§ 18349.5, subd. (h)(2)
§ 3532	§ 5307	§ 18435
§ 5300	§ 10004	§ 22753
§ 5302	§ 12102	§ 22780
§ 5303	§ 14752	§ 31880
§ 5304, subd. (c)	§ 17700	§ 50500

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Fish and Game Code

- § 12004, subd. (b)
- § 12005, subd. (a)(2)

Food and Agricultural Code

- § 17701
- § 18932
- § 18933
- § 19440
- § 19441
- § 80174

Government Code

- § 1368
- § 1369
- § 3108
- § 3109
- § 5954
- § 6200
- § 6201
- § 8670.64, subd. (a), (c)(1)
- § 9056
- § 27443
- § 51018.7, subd. (a)

Harbors and Navigation

- § 264
- § 310
- § 668, subds (c)(1) & (g)

Health and Safety Code [Abbreviated: HS]

- HS § 1390
- HS § 1522.01, subd. (c)
- HS § 1621.5, subd. (a):
- HS § 7051
- HS § 7051.5
- HS § 8113.5. subds. (b)(2) & (b)(3)
- HS § 8785
- HS § 11100, subd. (f)(2)
- HS § 11100.1, subd. (b)(2)
- HS § 11105, subds. (b)(1) & (b)(2)
- HS § 11153, subd. (b)
- HS § 11153.5, subd. (b)

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HS § 11355
HS § 11162.5, subd. (a)
HS § 11350, subds. (a) & (b).
HS § 11351
HS § 11351.5
HS § 11352, subds. (a) & (b)
HS § 11353.5
HS § 11353.6, subd. (c)
HS § 11353.7 **Can be serious. PC 1192.7(c)(24)**
HS § 11357, subd. (a)
HS § 11358
HS § 11359
HS § 11360, subd. (a)
HS § 11366.5, subds. (a), (b), & (c)
HS § 11366.6
HS § 11366.8, subds. (a) & (b)
HS § 11370.6, subd. (a)
HS § 11371
HS § 11371.1
HS § 11374.5, subd. (a)
HS § 11377, subd. (a)
HS § 11378
HS § 11378.5
HS § 11379, subds. (a) & (b)
HS § 11379.5, subds. (a) & (b)

HS § 11379.6, subds. (a) & (c)
HS § 11380.7, subd. (a)
HS § 11382
HS § 11383, subds. (a), (b), (c), & (d)
HS § 11383.5, subds. (a), (b)(1) to (2), & (c) to (f)
HS § 11383.6, subds. (a), (b), (c), & (d)
HS § 11383.7, subds. (a), (b)(1), (b)(2), & (c) to (f)
HS § 12401
HS § 12700, subds. (b)(3) & (b)(4)
HS § 17061, subd. (b)
HS § 18124.5
HS § 25180.7, subd. (c)
HS § 25189.5, subds. (b), (c), (d), & (e)
§ 25189.6, subds. (a) & (b)
HS § 25189.7, subds. (b) & (c)
HS § 25190
HS § 25191, subd. (a)(2)
HS § 25395.13, subd. (b)
HS § 25515
HS § 25541
HS § 42400.3, subd. (c)
HS § 44209
HS § 100895, subd. (b)
HS § 109335
HS §115215, subds. (b)(1), (b)(2), (c)(1), & (c)(2)

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HS § 116730, subd. (b)
HS § 116750, subd. (a) & (b)

HS § 118340, subd. (c) & (d)
HS § 131130, subd. (b)

Insurance Code

§ 700, subd. (b)
§ 750, subd. (b)
§ 833
§ 1043
§ 1215.10,subd. (d) and (e)
§ 1764.7

§ 1814
§ 1871.4, subd.7 (b)
§ 10192.165, subd. (e)
§ 11161
§ 11162
§ 11163

§ 11760, subd. (a)
§ 11880, subd. (a)
§ 12660
§ 12845

Labor Code

§ 227

§ 6425, subd. (a)

§ 7771

Military and Veterans Code

§ 145
§1318

§1672, subd. (b)
§1673

Penal Code [Abbreviated: Pen.]

Pen § 33
Pen § 38
Pen. § 67.5, subd. (b)
Pen. § 69
Pen. § 71, subds. (a)(1) and (a)(2)

Pen. § 72
Pen. § 72.5, subds. (a) and (b).
Pen. § 76, subds. (a)(1) and (a)(2)
Pen. § 95
Pen. § 95.1

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Pen. § 96
Pen. § 99
Pen. § 107
Pen. § 109
Pen. § 113
Pen. § 114
Pen. § 115.1, subd. (f)
Pen. § 126
Pen. § 136.7
Pen. § 137, subd. (b)
Pen. § 139, subd. (a)
Pen. § 140, subd. (a)
Pen. § 142, subd. (a)
Pen. § 146a, subd. (b)
Pen. § 146e, subd. (b)
Pen. § 148, subd. (b), (c), and (d)
Pen. § 148.1, subd. (a), (b), (c), and (d)
Pen. § 148.3, subd. (b)
Pen. § 148.4, subd. (b)
Pen. § 148.10, subd. (a)
Pen. § 149
Pen. § 153, items 1 and 2.
Pen. § 156
Pen. § 157
Pen. § 168, subd. (a)

Pen. § 171c, subd. (a)(1)
Pen. § 171d
Pen. § 181
Pen. § 182, subd (a), in various circumstances
Pen. § 186.10, subds. (a) and (c)(1)
Pen. § 186.28, subd. (a)
Pen. § 191.5, subd. (c)(2)
Pen. § 193, subd. (b)
Pen. § 193.5, subd. (b)
Pen. § 210.5
Pen. § 217.1, subd. (a)
Pen. § 218.1
Pen. § 219.1
Pen. § 237, subd. (a)
Pen. § 241.1
Pen. § 241.4
Pen. § 241.7
Pen. § 243, subds. (c)(1), (c)(2), and (d)
Pen. § 243.1
Pen. § 243.6
Pen. § 244.5, subds. (b) and (c)
Pen. § 245.6, subd. (d)
Pen. § 246.3, subd. (a) **Normally a serious felony**
Pen. § 247.5
Pen. § 261.5, subds. (c) and (d)

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Pen. § 265
Pen. § 266b
Pen. § 266g
Pen. § 271
Pen. § 271a
Pen. § 273.6, subds. (d) and (e)
Pen. § 273.65, subds. (d) and (e)
Pen. § 273d, subds. (a & (b))
Pen. § 278
Pen. § 278.5, subd. (a)
Pen. § 280, subd. (b)
Pen. § 284
Pen. § 288.2 **a PC-290 crime: not a County Jail Felony]**
Pen. § 290.4, subd (c)(1)
Pen. § 290.45, subd. (e)(1)
Pen. § 290.46, subd. (j)(2)
Pen. § 311.9, subds. (a)(b)(and (c)
Pen. § 313.4
Pen. § 337.3
Pen. § 337.7
Pen. § 337b
Pen. § 337c
Pen. § 337d
Pen. § 337e

Pen. § 337f
Pen. § 350, subds. (a)(2), (b), and (c)
Pen. § 367f, subd. (g)
Pen. § 367g, subd. (c)
Pen. § 368, subds. (d), (e), and (f)
Pen. § 374.2, subd. (d)
Pen. § 374.8, subd. (b)
Pen. § 375, subd. (d)
Pen. § 382.5
Pen. § 382.6
Pen. § 386, subds. (a) and (b)
Pen. § 387, subd. (a)
Pen. § 399.5, subd. (a)
Pen. § 404.6, subd. (c)
Pen. § 405b
Pen. § 417.3
Pen. § 417.6, subd. (a)
Pen. § 422.7
Pen. § 453, subd. (a)
Pen. § 461, subd. (b)
Pen. § 463, subds. (a) and (b)
Pen. § 464
Pen. § 470a
Pen. § 470b
Pen. § 473

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Pen. § 474
Pen. § 478
Pen. § 479
Pen. § 480, subd. (a)
Pen. § 481
Pen. § 483.5, subd. (f)
Pen. § 484b
Pen. § 484i, subd. (c)
Pen. § 487b
Pen. § 487d
Pen. § 489, subd. (b)
Pen. § 496, subd. (a), (b), and (d)
Pen. § 496a, subd. (a)_
Pen. § 496d, subd. (a)
Pen. § 499c, subd. (c)
Pen. § 499d
Pen. § 500, subd. (b)(2)
Pen. § 502, subd. (d)(1), (d)(2)(B), (d)(3)(C), (d)(4)(B)
Pen. § 506b
Pen. § 520
Pen. § 529, subd. (b)
Pen. § 529a
Pen. § 530.5, subds. (a), (c)(2), (c)(3), and (d)(1)
Pen. § 532a, item 4

Pen. § 532f, subd. (h)
Pen. § 533
Pen. § 535
Pen. § 537e, subd. (a)(3)
Pen. § 538.5
Pen. § 548, subd. (a)
Pen. § 549
Pen. § 550, subd. (c)(1), (c)(2)(A), and (c)(3)
Pen. § 551, subd. (a) and (d)
Pen. § 560
Pen. § 560.4
Pen. § 566
Pen. § 570
Pen. § 577
Pen. § 578
Pen. § 580
Pen. § 581
Pen. § 587
Pen. § 587.1, subd. (b)
Pen. § 591
Pen. § 593
Pen. § 594, subd. (b)(1)
Pen. § 594.3, subd. (a) and (b)
Pen. § 594.35
Pen. § 594.4, subd. (a)

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Pen. § 597, subds. (a), (b), (c), and (g)
Pen. § 597.5, subd. (a)
Pen. § 600 subd. (a) and (c)
Pen. § 601, subd. (d)
Pen. § 610
Pen. § 617
Pen. § 620
Pen. § 621
Pen. § 625b, subd. (b)
Pen. § 626.9, subds. (f)(1), (f)(2)(A) & (B), (f)(3), (h), & (i)
Pen. § 626.95, subd. (a)
Pen. § 626.10, subd. (a)(1), and (b)
Pen. § 629.84
Pen. § 631, subd. (a)
Pen. § 636, subd. (a) and (b)
Pen. § 637
Pen. § 647.6, subd. (b), (c)(1) & (c)(2) **A PC 290 offense, and so a State Prison Felony**
Pen. § 653f, subd. (a), (c), (d)(1), and (e) **Subd. (c) is a PC 290 offense, and so a State Prison Felony**
Pen. § 653h, subds. (b), (c), (d)(1), and (d)(2)
Pen. § 653j
Pen. § 653s, subds. (g), (h), (i)(1) and (i)(2)
Pen. § 653t, subds. (c) and (d)
Pen. § 653u, subds. (d) and (e)
Pen. § 653w, subds. (b)(1), (b)(2), and (b)(3)
Pen. § 664, subd. (a) [if the crime attempted is a Subd.(h) felony]
Pen. § 666, subd. (a)
Pen. § 666.5, subd. (a)
Pen. § 836.6, subd. (c)
Pen. § 1320
Pen. § 1320.5
Pen. § 2772
Pen. § 2790
Pen. § 4011.7
Pen. § 4131.5
Pen. § 4502, subd. (a) and (b)
Pen. § 4533
Pen. § 4536, subd. (a)
Pen. § 4550, subds. (a) and (b)
Pen. § 4573, subd. (a)
Pen. § 4573.6, subd. (a)
Pen. § 4573.9, subd. (a)
Pen. § 4574, subds. (a) and (b)
Pen. § 4600, subd. (a)
Pen. § 11411, subd. (c) and (d)
Pen. § 11413, subd. (a)
Pen § 11418, subd. (a)
Pen. § 11419, subd. (a)

Pen. § 12021.5, subd. (a)
Pen. § 12022, subds. (a)(1) & (2), (c), and (d)
Pen. § 12025, subds. (b)(1), (2), & (3), (b)(5) & (6)
Pen. § 12035, subd. (d)(1)
Pen. § 12040, subd. (b)
Pen. § 12072, subd. (g)(2) to (g)(4)
Pen. § 12076, subd. (b)(1)
Pen. § 12090
Pen. § 12101, subd. (c)(1)
Pen. § 12220, subd. (a) and (b)
Pen. § 12280, subd. (a)(1) and (b)
Pen. § 12281, subd. (j)
Pen. § 12303.3 **(Often serious; PC 1192.7, subd. (c)(15), and not a county jail felony.**
Pen. § 12303.6
Pen. § 12304
Pen. § 12312
Pen. § 12320
Pen. § 12355, subds. (a) and (b)
Pen. § 12370
Pen. § 12403.7, subd. (g)
Pen. § 12422
Pen. § 12520
Pen. § 18715, subd. (b)

Pen. § 18720
Pen. § 18725
Pen. § 18730
Pen. § 18735, subd. (c)
Pen. § 18740
Pen. § 20110, subd. (b)
Pen. § 22810, subd. (g)(1) and (g)(2)
Pen. § 22910, subd. (a)
Pen. § 23900
Pen. § 25110, subd. (a)
Pen. § 25300, subd. (b)
Pen. § 25400, subd. (c)(5) and (c)(6)
Pen. § 25850, subd. (c)(5) and (c)(6)
Pen. § 27590, subd. (b), (c), and (d)
Pen. § 28250, sub. (b)
Pen. § 29700, subd. (a)
Pen. § 30315
Pen. § 30600, subd. (a) and (b)
Pen. § 30605, subd. (a)
Pen. § 30725,subd. (b)
Pen. § 31360, subd. (a)
Pen. § 32625, subd. (a) and (b)
Pen. § 33410

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Public Contract Code

§ 10283	§ 10873

Public Resources Code

§ 5097.99, subds. (b) & (c)	§ 25205,subd. (g)
§ 14591, subd. (b)(2)	§ 48680, subd. (b)(1)

Public Utilities Code

§ 7680	§ 7903
§ 7724, subd. (a)	§ 21407.6, subd. (b)

Revenue and Taxation Code

§ 7093.6 (subd. (n) or (j), alternate versions	§ 41171.5 (subd.(p) or (l), alternate versions)
§ 9278 (subd. (n) or (j), alternate versions)	§ 43522.5, subd. (l)
§ 14251	§ 43606
§ 16910	§ 45867.5, subd. (l)
§ 18631.7, subd. (d)(2)	§ 45955
§ 19705, subd. (a)	§ 46628 (subd. (p) or (l), alternate versions)
§ 19708	§ 46705
§ 30459.15 (subd. (p) or (l), alternate versions)	§ 50156.18 (subd. (n) or (j), alternate versions)
§ 32471.5 (subd. (p) or (l), alternate versions)	§ 55332.5 (subd. (p) or (l), alternate versions)
§ 32555	§ 55363
§ 38800, subd. (l)	§ 60637 (subd. (p) or(l), alternate versions)
§ 40211.5, subd. (l)	

Unemployment Insurance Code

Appendix 1.

§ 2118.5

Vehicle Code

§ 2478 , subd. (b)
§ 2800.4
§ 4463, subd. (a)
§ 10501,subd. (b)
§ 10752, subd. (c)
§ 10801

§ 10802
§ 10803, subds/ (a) &(b)
§ 10851, subds. (a) & (b)
§ 21464, subd. (d)
§ 21651, subd. (c)
§ 23104, subd. (b) (**Usually serious: PC 1192.7 (c)(8)**

§ 23105, subd. (a) (**Usually serious: PC 1192.7(c)(8)**
§ 23109.1, subd. (a) (**1192.7(c)(8) Usually serious)**
§ 23550, subd. (a)

Water Code

§ 13387, subds. (b), (c), (d)(1), and (e)

Welfare and Institutions Code

§ 871.5, subd. (a)
§ 1001.5, subd. (a)
§ 1768.7, subd. (b)
§ 1768.85, subd. (a)
§ 3002

§ 7326
§ 8100, subd. (g)
§ 8101, subds. (a)& (b)
§ 8103, subd. (i)
§ 10980, subds. (b), (c)(2), (d), (g), & (h)

§ 14107.2, subds. (a)(2) & (b)(2)
§ 14107.3, item (3)
§ 14107.4, subds. (b) & (e)
§ 17410

EXHIBIT 5

Opinion No. 05-306—November 22, 2005

Requested by: SECRETARY OF STATE

Opinion by: BILL LOCKYER, Attorney General
Gregory L. Gonot, Deputy

THE HONORABLE BRUCE McPHERSON, SECRETARY OF STATE, has requested an opinion on the following question:

Is a person who is incarcerated in a local detention facility, such as a county jail, for the conviction of a felony eligible to vote?

CONCLUSION

A person who is incarcerated in a local detention facility, such as a county jail, for the conviction of a felony is not eligible to vote.

ANALYSIS

Section 4 of article II of the California Constitution provides:

> "The Legislature shall prohibit improper practices that affect elections and shall provide for the disqualification of electors while mentally incompetent or *imprisoned or on parole for the conviction of a felony*." (Italics added.)[1]

The question presented for resolution concerns the meaning of the term "imprisoned" as used in the phrase "imprisoned or on parole for the conviction of a felony." Does it refer only to incarceration in a state prison, or does it also include confinement in a local detention facility such as a county jail? We conclude that it includes incarceration in a local detention facility.

Preliminarily, we note that a person who has been convicted of a felony may be confined in a local detention facility, depending upon a variety of circumstances. Penal Code section 18, for example, states in part:

> ". . . [E]very offense which is prescribed by any law of the state to be a felony punishable by imprisonment in any of the state prisons or by a fine, but without an alternate sentence to the county jail, may be punishable by imprisonment in the county jail not exceeding one year or by a fine, or by both."

Based upon felony conviction information submitted by the superior courts to the Criminal Justice Statistics Center, Bureau of Criminal Information

[1] This constitutional provision was adopted by the electorate at the November 5, 1974, General Election, as section 3 of article II; it was renumbered section 4 on June 8, 1976. (See *Flood v. Riggs* (1978) 80 Cal.App.3d 138, 144–148.)

and Analysis, Department of Justice (see Pen. Code, §§ 13010, 13012, 13151), the most common disposition of a felony conviction is confinement in a local jail as a condition of probation, either where the court has suspended imposition of the potential state prison sentence and has suspended pronouncing judgment on the felony offense (see Pen. Code, §§ 1203, 1203.1, subd. (a); *People v. Livingston* (1970) 4 Cal.App.3d 251, 255; 3 Witkin & Epstein, Cal. Criminal Law (2d ed. 2000) Punishment, § 248, p. 330) or the court has imposed a prison sentence but suspended its execution pending the defendant's successful completion of probation, including time in jail (see *People v. Howard* (1997) 16 Cal.4th 1081, 1084, 1087; *In re DeLong* (2001) 93 Cal.App.4th 562, 570–571). In addition, the California Department of Corrections may contract with cities and counties for the confinement of prison inmates under the terms of Penal Code section 2910:

> "(a) The Director of Corrections may enter into an agreement with a city, county, or city and county, to permit transfer of prisoners in the custody of the Director of Corrections to a jail or other adult correctional facility of the city, county, or city and county, if the sheriff or corresponding official having jurisdiction over the facility has consented thereto. The agreement shall provide for contributions to the city, county, or city and county toward payment of costs incurred with reference to such transferred prisoners.
>
> "(b) When an agreement entered into pursuant to subdivision (a) is in effect with respect to a particular local facility, the Director of Corrections may transfer prisoners whose terms of imprisonment have been fixed and parole violators to the facility.
>
> "(c) Prisoners so transferred to a local facility may, with approval of the Director of Corrections, participate in programs of the facility, including work furlough rehabilitation programs.
>
> "(d) Prisoners transferred to such facilities are subject to the rules and regulations of the facility in which they are confined, but remain under the legal custody of the Department of Corrections and shall be subject at any time, pursuant to the rules and regulations of the Director of Corrections, to be detained in the county jail upon the exercise of a state parole or correctional officer's peace officer powers as specified in Section 830.5, with the consent of the sheriff or corresponding official having jurisdiction over the facility.

". . . . ."

Other situations may result in the temporary confinement of a person in a local jail for the conviction of a felony.

The principles of construction to be applied in interpreting a constitutional provision are well settled. As stated by the court in *Thompson v. Department of Corrections* (2001) 25 Cal.4th 117, 122: "In interpreting a constitution's provision, our paramount task is to ascertain the intent of those who enacted it. [Citation.]" In determining the voters' intent, we "look first to the language of the constitutional text, giving the words their ordinary meaning." (*Leone v. Medical Board* (2000) 22 Cal.4th 660, 665.) "[T]he words used should be accorded the ordinary and usual meaning given them among people by whose vote they were adopted [citation] . . . ." (*Flood v. Riggs, supra*, 80 Cal.App.3d at p. 152.) Where a term is not further defined in the constitutional provision, "it can be assumed to refer not to any special term of art, but rather to a meaning that would be commonly understood by the electorate." (*People ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 302.) "To determine the common meaning, a court typically looks to dictionaries." (*Consumer Advocacy Group, Inc. v. Exxon Mobil Corp.* (2002) 104 Cal.App.4th, 438, 444.)

"Imprison" means "to put in prison: confine in a jail." (Webster's 3d New Internat. Dist. (2002) p. 1137.) A "prison" is "a place or condition of confinement or restraint" or "a building or other place for the safe custody or confinement of criminals or others." (*Id.* at p. 1804.) The most common definition of "jail" is "prison." (*Id.* at p. 1208.) Penal Code section 4000 specifies the uses of a county jail as including "the confinement of persons sentenced to imprisonment therein upon a conviction for crime." In *People v. Carter* (1981) 117 Cal.App.3d 546, 550, the court noted that "a jail is a place of confinement of persons in lawful custody," including "for both temporary custody and for long term custody of trustee prisoners." (Fn. omitted.)

Typically, then, the word "imprisoned" refers to confinement in a local jail in addition to confinement in a state prison. The phrase "imprisoned in jail," or some variation thereof, is found not only throughout the Penal Code (see, e.g., Pen. Code, §§ 17, 18, 19, 136.7, 166, 186.22, 243, 273h, 273.5, 273.6, 273.65, 286, 288a, 289, 296.1, 298.1, 337a, 337.2, 381a, 383, 412, 422.77, 499, 551, 560.6, 626.9, 647, 647d, 666, 919, 969b, 1203.1, 1208, 1208.5, 1567, 2042, 2903, 4103, 4104, 4133, 6301, 11149.3, 12025), but also in the Civil Code (Civ. Code, § 52.1, 1812.125, 1812.217, 2924h), the Code of Civil Procedure (Code Civ. Proc., § 1997), the Corporations Code (Corp. Code, §§ 6811–6814, 8811–8814, 12671, 12673–12675,

21307, 22002, 25540, 28880, 29550, 31410, 31411, 35302), the Financial Code (Fin. Code, §§ 1823, 1896, 1913.5, 12102, 14752, 17700, 18349.5, 18435, 22753, 22780, 23065, 31880, 34201, 50500), the Fish and Game Code (Fish & G. Code, § 11036), the Food and Agricultural Code (Food & Agr. Code, § 41511), the Government Code (Gov. Code, § 36903), the Health and Safety Code (Health & Saf. Code, § 1390), the Insurance Code (Ins. Code, § 988), the Labor Code (Lab. Code, §§ 1303, 1308, 1309, 1391), the Revenue and Taxation Code (Rev. & Tax. Code, §§ 9351, 9353, 30472, 30474, 30475, 30476), the Vehicle Code (Veh. Code, §§ 14601.4, 23109, 23536) and the Water Code (Wat. Code, § 71689.27), among other statutory provisions. The courts (see, e.g., *In re Jennings* (2004) 34 Cal.4th 254, 262) and our prior opinions (see, e.g. 73 Ops.Cal.Atty.Gen. 45, 47 (1990)) have noted this common "imprisoned in jail" phraseology. California law is thus consistent with the ordinary definition of "imprisoned" as including confinement in a local jail.

If any doubt remained as to the voters' intent in using the word "imprisoned," we need only examine the ballot pamphlet for the 1974 General Election at which the provision was adopted as part of Proposition 10. "When an initiative measure's language is ambiguous, we refer to other indices of the voters' intent, particularly the analyses and arguments contained in the official ballot pamphlet. [Citations.]" (*People v. Birkett* (1999) 21 Cal.4th 226, 243.) "[W]hen . . . the enactment follows voter approval, the ballot summary and arguments and analysis presented to the electorate in connection with a particular measure may be helpful in determining the probable meaning of uncertain language." (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 245–246; accord, *People ex rel. Lungren v. Superior Court, supra,* 14 Cal.3d at p. 306.)

Here, the 1974 ballot pamphlet described the proposed constitutional amendment as granting the right to vote to felons *after* they had completed their sentences, including parole, and are once again fully participating members of society. The argument in favor of Proposition 10 stated in part:

> "The objective of reintegrating ex-felons into society is dramatically impeded by continued restriction of the right to vote. This restriction is a lifelong reminder of second class citizenship—inferiority—often because of one mistake committed years earlier. The daily lives of all citizens are deeply affected and changed by the decisions of government. Full citizen participation in these decisions should be encouraged, not prevented. This participation—electing responsive officials, voting in local school board

elections on issues directly affecting the education of our children, expressing views on statewide issues of major significance—all this is precluded by this unnecessary restriction. The President's Commission on Law Enforcement and the Administration of Justice and the President's Commission on the Causes and Prevention of Violence, have strongly endorsed full voting rights for ex-felons. A majority of states, including four that have restored the right since 1972, allow ex-felons to vote. So should we. Let us eliminate this needless restriction." (Ballot Pamp., Gen. Elec. (Nov. 5, 1974) argument in favor of Prop. 10, p. 38.)

No indication may be found in the 1974 ballot pamphlet that the electorate intended to grant voting rights to those who were still in custody. Indeed, even those no longer behind bars and otherwise participating in society would nevertheless be ineligible to vote while serving their terms of parole.

The only reported case that has considered the matter, *People v. Montgomery* (1976) 61 Cal.App.3d 718, is in agreement that the common definition of "imprisoned," including confinement in a local detention facility, is to be applied for purposes of article II, section 4, of the Constitution. The defendant in *Montgomery* argued that Penal Code section 165, which prohibits voting by anyone convicted of bribery, violated the equal protection clause of the Fourteenth Amendment. (*Id.* at. p. 733.) The court rejected the argument, noting in part that "defendant's complaint . . . is premature because he is presently serving a sentence of two years probation on condition he serve six months in the county jail." (*Id.* at p. 733.) The court explained: "Until he completes his current sentence, he is disqualified from voting under the California Constitution . . . ." (*Ibid* .)[2] The court's analysis is thus consistent with defining "imprisoned" in its usual sense as including confinement in a local detention facility.

We recognize, however, that the Secretary of State has long administratively construed the term "imprisoned" as referring only to felons who are in prison. This administrative construction finds some support in the language of Elections Code section 2101:

> "A person entitled to register to vote shall be a United States citizen, a resident of California, not in prison or on parole for the conviction of a felony, and at least 18 years of age at the time of the next election."

[2] Since probation is different from parole (see Pen. Code, §§ 1168, 1170, 3000), we may assume that the court meant "his current [jail] sentence."

"[I]t is well settled that when the Legislature is charged with implementing an unclear constitutional provision, the Legislature's interpretation of the measure deserves great deference. [Citations.]" (*People v. Birkett*, *supra*, 21 Cal.4th at p. 244.) " 'When the Constitution has a doubtful or obscure meaning or is capable of various interpretations, the construction placed thereon by the Legislature is of very persuasive significance.' " (*Methodist Hosp. of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 693.) Also, any ambiguity in a constitutional provision or statute prohibiting the right to vote is to be construed in favor of eligibility to vote. (See *Peterson v. City of San Diego* (1983) 34 Cal.3d 225, 229–230 ["restrictions on exercise of the franchise will be strictly scrutinized"]; *Hedlund v. David* (1956) 47 Cal.2d 75, 81 ["Every reasonable presumption and interpretation is to be indulged in favor of the right of the people to exercise the elective process"]; see also *Stanton v. Panish* (1980) 28 Cal.3d 107, 115; *Otsuka v. Hite* (1966) 64 Cal.2d 596, 603–604; *McMillan v. Siemon* (1940) 36 Cal.App.2d 721, 726 ["no construction of an election law should be indulged that would disfranchise any voter if the law is reasonably susceptible of any other meaning"]).[3]

While the Secretary of State's interpretation of election laws is to be accorded "great weight" (*In re Dannenberg* (2005) 34 Cal.4th 1061, 1082 ["we accord significant weight and respect to the long-standing construction of a law by the agency charged with its enforcement"]; *Highland Ranch v. Agricultural Labor Relations Bd.* (1981) 29 Cal.3d 848, 859 [" '[t]he construction of a statute by the officials charged with its administration must be given great weight' "]), we cannot ignore the common definition of the term "imprisoned," the ballot pamphlet describing the electorate's intent in approving Proposition 10, and *People v. Montgomery*, *supra*, 61 Cal.App.3d 718, all of which support a definition of "imprisoned" that includes confinement in a local detention facility. In the final analysis, it is not the manner in which the Secretary of State or the Legislature has interpreted the law, but rather what the voters intended when they approved Proposition 10 in 1974.

We conclude that a person who is incarcerated in a local detention facility, such as a county jail, for the conviction of a felony is not eligible to vote.

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[3] Because of this principle of construction, the term "conviction" would normally not refer to someone on probation and confined in a local jail where a civil disability, such as the denial of the right to vote, was at stake. (See *Boyll v. State Personnel Board* (1983) 146 Cal.App.3d 1070, 1073–1074; *Truchon v. Toomey* (1953) 116 Cal.App.2d 736, 744–745.)

EXHIBIT 6

BRUCE McPHERSON | SECRETARY OF STATE | STATE OF CALIFORNIA
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December 28, 2005

TO ALL COUNTY CLERKS/REGISTRARS OF VOTERS (05388)

FROM JUDITH A CARLSON
Staff Counsel

SUBJECT Felon Voting

On November 22, 2005, pursuant to a request from this Office, the California Attorney General issued Opinion No 05-306, addressing the question of whether a person who is incarcerated in a local detention facility, such as a county jail, for the conviction of a felony is eligible to vote **Concluding that the term "imprisoned" includes confinement in a local facility, the Attorney General concluded that a person who is incarcerated in such a local detention facility for the conviction of a felony is not entitled to vote** Since the issuance of this opinion, the Secretary of State's Office has received several requests from counties for further clarification concerning this matter Accordingly, we provide the following guidance

Article II, Section 4, of the California Constitution provides "The Legislature shall prohibit improper practices that affect elections and shall provide for the disqualification of electors *while imprisoned or on parole for the conviction of a felony*" (Italics added) In accordance with this constitutional directive, California law provides that "the county elections official shall cancel the registration in the following cases (c) Upon proof that the person is *presently imprisoned or on parole for conviction of a felony*" (Elec Code, § 2201(c), italics added) This information is provided twice a year to the chief elections official of a county by that county's superior court (Elec Code, § 2212) Where the sentence is physically served is immaterial with respect to voting eligibility, the fact of a felony conviction is what triggers the restriction on the felon's voting rights

The plain language of both the California Constitution and Section 2201(c) provides that a person convicted of a felony is ineligible to vote only during the time that person is imprisoned or on parole following that felony conviction Therefore, **once an individual has completed his sentence of confinement, including any period of parole, that individual's voting rights are automatically restored.**

In addition, the kind of felony for which a person has been convicted is not an issue Both the Constitution and the statute use the term "a felony" without explanation or restriction As the First District Court of Appeal held in *Flood v Riggs* (1978) 80 Cal App 3d 138, 155, "[A]n elector convicted of *any felony* is temporarily disfranchised while serving a sentence of imprisonment or while undergoing an unexpired term of parole " (Italics added.) The court in *Flood* further held that the jurisdiction of the conviction did not matter in determining whether a parolee is subject to temporary loss of voting rights, stating that the constitutional language "applied uniformly to all paroled felons in California whether convicted under the laws of California, any sister state or federal jurisdiction " (*Id* at p 156) Thus, an individual paroled here in California is subject to the restriction, regardless of where and under what law the conviction occurred Furthermore, a convicted felon who is on federal supervised release, the equivalent of parole, is governed by the same restrictions Once the supervised release term has concluded, voting rights are restored

If you have any further questions on the subject, please feel free to contact me directly at (916) 651-6971 or via email at jcarlson@ss ca gov

JAC kc

EXHIBIT 7

TIMELINE OF CALIFORNIA CONSTITUTION
CRIMINAL DISENFRANCHISEMENT PROVISIONS

1849 **The original California Constitution included Article II, Section 5, which provided: "No idiot or insane person, or person convicted of any infamous crime, shall be entitled to the privilege of an elector."**

1879 **Article II, Section 1 rewrote the provision as follows: "…no idiot, no insane person, no person convicted of any infamous crime, no person hereafter convicted of 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."**

1953 First District Court of Appeal decision in *Truchon v. Toomey,* 116 Cal. App. 2d 736 (1953). Court holds that term "convicted" as used in the criminal disenfranchisement provision requires both a verdict or plea and the imposition of judgment and sentence, such that unsentenced probationer retains his voting rights. *Id.* at 742. Attorney General also concludes that unsentenced probationers are not "convicted" and therefore "can continue voting while on probation." 22 Cal. Op. Att'y Gen 39, 41 (1953).

1959 California Supreme Court decision in *Stephens v. Toomey*, 51 Cal. 2d 864 (1959). Court states that "conviction" as used in disenfranchisement provision "must mean a final judgment of conviction." *Id.* at 869.

1960 California Legislature places proposed constitutional amendment on the ballot, Assembly Constitutional Amendment No. 5, appearing on the ballot as Proposition 8. Initiative would disenfranchise individuals "convicted of any felony, while paying the penalties imposed by law therefor, including any period of probation or parole." Measure fails at the ballot.

1966 California Supreme Court decision in *Otsuka v. Hite*, 64 Cal. 2d 596 (1966). Court holds that the term "infamous crime" as used in the disenfranchisement provision must be construed to mean crimes that "may reasonably be deemed to constitute a threat to the integrity of the elective process" in order to withstand constitutional scrutiny. *Id.* at 611. The Court "also found that California, properly denied the right to vote to all felons actually incarcerated in state prison" referring to California Penal Code § 2600. *League of Women Voters v. McPherson* 145 Cal. App.4th at 1477 (citing *Otsuka*, supra, 64 Cal. 2d at 606, n.5). The court leaves to local elections officials to determine which specific crimes constitute such a threat. *See Flood v. Riggs,* 80 Cal. App. 3d 138, 146-147 (1978). This leads to wide variation in implementation from county to county, as local elections officials make individual determinations about eligibility to vote. *Id.* at 146.

1970 California Constitution Revision Commission recommends to Legislature that the blanket criminal disenfranchisement provision be modified to disqualify electors only while "under court order for conviction of designated felonies." Legislature declines to adopt this recommendation when it submits constitutional amendment to the voters in 1972 as Proposition 7.

1972 Attorney General opinion cites *Truchon v. Toomey, Stephens v. Toomey¸* and 22 Cal. Op. Att'y Gen 39 for the proposition that " 'conviction' within the meaning of article II, section 1 of the Constitution and resulting in disenfranchisement requires both a verdict of guilty *and* the imposition of sentence pursuant to such verdict." 55 cal. Op. Att'y Gen 125, 126 (1972). (Emphasis in original).

1972 **Article II, Section 3 substituted for the earlier Article II, Section 1 disenfranchisement provision as a result of Proposition 7 adopted by voters. Provision amended to read: "…the legislature shall prohibit improper practices that affect elections and shall provide that no severely mentally deficient person, insane person, person convicted of an infamous crime, no person convicted of embezzlement or misappropriation of public money shall exercise the privileges of an elector in this State."**

1973 California Supreme Court decision in *Ramirez v. Brown*, 9 Cal. 3d. 199 (1973). Court reexamines the constitutionality of the disenfranchisement provision, determining that, in the years since its decision in *Otsuka,* "the test for judging the constitutionality of a state-imposed limitation on the right to vote has become substantially more strict." *Id.* at 207. Applying the stricter test, the court finds that election reforms have "radically diminished the possibility of election fraud in California," *id.* at 214, such that blanket disenfranchisement is not "necessary" and is, therefore, unconstitutional. *Id.* at 216-217.

1973 Three days after the *Ramirez* decision, Legislature introduces Assembly Constitutional Amendment No. 38 (ACA 38) to amend the Constitution consistent with the *Ramirez* decision. The original version of ACA 38 eliminates any elector disqualification on the basis of criminal conviction and a subsequent version disenfranchises any person "under court order for the conviction of a felony." The Assembly considers and rejects both versions, the latter of which would arguable disfranchise future classes of felons confined in local jails.

1974 Senate Judiciary Committee Chief Counsel correspondence with Legislative Counsel as to "existing constitutional, statutory, and decisional law" restrictions "upon the right of suffrage" for individuals with felony convictions. Committee Chief Counsel is advised the "convicted felons who are out of prison, but still on parole or who are still in prison may not vote (Secs. 2600 and 3054, Pen. C.)." Senate amends ACA 38 to add "imprisoned or on parole for the conviction of a felony" disenfranchisement language after this correspondence, and AB 1128 (ACA 38 companion bill) amended to include legislative intent language. ACA 38 is passed by the Legislature and proceeds to November 1974 ballot as Proposition 10.

1974	United States Supreme Court Decision in *Richardson v. Ramirez*, 418 U.S. 24 (1974), reversing and remanding *Ramirez.* Court holds that blanket disenfranchisement does not constitute denial of equal protection under the United States Constitution, and remands for consideration of whether the lack of uniformity in local practices might constitute a separate denial of equal protection. *Id.* at 56. The court also notes that, while blanket disenfranchisement is not unconstitutional, the people of California could choose a difference course. *See id.* at 55.
1974	Attorney General opinion notes that California appellate courts have held that "suspension of imposition of sentence and placement upon probation" does "not constitute a conviction of a crime" within the meaning of criminal disenfranchisement. 57 Cal. Op. Att'y Gen. 374, 383 (1974).
1974	**Voters enact Proposition 10 at the ballot, which repeals 1972 version of Article II, Section 3 and replaces it with the current disenfranchisement provision: "The Legislature…shall provide for the disqualification of electors while mentally incompetent or imprisoned or on parole for the conviction of a felony."**
1976	Secretary of State advises local election officials that a "person on probation *may* register to vote" pursuant to new Article II, Section 3. (Emphasis in original). Secretary of State, represented by the state Attorney General, admits in *Flood* briefing that "persons on probation and persons convicted only of misdemeanors may register to vote…because they are not disenfranchised by any provision of law"
1976	Article II, Section 3 is renumbered to the current Section 4.
1978	First District Court of Appeal decision in *Flood v. Riggs,* 80 Cal. App. 3d. 138 (1978). Court holds that Article II, Section 4 disenfranchises individuals during term of parole, *id.* at 155, and that inconsistent Elections Code provisions are invalid, *id.* at 157.
1979	In 1979 the Secretary of State, interpreting *Flood v. Riggs*, 80 Cal.App.3d 138, 145 Cal.Rptr. 573 (1978), wrote to the Fairfield Elections Supervisor that the constitutional provision "does not [disenfranchise] a person convicted of a felony and who is on probation. It speaks only to those felons imprisoned or undergoing an unexpired term of parole. The Secretary of State has also taken the position that the conviction must be for a felony which results in confinement in a state prison. Therefore, persons convicted of a felony but ... sent to the county jail are not ineligible to register to vote." (Secretary of State March Fong Eu, letter to Elections Supervisor Mary Widger, May 29, 1979 (quoted in *League of Women Voters v. McPherson* 145 Cal.App.4th 1469, 1474, n.1(2006))).
1979-2003	California Legislature introduces bills interpreting Article 2, section 4 term "imprisoned" as "in prison." For example, Legislative Committee reports accompanying Senate Bill 1142 in 1979 indicate that new disenfranchisement

0065

provision provides for elector disqualification while "in prison or on parole." In 1982, Elections Code section 304.5 (later renumbered to § 2106) enacted to require that all programs designed to encourage the registration of electors contain a statement that "a person entitled to register to vote must be a United States citizen, a resident of California, not in prison or on parole for the conviction of a felony, and at least 18 years of age at the time of the election." In 1989, Elections Code section 300.5 (later renumbered to § 2101) enacted using "in prison" language to describe disenfranchised class of individuals. In 2003, Voters Bill of Rights passed by Legislature stating valid registered voter is someone "not in prison or on parole."

2004 In 2004, the Secretary of State responds to an inquiry from San Francisco's Legal Services for Prisoners with Children that "it is the law and therefore the position of the Secretary of State, that only those persons who are in prison or on parole for the conviction of a felony may be disqualified as electors." (Secretary of State Kevin Shelley, letter to Program Director Dorsey E. Nunn & Staff Attorney Cassie M. Pierson, Nov. 5, 2004 (quoted in *League of Women Voters v. McPherson* 145 Cal.App.4th 1469, 1474, n.1(2006))).

2005 California Attorney General issues Opinion No. 05-306, concluding that anyone "who is incarcerated in a local detention facility, such as a county jail, for the conviction of a felony is not eligible to vote." 88 Cal. Op. Att'y Gen. 207 at 212 (2005). The Opinion contends that the 1974 ballot arguments and the dictionary and ordinary meaning of "imprisoned" establish the voters intended to disenfranchise a person convicted of a felony confined in a jail as well as a state prison. *Id.* at 209-212.

2006 First District Court of Appeal decision in *League of Women Voters v. McPherson* 145 Cal.App.4th 1469 (2006). Court rejects Attorney General opinion and finds that application of § 4 only to those in prison or on parole for conviction of a felony is consistent with language of § 4, with 1974 ballot arguments and voters' intent, and with Legislature's use of "in prison" in Elections Code §§ 2106 and 2300 to describe class disenfranchised by § 4. Court's writ of mandate directs Secretary of State to inform election officials "that the only persons disqualified from voting by reason of article II, section 4 are those who have been imprisoned in state prison or who are on parole as a result of the conviction of a felony." 145 Cal.App.4th 1469 at 1486.

2009 Legislature amends section 2106 to require that programs to encourage individuals to pre-register to vote contain a statement identical to language construed in McPherson, that persons entitled to pre-register to vote must be "not in prison or on parole for the conviction of a felony."

2011 Legislature adopts Criminal Justice Realignment Act ("Realignment Act") which (i) abolishes state prison imprisonment for low level felony offenders and requires sentencing to county jail; (ii) authorizes court to impose "split sentence" for certain low level felony offenders under which concluding portion of term may be served under mandatory supervision of local probation authorities; and (iii) which

abolishes parole for low level felony offenders confined in state prison and provides for post-release community supervision under new Post-Release Community Supervision ("PRCS") program, a locally run community-based program that includes community based punishment, evidence based practices, and improved supervision strategies designed to improve public safety and facilitate reintegration. Realignment Act amends 41 Election Code sections to provide for sentencing under new Realignment Act provisions.

2011 Secretary of State issues opinion asserting all persons sentenced or released under Realignment Act are disfranchised by § 4 because (i) low level felons sentenced to county jail are imprisoned for the conviction of a felony under the dictionary definition of "imprison"; (ii) low level felons released on probation and under the supervision of local probation officials on the concluding part of a split sentence are under a "form of probation [that] is more akin to traditional parole" than to post conviction pre-sentencing probation; and (iii) low level felons on post-release community supervision are in a status that is "functionally equivalent to parole in the California criminal justice system."

EXHIBIT 8

STATE OF CALIFORNIA

CALIFORNIA CONSTITUTION REVISION COMMISSION

PROPOSED REVISION

of

ARTICLE II

ARTICLE XIV

ARTICLE XV

ARTICLE XXI

ARTICLE XXIII

ARTICLE XXVII

ARTICLE XXXIV

of the

CALIFORNIA CONSTITUTION

1970

California Constitution Revision Commission
Suite 1065, State Building
San Francisco, California

LETTER OF TRANSMITTAL

San Francisco, California
March, 1970

JOINT COMMITTEE ON RULES
State Capitol
Sacramento, California 95814

Gentlemen:

The California Constitution Revision Commission submits its recommendations concerning revision of Articles II, XIV, XV, XXI, XXIII, XXVII, and XXXIV of the California Constitution.

The Commission has previously submitted to the Legislature its recommendations for revision of Articles III, IV, V, VI, VII, VIII, X, XI, XII, XVII, XVIII, XXIV and part of Article IX. We hope to submit our recommendations for revision of the remainder of the Constitution this year.

We were first convened in 1964. Since that time the full Commission has customarily met for two-day monthly sessions and committees frequently held interim meetings. The Commission Staff spent full time on the project.

The Commission is comprised of persons from all walks of life, representing a cross-section of the social, political and economic life of California. Each is subject to heavy demands from his private occupation and other civic-oriented pursuits. We are appointed by the Legislature and serve without pay. We have donated tens of thousands of hours of study and debate. Issues were carefully researched, presented, and considered. Yet over this long period of time attendance at the meetings, involvement in the work, and enthusiasm has remained high. This, I submit, speaks well of the wisdom of the Legislature in choosing these particular individuals to perform this vital task. More important, however, it clearly indicates that citizens of California are able and willing to face challenges and devote time and effort to preserve and improve our system of government.

Respectfully submitted,

BRUCE W. SUMNER
Chairman

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PROPOSED REVISION

OF

ARTICLE II

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ARTICLE II

SUMMARY OF RECOMMENDATIONS

Proposed Article II retains, in simplified form, the basic provisions of the existing Article. The qualifications for voters: citizenship, age, residence, and registration are provided for in proposed Section 1. Disqualification from voting because of crime or mental incompetence is provided in Section 3. A mandate to the Legislature to provide for primary elections is continued in proposed Section 4. The secrecy requirement, and the declaration that certain offices shall be non-partisan are also retained.

The Commission recommends deletion of detailed language relating to residence, registration requirements, and primary elections because such matters are better provided by statute. Similarly, the Commission recommends that provisions in the existing Article relating to presidential voting by short-term residents, freedom of voters from civil arrest, freedom of voters from militia duty on election day, and certain other provisions be considered by the Legislature as possible statutes, but not be continued in the Constitution.

The Commission recommends that the minimum age for voters be lowered to 19 years, and that the disqualification of felons and mental incompetents apply only while such persons are actually incompetent or actually under sentence. The Commission also recommends removal of English language and literacy restrictions, and of the 90-day waiting period for naturalized citizens.

COMPARATIVE SECTIONS TABLE

This table indicates the proposed disposition of each section and clause of existing Article II, and part of Section 11 of Article XX.

DELETION: This indicates a provision that is entirely deleted from the Constitution and deemed unsuitable for consideration as a statute. The reference is to "Deleted Provisions" found in the second division of the report on Article II.

REVISED CONST: This indicates the existing provision is revised in some form. The reference is to "Revised Provisions" found in the first division of the report on Article II.

STATUTE CONSIDERATION: This indicates a provision that is deleted but will be called to the attention of the Legislature for consideration as a statute. The reference is to "Provisions for Statutory Consideration" found in the third division of the report on Article II.

Existing Constitution	Disposition of Provisions
Section 1	
Clause 1	REVISED CONST SEC. 1; STATUTE CONSIDERATION
Clause 2	STATUTE CONSIDERATION
Clause 3	REVISED CONST SEC. 3; DELETED
Clause 4	DELETED
Clause 5	STATUTE CONSIDERATION
Section 1½	STATUTE CONSIDERATION
Section 2	STATUTE CONSIDERATION
Section 2.5	REVISED CONST SEC. 4; STATUTE CONSIDERATION
Section 2¾	REVISED CONST SEC. 5; STATUTE CONSIDERATION
Section 3	STATUTE CONSIDERATION
Section 4	STATUTE CONSIDERATION; REVISED CONST. SEC. 1
Section 5	REVISED CONST. SEC. 2
Section 6	DELETED
Article XX Section 11	REVISED CONST SECS. 1, 3

ARTICLE II

REVISED PROVISIONS

Voting

Proposed Constitution

Section 1

Sec. 1. A United States citizen 19 years of age and resident in this State may vote. The Legislature shall define residence, prescribe minimum periods of residence, and provide for registration and free elections.

Existing Constitution

Section 1, first part

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 Queretaro, and every naturalized citizen thereof, who shall have become such ninety 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 ninety days, and in the election precinct fifty-four 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 fifty-four days, or any person duly registered as an elector in any county in California and removing therefrom to another county in California within ninety 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; . . . .

Section 1, clause 5

. . . 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 their respective precincts or unable to vote therein, by reason of physical disability, on the day on which any election is held.

Section 5

Sec. 5. All elections by the people shall be by ballot or by such other method as may be prescribed by law; [provided, that secrecy in voting be preserved.] *

Article XX, part of Section 11

. . . The privilege of free suffrage shall be supported by laws regulating elections and prohibiting, under adequate penalties, all undue influence thereon . . . .

* Bracketed portions of Section 5 are not pertinent to revised Section 1 but are treated with revised Section 2.

Comment: Proposed Section 1 like Section 1 of the existing Constitution provides the basic qualifications for voters: citizenship, age, residence, and registration. Simplification in the revised Section has been achieved by leaving to legislative prescription such matters as state and local residence requirements, removal of voters from one precinct or county to another, registration, and absentee balloting. These matters are more suitable for detailed statutory treatment than for statement in the Constitution. Moreover, these matters already appear in statutory form in the Elections Code.

Reference to the Treaty of Queretaro was deleted because any citizen who derived his citizenship from that source would necessarily be a "citizen of the United States" within the meaning of revised Section 1. The existing 90-day waiting period for naturalized citizens was deleted as unnecessary and possibly unconstitutional.

The Commission recommends that the minimum age for voting be reduced from 21 to 19 years of age, and suggests to the Legislature that this proposal be submitted to the electors as a separate ballot measure. It should be noted that the constitutionality of the 21-year voting age is being challenged in pending litigation. See *Puishes* v. *Mann*, Civil Action No. C-69503ACW, United States District Court for the Northern District of California.

Proposed Constitution

Section 2

Sec. 2. Voting shall be secret.

Existing Constitution

Section 5

Sec. 5. [All elections by the people shall be by ballot or by such other method as may be prescribed by law; provided,] that secrecy in voting be preserved.*

* Bracketed portions of Section 5 are not pertinent to revised Section 2 but are treated with revised Section 1.

Comment: Proposed Section 2 continues the existing guarantee of secrecy in voting. The first clause of existing Section 5 is unnecessary since the Legislature is compelled by revised Section 1 to provide for the election details such as the method of voting.

Proposed Constitution

Section 3

Sec. 3. The Legislature shall prohibit improper practices which affect elections and provide for the disqualification of electors while mentally incompetent or under court order for conviction of designated felonies.

Existing Constitution

Section 1, clause 3

. . . provided, further, no alien ineligible to citizenship, no idiot, no insane person, no person convicted of any infamous crime, no person hereafter convicted of the embezzlement, or misappropriation of public money, . . . shall ever exercise the privileges of an elector in this State. . . .

Article XX

Section 11, sentence 2

The privilege of free suffrage shall be supported by laws regulating elections and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult or other improper practice.

Comment: This proposed provision compels the Legislature to protect elections from improper practice and, subject to specified conditions, to provide for disqualification of electors who are mentally incompetent or under court order for conviction of felonies specified by the Legislature.

Reference to the prohibition of improper practice in proposed Section 3 is derived from the corresponding prohibition in Article XX, Section 11.

Provision for the disqualification of felons and mental incompetents has been retained in the Commission's proposal, but has been revised and clarified. The existing provision, Section 1, clause 3, appears to mean that persons convicted of crime, or persons found to be insane, are disqualified from voting even after the completion of their sentences or the recovery of their mental health. The Commission recommends that the disqualification apply only w[hil]e the elector is actually under sentence, or other court order, or actually me[nta]lly ill. Proposed Section 3 empowers the Legislature to disqualify electors only under these circumstances.

The phrase "under court order" in most instances means "under sentence." "Under court order" was used rather than "under sentence" because there are certain limited circumstances in which a court disposition after conviction is not technically a sentence.

Definition of the term "mentally incompetent" was deemed unsuited for constitutional treatment but properly within the province of the Legislature and the courts.

The existing Constitution, Section 1, clause 3, uses the ambiguous term "infamous crime" to describe the crimes which result in disqualification from voting. The Attorney General had interpreted this term to mean conviction of any felony but the California Supreme Court recently held that this interpretation is too broad, and that not every felony can result in disenfranchisement. For this reason, the Commission has used the term "designated felonies", meaning that the Legislature should determine which felonies result in disqualification from voting.

Proposed Constitution

Section 4

Sec. 4. The Legislature shall provide for primary elections for partisan offices.

Existing Constitution

Section 2.5

Sec. 2.5. The Legislature shall have the power to enact laws relative to the election of delegates to conventions of political parties; and the Legislature shall enact laws providing for the direct nomination of candidates for public office, by electors, political parties, or organizations of electors without conventions, at elections to be known and designated as primary elections; also to determine the tests and conditions upon which electors, political parties, or organizations of electors may participate in any such primary election. It shall also be lawful for the Legislature to prescribe that any such primary election shall be mandatory and obligatory. The Legislature shall also have the power to establish the rates of compensation for primary election officers serving at such primary elections in any city, or city and county, or county, or other subdivision of a designated population, without making such compensation uniform, and for such purpose such law may declare the population of any city, city and county, county or political subdivision.

Comment: Proposed Section 4 continues the existing mandate to the Legislature to provide for primary elections. Other provisions in existing Section 2.5 relating to conventions of political parties, qualifications for participation in primary elections, and compensation for primary election officers are unnecessary since the Legislature has power over these matters both inherently and from proposed Section 1. Detailed statutory provisions covering these and related matters already are in the Elections Code.

Proposed Constitution

Section 5

Sec. 5. Judicial, school, county, and city offices shall be nonpartisan.

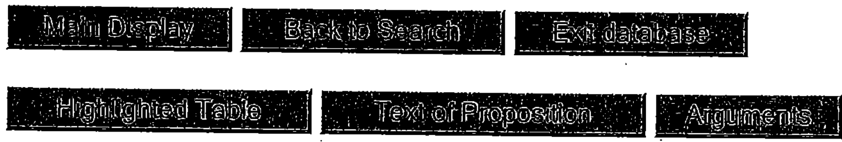
Existing Constitution

Section 2¾, part of first sentence

Sec. 2¾. Any candidate for a judicial, school, county, township, or other nonpartisan office . . . .

Comment: Existing Section 2¾ is the only existing constitutional guarantee that judicial, school, and county offices are nonpartisan. The Commission concluded that this provision should be retained and clarified, which has been done in proposed Section 5. City offices are added to the list of nonpartisan offices in recognition of the existing practice throughout the State.

EXHIBIT 9



Full Text

Record: 557

Proposition #	8
Title	ELIGIBILITY TO VOTE
Year/Election	1960 general
Proposition type	aca
Popular vote	Yes: 2,353,761 (44.8%); No: 2,901,080 (55.2%)
Pass/Fail	Fail
Summary	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.

Analysis

Analysis by the Legislative Counsel

This constitutional amendment would amend Section 1 of Article II of the Constitution to permit a person who has been convicted of a felony, other than treason or the embezzlement or misappropriation of public money, to vote and exercise other privileges accorded an elector, upon paying the penalties prescribed by law for his offense, including any period of probation or parole. At the present time, under the Constitution, a person who is convicted of a felony loses his privileges as an elector and cannot regain those privileges unless he is pardoned by the Governor.

The constitutional provision being amended presently refers to "infamous crimes" rather than "felonies." The courts have indicated that every felony constitutes an infamous crime, but have given no indication as to whether the term includes any other type of offense. This measure would eliminate any question in that regard by substituting the term "felony" for "infamous crime."

For

Argument in Favor of Assembly Constitutional Amendment No. 5

There are approximately 20,000 young people in California who are presently law abiding citizens endeavoring to live honest lives who are deprived under an archaic provision of the State Constitution from the right to vote for life because of mistakes they made and paid the price for as juveniles.

These young people are usually individuals from broken or underprivileged homes and social conditions which inevitably produce a higher incidence of law violations.

They paid their penalties under the jurisdiction of state correctional agencies and were discharged as ex-felons. They have rehabilitated themselves as useful members of society cognizant of the wrongs they have committed, willing to accept their duties and responsibilities as constructive members of the community.

Yet they are deprived of the right to vote for life.

Is this fair?

We say no one who neglects to register and vote is a good citizen. Should we deprive these young people of the opportunity to become good citizens!

Proposition Number 8 would rectify this anomalous situation.

It would correct other injustices.

Proposition 8 proposes an amendment to Section 1 of Article II of the State Constitution. This section has a provision that no person convicted of a felony shall ever exercise the privileges of an elector in this State (the term "infamous crime" used in the Constitution has been construed to mean the same as "felony," that is a crime punishable by imprisonment in a state prison or in a federal prison for a sentence of one year or more.) This Proposition would provide instead that no person "while paying the penalties imposed by law, including any period of probation or parole," for conviction of a felony, shall exercise the privileges of an elector. It also adds "treason" to those offenses specifically enumerated for which the right to vote could not be restored except by pardon by the Governor.

The fundamental change proposed is to restore to the individual convicted of a felony (with certain exceptions) the right to vote once he has paid the penalties imposed by law. This franchise would be returned to the individual when his debt to society had been paid.

This perpetual restriction on the right to vote is an outmoded concept and inconsistent with the rehabilitation approach of modern correctional methods. It is repugnant to democratic concepts of justice.

This proposal would not remove present constitutional and statutory restrictions on collateral rights of electors, such as the right to be a candidate and serve in public office. It would not repeal or limit the certificate of rehabilitation procedure under which ex-felons are able to secure recommendations for pardons from the Governor by the Superior Court. It would not limit powers which the Legislature now possesses. It would delete from the fundamental law of the State an unjust restriction.

This medieval and undemocratic perpetual prohibition should be repealed.

This proposition is endorsed by the State Board of Corrections and California Probation, Paroles and Correctional Association.

We recommend a YES vote on Proposition 8.

FOR(au) Edward E. Elliott |t Assemblyman, 40th District Los Angeles

FOR(au) Augustus F. Hawkins |t Assemblyman, 62nd District Los Angeles

Against **Argument Against Assembly Constitutional Amendment No. 5**

0080

This proposed constitutional amendment provides that a person convicted of a felony is ineligible to vote for the period during which he is paying the penalty which the law prescribes for his offense including the period of probation or parole. This amendment changes the present constitutional provision so that instead of losing the right to vote forever unless he is pardoned or successfully applies for release of disabilities under Sec. 1203.4 of the Penal Code, such a person will automatically regain his right to vote after his punishment has been completed. The proposal further liberalizes the law by changing "infamous crimes" to "felonies" since infamous crimes include felonies and possibly other offenses, depending on which definition of a felony is used -- a matter on which there is some dispute.

We should not lessen the penalties for those who commit serious crimes against society at a time when crime is increasing and when there is an unprecedented amount of violence in our large communities.

The present law simply says in effect that voting is a privilege. If you commit an infamous crime, you forfeit that privilege until you successfully carry out certain legal steps to regain your voting privilege.

The law is now clear that a person who is convicted of an infamous crime can regain his voting right in two ways -- (1) by a pardon, or (2) by completing the procedure to remove disabilities as set forth in Section 1203.4 of the Penal Code. If a man is unworthy to be pardoned or does not care enough about voting to carry out the procedure set forth in Section 1203.4 of the Penal Code, he does not deserve to receive the right to vote. In short, a man sincerely desirous of regaining his right to vote can already do so under present law.

The proponents of this amendment argue that pardons and the procedure set forth in Section 1203.4 are inadequate because they may involve publicity which will embarrass the party seeking to regain his voting rights. This argument can be answered in two ways:

(1) Embarrassment is part of the price the criminal pays for crime.

(2) If we seek to avoid embarrassment possibly involved in present remedies, there is still no real need for the proposed constitutional amendment. In our eagerness to spare the convicted man embarrassment, it is not necessary to destroy a perfectly understandable constitutional provision that properly emphasizes the importance of voting by saying, if you commit an infamous crime, you shall not automatically receive back your voting rights.

If we desire to spare the convicted person humiliating publicity, why could we not allow a procedure to be authorized by the Constitution in which voting rights could be restored in a proper case by a confidential hearing? Confidential procedures are not unknown. We have them in adoptions, for example. Proper safeguards could be established to protect the interest of the public as well.

This proposed constitutional amendment is unnecessary and undesirable.

VOTE NO ON THIS MEASURE

0081

Against(au) Howard J. Thelin |t Member of Assembly, 43rd District California Legislature

Text of Prop. (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[BOLD] 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 Queretaro, and every naturalized citizen thereof, who shall have become such 90 days prior to any election, of the age of 12 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 no 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 their respective precincts or unable to vote therein, by reason of physical disability, on the day on which any election is held.

EXHIBIT 10

May 9, 1974

Mr. George H. Murphy
Legislative Counsel, State of California
3021 State Capitol
Sacramento, California

Dear George:

The staff of the committee is presently attempting to conform a constitutional amendment and bill to the decisions in Otsuka v. Hite (1966), 64 Cal. 2d 596 and Ramirez v. Brown (1973), 9 Cal. 3d 199.

It appears that no restrictions may be imposed upon the right of suffrage of a person convicted of a felony if his terms of imprisonment and parole have expired. However, we have been unable to ascertain what restrictions, if any, may be imposed on this right in the case of a convicted felon whose terms of imprisonment and parole have not expired.

Accordingly, considering existing constitutional, statutory, and decisional law, we need an opinion setting forth what the existing restrictions are upon the right of suffrage of the following persons who have been convicted of a felony:

(1) Persons whose terms of imprisonment and parole have expired.

(2) Persons who are not imprisoned but are still on parole.

(3) Persons who are imprisoned.

We need the opinion by the afternoon of Monday, May 13.

If you have any questions regarding this request, please contact me.

Sincerely,

Bion M. Gregory
Chief Counsel

BMG:eep

EXHIBIT 11

Legislative Counsel of California

GEORGE H. MURPHY

BERNARD CZESLA
CHIEF DEPUTY

OWEN K. KUNS
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JOHN W. DAVIES
CLINTON J. DEWITT
FRANCES S. DORBIN
ROBERT CULLEN DUFFY
CARL NED ELDER, JR.
LAWRENCE H. FEIN
JOHN FOSSETTE
HARVEY J. FOSTER
HENRY CLAY FULLER III
ALVIN D. GRESS
ROBERT D. GRONKE
JAMES W. HEINZER
THOMAS R. HEUER
MICHAEL J. KERSTEN
L. DOUGLAS KINNEY
VICTOR KOZIELSKI
DANIEL LOUIS
JAMES A. MARSALA
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MIRKO A. MILICEVICH
EUGENE L. PAINE
TRACY O. POWELL, II
MARGUERITE ROTH
HUGH P. SCARAMELLA
MARY SHAW
JOHN T. STUDEBAKER
GREGORY THOMPSON
DAVID W. VASQUEZ
BRIAN L. WALKUP
THOMAS D. WHELAN
JIMMIE WING
CHRISTOPHER ZIRKLE
DEPUTIES

Sacramento, California
May 13, 1974

Honorable Alfred H. Song
Senate Chamber

Voting Rights of Felons - #10358

Dear Senator Song:

QUESTION

What are the existing restrictions upon the right of suffrage of the following persons who have been convicted of a felony: (1) persons whose terms of imprisonment and parole have expired, (2) persons who are out of prison but still on parole, and (3) persons who are still in prison?

OPINION AND ANALYSIS

Convicted felons whose terms of imprisonment and parole have expired may vote (Ramirez v. Brown, 9 Cal 3d 199). Convicted felons who are out of prison but still on parole, or who are still in prison, may not vote (Secs. 2600 and 3054, Pen. C.).

Very truly yours,

George H. Murphy
Legislative Counsel

By
Clinton J. deWitt
Deputy Legislative Counsel

CJdeW:jn

EXHIBIT 12

behalf of the prisons. [1941 ch 106 § 15; 1957 ch 2256 § 21.] *Cal Jur 2d Pris & P § 30; Witkin Crimes p 870.*

CHAPTER 3

Civil Death of Prisoners

Article
1. Civil Death. §§ 2600–2604.
2. Prisoners as Witnesses. §§ 2620–2623.

ARTICLE 1

Civil Death

§ 2600. Rights, etc., lost by imprisonment: Restoration.
§ 2603. Construction of preceding sections.
§ 2604. Forfeiture of property on conviction.

§ 2600. [Rights, etc., lost by imprisonment: Restoration.] A sentence of imprisonment in a state prison for any term suspends all the civil rights of the person so sentenced, and forfeits all public offices and all private trusts, authority, or power during such imprisonment. But the Adult Authority may restore to said person during his imprisonment such civil rights as the authority may deem proper, except the right to act as a trustee, or hold public office or exercise the privilege of an elector or give a general power of attorney.

Between the time of the imposition of a sentence of imprisonment in a state prison for any term and the time the said person commences serving such sentence, the judge who imposed such sentence may restore to said person for said period of time such civil rights as the judge may deem proper, except the right to act as a trustee, or hold public office or exercise the privilege of an elector or give a general power of attorney.

This section shall be construed so as not to deprive such person of the following civil rights, in accordance with the laws of this state:

(1) To inherit real or personal property.

(2) To correspond, confidentially, with any member of the State Bar, or holder of public office, provided that the prison authorities may open and inspect such mail to search for contraband.

(3) To own all written material produced by such person during the period of imprisonment.

(4) To purchase, receive, and read any and all newspapers, periodicals, and books accepted for distribution by the United States Post Office. Pursuant to the provisions of this section, prison authorities shall have the authority to exclude obscene publications or writings, and mail containing information concerning where, how, or from whom such matter may be obtained; and any matter of a character tending to incite murder, arson, riot, violent racism, or any other form of violence; and any matter concerning gambling or a lottery. Nothing in this section shall be construed as limiting the right of prison authorities (i) to open and inspect any and all packages received by an inmate and (ii) to establish reasonable restrictions as to the number of newspapers, magazines, and books that the inmate may have in his cell or elsewhere in the prison at one time. [1941 ch 106 § 15; 1941 ch 489 § 3; 1957 ch 2256 § 22; 1963 ch 1792 § 1; 1968 ch 1402 § 1.] *Cal Jur 2d Ack § 17, Civ R § 3, Crim L §§ 283, 287, 290, Discovery § 55, Elect § 21, Pris & P § 69, Pub O § 100; Cal Practice § 10:33; Witkin Crimes pp 873, 916; Procedure 2d, pp 1767, 1768; Summary p 133.*

§ 2603. [Construction of preceding sections.] The provisions of the last three preceding sections must not be construed to render the persons therein mentioned incompetent as witnesses by affidavit or deposition in a civil case or proceeding or by affidavit or deposition or personally in a criminal case or proceeding, or incapable of making a will, or incapable of making and acknowledging, a sale or conveyance of property. [1941 ch 106 § 15.] *Cal Jur 2d*

EXHIBIT 13

§ 3053. **[Conditions on parole.]** The Adult Authority upon granting any parole to any prisoner may also impose on the parole such conditions as it may deem proper, and shall impose as a condition of the parole, that all or a portion of his credits earned, or to be earned, may be forfeited by order of the Adult Authority in the event that such prisoner shall break his parole or violate any law of this State or rule or regulation of the prison, or of the department, the director or the Adult Authority, or any of the conditions of his parole. [1941 ch 106 § 15; 3d Ex Sess 1944 ch 2 § 41.] *Cal Jur 2d Pris & P § 118; Witkin Crimes p 1030.*

§ 3053.5. **[Same: Inquiry into intoxication: Requiring abstention from use of alcoholic liquor.]** Upon granting parole to any prisoner convicted of any of the offenses enumerated in Section 290 of this code, the Adult Authority shall inquire into the question whether the defendant at the time the offense was committed was intoxicated or addicted to the excessive use of alcoholic liquor or beverages at that time or immediately prior thereto, and if it is found that the person was so intoxicated or so addicted, it shall impose as a condition of parole that such prisoner shall totally abstain from the use of alcoholic liquor or beverages. [1st Ex Sess 1950 ch 25 § 2.] *Cal Jur 2d Pris & P § 118; Witkin Crimes p 1030.*

§ 3054. **[Allowance of civil rights: Authority of board: Scope of rights.]** The Adult Authority may permit paroled persons civil rights, other than the right to act as trustee, or hold public office, or exercise the privilege of an elector, during the term of such parole. The scope or extent of such civil rights shall be such as, in the judgment of the authority, is for the best interest of society and such paroled person. [1941 ch 106 § 15; 1957 ch 2256 § 62.] *Cal Jur 2d Civ R § 3, Crim L § 287, Pris & P § 127; Witkin Crimes pp 917, 1030; Summary p 133.*

§ 3055. **[Same: Making of record.]** The Adult Authority shall, at the time of permitting such civil rights, make a permanent record thereof, and such record shall be a public record for the benefit of all persons requiring information in that behalf. [1941 ch 106 § 15; 1957 ch 2256 § 63.] *Cal Jur 2d Pris & P § 127; Witkin Crimes p 1030.*

§ 3056. **[Legal custody of parolees: Right to reimprison.]** Prisoners on parole shall remain under the legal custody of the department and shall be subject at any time to be taken back within the inclosure of the prison. [1941 ch 106 § 15 as § 3057; 1941 ch 893 § 8; 1957 ch 2256 § 64.] *Cal Jur 2d Pris & P § 127; Witkin Crimes p 1030.*

§ 3058. **[Communications designed to prevent or impede employment: Extortion, etc.]** Any person who knowingly and wilfully communicates to another, either orally or in writing, any statement concerning any person then or theretofore convicted of a felony, and then on parole, and which communication is made with the purpose and intent to deprive said person so convicted of employment, or to prevent him from procuring the same, or with the purpose and intent to extort from him any money or article of value; and any person who threatens to make any said communication with the purpose and intent to extort money or any article of value from said person so convicted of a felony, is guilty of a misdemeanor. [1941 ch 106 § 15.] *Cal Jur 2d Pris & P § 135; Witkin Crimes pp 412, 414, 1027.*

§ 3059. **[Consequences of leaving state without permission.]** If any paroled prisoner shall leave the State without permission of the Adult Authority he shall be held an escaped prisoner and arrested as such. [1941 ch 106 § 15; 1957 ch 2256 § 65.] *Cal Jur 2d Pris & P §§ 127, 132; Witkin Crimes p 1030.*

§ 3060. **[Suspension, cancellation and revocation of paroles: Notice unnecessary: Warrant for return.]** The Adult Authority shall have full power to suspend, cancel or revoke any parole without notice, and to order returned to prison any prisoner upon parole. The written order of any member of the Adult Authority shall be a sufficient warrant for any peace or prison officer to return to actual custody any conditionally released or paroled prisoner. [1941 ch 106 § 15; 1947 ch 1211 § 1.] *Cal Jur 2d Pris & P §§ 48, 129, 130; Witkin Crimes p 1032; Criminal Procedure p 105.*

EXHIBIT 14

California Voters Pamphlet

General Election November 5, 1974

Compiled by Edmund G. Brown Jr.
Secretary of State

Analyses by A. Alan Post
Legislative Analyst

10 RIGHT TO VOTE

Ballot Title

RIGHT TO VOTE. LEGISLATIVE CONSTITUTIONAL AMENDMENT. Amends Article II, section 3, and Article XX, section 11, of the State Constitution to eliminate provisions disqualifying electors convicted of an infamous crime, embezzlement or misappropriation of public money and to now provide for the disqualification of an elector while mentally incompetent, or imprisoned or on parole for the conviction of a felony. Financial impact: Minor increase in county government costs.

FINAL VOTE CAST BY LEGISLATURE ON ACA 38 (PROPOSITION 10)

ASSEMBLY—Ayes, 56	SENATE—Ayes, 27
Noes, 12	Noes, 8

Analysis by Legislative Analyst

PROPOSAL:

The California Constitution requires the Legislature to pass laws to prevent persons convicted of specified crimes from voting. The Constitution does not allow the Legislature to restore voting rights to such persons when their prison sentences have been completed. The loss of the right to vote continues throughout life, unless restored by pardon.

This proposition will require the Legislature to pass laws which deny the right to vote to persons when they are in prison or on parole for committing a felony. The right of convicted felons to vote would be restored, however, when their prison sentences, including time on parole, have been completed.

FISCAL EFFECT:

The cost effect of this proposition would be on county government and would be minor, if any.

Polls are open from 7 A.M. to 8 P.M.

This amendment proposed by Assembly Constitutional Amendment 38 (Statutes of 1974, Resolution Chapter 89) expressly amends existing sections of the Constitution; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be inserted or added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENTS TO ARTICLES II AND XX

First—That Section 3 of Article II be amended to read:

SEC. 3. The Legislature shall prohibit improper practices that affect elections and shall provide ~~that no severely mentally deficient person, insane person, person convicted of an infamous crime, nor person convicted of embezzlement or misappropriation of public money, shall exercise the privileges of an elector in this state~~ *for the disqualification of electors while mentally incompetent or imprisoned or on parole for the conviction of a felony*.

Second—That Section 11 of Article XX is amended to read:

SEC. 11. Laws shall be made to exclude ~~from office, serving on juries, and from the right of suffrage,~~ persons convicted of bribery, perjury, forgery, malfeasance in office, or other high crimes *from office or serving on juries*. The privilege of free suffrage shall be supported by laws regulating elections and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice.

Remember to Vote on Election Day

Tuesday, November 5, 1974

10 Right to Vote

Argument in Favor of Proposition 10

VOTING—"A FUNDAMENTAL RIGHT"

The right to vote is the essence of a democratic society and any restrictions on that right strike at the heart of representative government. Historically, voting has long been considered "a fundamental right" diligently sought by those excluded from its exercise. Indeed, our Declaration of Independence repeatedly condemns oppression of the right to vote. Restricted exercise of "a fundamental right," when the need for restriction no longer exists, is unfair and abusive.

NUMEROUS COUNTIES HAVE RESTORED RIGHT

Many California counties have restored the right to vote to ex-felons. Others have not. Even among counties restoring the right, there is wide variation in the offenses which allow restoration. Thus, an offense which bars voting in one county is no bar in another. To base the exercise of so fundamental a right on the good fortune to reside in one county as opposed to another is blatantly arbitrary and does violence to the most basic concept of fairness and equal protection of the law. Uniform application of law, to insure equal treatment, demands restoration of this "fundamental right" throughout the State.

HISTORICAL NEED TO RESTRICT RIGHT TO VOTE IS GONE

Historically, exclusion of ex-felons from voting was based on a need to prevent election fraud and protect the integrity of the elective process. The need to use this voter exclusion no longer exists. As a unanimous California Supreme Court recently pointed out, in the *Ramirez* case, modern statutes regulate the voting process in detail. Voting machines and other safeguards, combined with a variety of criminal penalties, effectively prevent election fraud. Permanent loss of the right to vote is not necessary to achieve this goal!

DEBT TO SOCIETY FULLY PAID—CONTINUED PUNISHMENT UNFAIR

An ex-felon returned to society and released from parole has fully paid the price society has demanded. A basic sense of justice demands that a person not be punished repeatedly, for a lifetime, by denying the right to vote.

DETERS REINTEGRATION INTO SOCIETY

The objective of reintegrating ex-felons into society is dramatically impeded by continued restriction of the right to vote. This restriction is a lifelong reminder of second class citizenship—inferiority—often because of one mistake committed years earlier. The daily lives of all citizens are deeply affected and changed by the decisions of government. Full citizen participation in these decisions should be encouraged, not prevented. This participation—electing responsive officials, voting in local school board elections on issues directly affecting the education of our children, expressing views on statewide issues of major significance—all this is precluded by this unnecessary restriction. The President's Commission on Law Enforcement and the Administration of Justice and the President's Commission on the Causes and Prevention of Violence, have strongly endorsed full voting rights for ex-felons. A majority of states, including four that have restored the right since 1972, allow ex-felons to vote. So should we. Let us eliminate this needless restriction. **VOTE "YES" ON PROPOSITION 10!**

JULIAN C. DIXON
Assemblyman, 63rd District

GEORGE R. MOSCONE
Senator, 10th District

EVELYN P. KAPLAN
President, League of Women Voters of California

Rebuttal to Argument in Favor of Proposition 10

The real question here is whether the State of California should grant a blanket, automatic restoration of voting rights to each and every person convicted of a felony on the very day he is released from prison.

There is already in the law a procedure whereby a person may file with the County to restore his voting rights. If denied, he may appeal to the Superior Court of the county in which he resides.

It is a "fundamental" point in our history whereby people who have committed serious crimes can have their voting rights taken away. This point is spelled out in the United States Constitution and has been there for over 100 years.

Based on the fact there presently is a restoration procedure available, and denial of the vote does serve to maintain the honor and integrity of the electoral process, I urge a "no" vote on Proposition 10.

JOHN V. BRIGGS
Assemblyman, 35th District

Arguments printed on this page are the opinions of the authors and have not been checked for accuracy by any official agency.

Argument Against Proposition 10

The critical question raised by this proposition is whether or not a person who has been convicted of a serious crime should be allowed to vote once that person has served time and has completed parole.

Denial of the vote to convicted felons is a deep-rooted tradition in this country and is as much a part of discipline as is imprisonment. A "no" vote will strengthen respect for the law and provide society with one more weapon with which to discourage potential offenders.

Proponents of this measure argue that to deny the vote to convicted felons is a violation of the "equal protection" clause of the 14th Amendment of the U. S. Constitution. Their case is heavily dependent upon a California State Supreme Court case which agreed that it was unconstitutional for states to enact laws denying the vote to criminals.

However, the United States Supreme Court reversed the California decision and stated that it was perfectly proper for a state to take the vote away from those citizens who had committed serious crimes and who are likely to ruin the integrity of the electoral process.

I, therefore, strongly urge a "no" vote on this proposition.

JOHN V. BRIGGS
Assemblyman, 35th District

Rebuttal to Argument Against Proposition 10

Denial of the right to vote is not necessary to protect the election process. Restoration of voting rights is based on logic and fairness, not, as opponents suggest, on narrow legal questions. Opponents misstate the court decisions. The U.S. Supreme Court did not overrule the California Court's holding that modern election safeguards protect the integrity of the election process. It returned the case to the California Supreme Court to further review the equal protection argument.

Change in response to new conditions is rooted in American tradition. Twenty-seven of the fifty states, including five within the past three years, have fully restored voting rights to ex-felons in recognition that modern safeguards protect the integrity of the election process and that continued restriction, when no longer needed, seriously diminishes respect for the law. Similarly, Congress recently restored ex-felon voting rights in the District of Columbia.

Virtually every serious study on this subject strongly endorses full voting rights for ex-felons. For example, the President's Commission on Law Enforcement and the Administration of Justice, The American Law Institute, and The National Probation and Parole Association all strongly endorse full voting rights for ex-offenders.

Further, a recent national survey of American attitudes toward voter eligibility disclosed that 81% of Chamber of Commerce presidents, 88% of Labor Council presidents, 75% of mayors, 65% of Republican Party chairmen, 93% of League of Women Voters, 80% of Democratic Party chairmen and 88% of American Legion commanders endorsed ex-felon voting rights.

VOTE "YES" ON PROPOSITION 10!

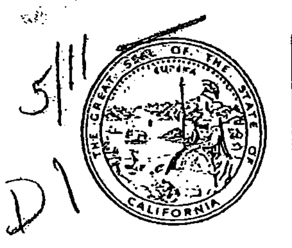
JULIAN C. DIXON
Assemblyman, 63rd District

GEORGE R. MOSCONE
Senator, 10th District

EVELYN P. KAPLAN
President, League of Women Voters of California

Arguments printed on this page are the opinions of the authors and have not been checked for accuracy by any official agency.

EXHIBIT 15



Office of the Secretary of State
March Fong Eu

111 Capitol Mall
Sacramento, California 95814

Executive Office	(916) 445-6371
Certification	(916) 445-1430
Corporation Index	(916) 445-2900
Corporation Records	(916) 445-1768
Election Division	(916) 445-0820
Legal Division (Corp.)	(916) 445-0620
Notary Public Division	(916) 445-6507
State Archives	(916) 445-4293
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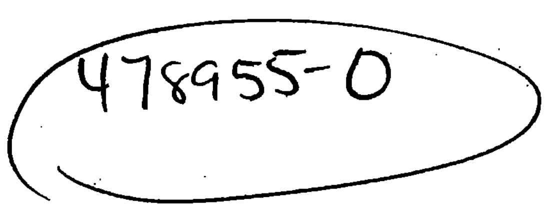


FILED
APR 30 1976
RENE C. DAVIDSON, County Clerk
BY ______ DEPUTY

TO: County Clerks and Registrars of Voters

FROM: March Fong Eu, Secretary of State

DATE: April 30, 1976

RE: Voting rights of persons imprisoned or on parole for the conviction of a felony.

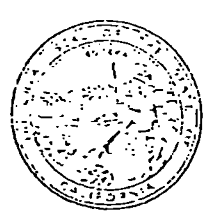
Please find enclosed a copy of an opinion of this office which concludes that Article II, § 3 of the California Constitution, as amended by the passage of Proposition 10 in November of 1974, requires the continued disqualification from voting of persons imprisoned or on parole for the conviction of a felony. Thus, any convicted felon who is presently in State prison or on parole is not eligible to register or vote regardless of the felony involved. (Do not confuse "probation" with "parole". A person on probation may register to vote.) Please advise this office immediately if your current policy is contrary to the opinion of this office.

You should advise any person who is denied the right to register for this or any other reason that he or she may file an action, pursuant to Elections Code § 350, in Superior Court to compel the County Clerk/Registrar to accept his registration.

March Fong Eu
MARCH FONG EU

MFE:gp
Enc.

MAY 6 1976



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April 29, 1976

Opinion No. 76 SOS 3(E/PR)

Re: Voting rights of persons imprisoned or on parole for the conviction of a felony.

QUESTION

Are persons imprisoned or on parole for the conviction of any felony qualified to vote?

CONCLUSION

Persons incarcerated or on parole for the conviction of any felony are disqualified from voting.

ANALYSIS

I. ARTICLE II, § 3 OF THE CONSTITUTION OF CALIFORNIA DISQUALIFIES FROM VOTING ALL PERSONS WHO ARE IMPRISONED OR ON PAROLE FOR THE CONVICTION OF ANY FELONY.

A. THE LANGUAGE OF ARTICLE II, § 3 OF THE CONSTITUTION OF CALIFORNIA IS NOT SUBJECT TO ANY OTHER REASONABLE INTERPRETATION.

As amended by the voters on November 5, 1974, Article II, § 3 of the Constitution of California provides, in applicable part,

> The Legislature shall . . . provide for the disqualification of electors while . . . imprisoned or on parole for the conviction of a felony.

The right to vote has long been held to be a fundamental right, and the courts have repeatedly engaged in "every reasonable presumption in favor of the right of the people to exercise the elective process." Hedlund v. Davis, 47 Cal.2d 75, 85,

81 P.2d 843 (1966). Thus, . . . "no construction of an election law should be indulged that would disfranchise any voter if the law is reasonably susceptible of any other meaning." Otsuka vs. Hite, 64 Cal.2d 596, 604, 51 Cal.Rptr. 284, 414 P.2d 412 (1966).

The language of Section 3, however, is clear. There is no qualification of the word "felony", and to read into that section such a qualification would be to disregard the section's literal language and the accepted rules of statutory construction. Where a provision is free from ambiguity or uncertainty, it needs no construction. It must be enforced as written. Malone v. State Employees Retirement System, 151 Cal.App.2d 562, 312 P.2d 296 (1957).

B. THE LEGISLATIVE HISTORY OF ARTICLE II, § 3 MAKES IT CLEAR THAT THE LEGISLATURE AND THE PEOPLE MEANT PRECISELY WHAT THE SECTION SAYS.

1. THE BALLOT MEASURE ARGUMENTS AND ANALYSIS INDICATE THAT DISQUALIFICATION WAS INTENDED.

Although ballot measure arguments are not controlling, they are proper subjects for consultation in determining the legislative intent. White v. Davis, 13 Cal.3d 757, 774-776, 120 Cal.Rptr. 94, 533 P.2d 222 (1975). The argument submitted in favor of Proposition 10, the measure amending Article II, § 3, provided in applicable part:

> An ex-felon returned to society and released from parole has fully paid the price society has demanded. [Emphasis added.] [California Voters Pamphlet, General Election, November 5, 1974, p. 38]

Similarly, the argument submitted against Proposition 10 provided, in applicable part:

> "The critical question raised by this proposition is whether or not a person who has been convicted of a serious crime should be allowed to vote once that person has served time and has completed parole." [Emphasis added.] [Ibid, p. 39]

Likewise, the Analysis by the Legislative Analyst indicated that the proposition would require that the right of convicted felons to vote be restored ". . . when their prison sentences, including the time on parole, have been completed." [Ibid., p. 36]

2. OTHER LEGISLATIVE HISTORY IS CONSISTENT WITH THE ABOVE CONCLUSION.

Assembly Constitutional Amendment 38 (hereafter referred to as ACA 38), which became Proposition 10 on the November 1974 ballot, was accompanied by Assembly Bill 1128 (hereafter referred

to as AB 1128) which was passed by the Legislature but was subsequently vetoed by the Governor. The enactment of AB 1128 was to be contingent on the approval of ACA 38 by the voters and was intended to conform the provisions of the Elections Code to the amended Article II, § 3 of the California Constitution. Thus, Section 15 of AB 1128 provided:

> It is the intent of the Legislature in enacting this act and proposing Assembly Constitutional Amendment No. 38 of the 1973-74 Regular Session of the Legislature for adoption by the people to conform the laws of this state to the decision of the Supreme Court of California in Ramirez v. Brown (1973) 9 Cal.3d 199 which governs the right of suffrage of persons whose terms of imprisonment and parole for the conviction of a felony have expired. It is also the intent of the Legislature that this act and Assembly Constitutional Amendment No. 38 shall not be construed to affect in any manner the existing constitutional, statutory, and decisional law of this state governing the right of suffrage of persons whose terms of imprisonment and parole for the conviction of a felony have not expired.

Although AB 1128 was vetoed by the Governor after passage by the Legislature, its efficacy as a statement of legislative intent is not undermined. People v. Puritan Ice Co., 24 Cal.2d 645, 653 (1944). Given the provisions of the second paragraph of Section 15 pertaining to the voting rights of persons imprisoned or on parole for conviction of a felony, it is relevant to survey the constitutional, statutory, and decisional law of California at the time AB 1128 and ACA 38 were considered by the Legislature in 1974.

(a) Constitutional and decisional law

In June of 1974, the California Constitution provided for the disfranchisement of persons "convicted of an infamous crime." However, interpretation of this section to deny the franchise to all ex-felons without considering the nature of the felony had been held by the California Supreme Court to deny equal protection of the laws under the Fourteenth Amendment to the U.S. Constitution. Otsuka v. Hite, supra. Also, in Ramirez v. Brown, 9 Cal.3d 199, 107 Cal.Rptr. 137, 507 P.2d 1345 (1973), the California Supreme Court had held that disfranchising forever persons convicted of infamous crimes was a denial of equal protection regardless of the felony involved. Neither case, however, was applicable to persons imprisoned or on parole for the conviction of a felony. Both cases involved persons who had served prison sentences and had successfully completed their parole. Noting the distinction, the Court in Otsuka, supra, expressly indicated its approval of disfranchising incarcerated felons (see 64 Cal.2d at 606, footnote 5) and in Ramirez, supra, the Court specifically refused to reach the issue. (See 9 Cal.3d at 199, footnote 18.)

Furthermore, the United States Supreme Court in Richardson v. Ramirez, 418 U.S. 24 (1974), rev'g. Ramirez v. Brown, supra, had specifically rejected the conclusion of the California Supreme Court that disfranchising ex-felons was prohibited by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Thus, at the time ACA 38 and AB 1128 were passed by the Legislature, the constitutional and decisional law upheld the right of California to disfranchise convicted felons who were no longer incarcerated or serving on parole, thereby implicitly upholding the right of the state to disfranchise those who were still imprisoned or on parole for the conviction of a felony.

(b) Statutory Law

At the time when ACA 38 and AB 1128 were considered by the Legislature, Penal Code § 2600 provided, in applicable part:

> "A sentence of imprisonment in a state prison for any term suspends all the civil rights of the person so sentenced. . . .But the Adult Authority may restore to said person during his imprisonment such civil rights as the authority may deem proper, except the right to . . . exercise the privilege of an elector. . . ."

Furthermore, Penal Code § 3054 provided, and still provides, in applicable part:

> The Adult Authority may permit paroled persons civil rights, other than the right to . . . exercise the privilege of an elector. . . .

Thus, at the time ACA 38 and AB 1128 were passed by the Legislature, the statutes clearly disfranchised persons imprisoned or on parole.

It is clear from the foregoing that when the Legislature passed ACA 38 and AB 1128 the constitutional, decisional and statutory law provided for the disfranchisement of persons imprisoned or on parole for the conviction of a felony. That the Legislature intended to continue this practice with the enactment of ACA 38 is certain not only from the language of Section 15 of AB 1128, (supra), but from the provisions of AB 1128 itself. Assembly Bill 1128, as passed by the Legislature and sent to the Governor, expressly provided for the continued disfranchisement of these persons. For example, Section 1, which would have amended Elections Code § 310* by adding subsection (i), required the affidavit of registration to provide: "Whether the affiant has been convicted of a felony for which any terms of imprisonment and parole have not expired." Similarly, Section 3, which would have amended Elections Code § 321.5,

* All section citations refer to the Elections Code unless otherwise provided.

required the county clerk to determine whether the person had been ". . . convicted of a felony for which any terms of imprisonment and parole have not expired. . . ." Significantly, this latter section was amended to delete prior language in the bill which would have required the county clerk to determine whether the affiant had been convicted of a felony "which disqualifies him from voting." (See, also, AB 1128 §§ 2, 4, 5, 6, 7, 8, 9.) Given the language of the bill designed to implement Proposition 10, there can be no question but that the Legislature intended to disqualify persons imprisoned or on parole for the conviction of a felony.

3. THE CALIFORNIA SUPREME COURT HAS INTERPRETED ARTICLE II, § 3 OF THE CALIFORNIA CONSTITUTION TO REQUIRE THE DISQUALIFICATION OF PERSONS IMPRISONED OR ON PAROLE FOR THE CONVICTION OF A FELONY.

After determining in Richardson v. Ramirez, Supra, that the disfranchisement of ex-felons was not a denial of equal protection guaranteed by the Fourteenth Amendment, the United States Supreme Court remanded the case back to the California Supreme Court for consideration of respondents' alternative contention that there was such a total lack of uniformity in county election officials' enforcement of the challenged state laws as to work a denial of equal protection. 418 U.S. at 56. On remand, the California Supreme Court, per Mr. Justice Mosk, noted that subsequent to the decision in Richardson the people had amended the applicable section with the passage of Proposition 10, deleting the section which formerly disfranchised persons convicted of crime and directing the Legislature ". . . to provide for the temporary 'disqualification' of electors while they are imprisoned or on parole for the conviction of a felony. Ramirez v. Brown, 12 Cal.3d 912, 914, 117 Cal.Rptr. 562, 528 P.2d 378 (1974). It is clear from the foregoing that the California Supreme Court interprets Article II, § 3 to mean exactly what it says.

Given a review of the literal language of Article II, § 3, the legislative history of that section and the interpretation of this section by the California Supreme Court, it is clear that the California Constitution requires the disfranchisement of persons imprisoned or on parole for the conviction of any felony.

II. THE PROVISIONS OF ARTICLE II, § 3 OF THE CALIFORNIA CONSTITUTION DISQUALIFYING PERSONS IMPRISONED OR ON PAROLE FOR THE CONVICTION OF A FELONY ARE SELF-EXECUTING.

Section 3 of Article II of the California Constitution provides that "The Legislature shall provide for the disqualification of electors while . . . imprisoned or on parole for the conviction of a felony." The language "The Legislature shall provide" was added to a predecessor section by the passage of Proposition 7 at the November 7, 1972 election. Prior to the adoption of Proposition 7, Section 1 of Article II of the California Constitution provided, in applicable part, that

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". . . no person convicted of any infamous crime . . . shall ever exercise the privileges of an elector in this State." By the passage of Proposition 7, Section 1 was repealed and substituted therefor was Article II, Section 3, which provided:

> "The Legislature shall prohibit improper practices that affect elections and shall provide that no . . . person convicted of an infamous crime, nor person convicted of embezzlement or misappropriation of public money, shall exercise the privileges of an elector in this state."

The California Supreme Court, in interpreting the amendment inserting the language "The Legislature shall provide" by Proposition 7 held in Ramirez v. Brown that there was "no difference in substance" between the new language and the prior section which itself prohibited certain persons from voting. 9 Cal.3d at 204. The Court held that the addition of the words, "The Legislature shall provide," must be interpreted merely as an express recognition of the legislative authority which has in fact been exercised since the earliest days of our state government." Ibid. At the time Proposition 10 was passed, felons imprisoned or on parole were disqualified from voting (supra). Thus, as with Proposition 7, Proposition 10, which contained the same language as to the duty of the Legislature, must be held to be self-executing relative to the continued disfranchisement of felons imprisoned or on parole.

The rules of construction support the conclusion that Article II, § 3 is self-executing as to the continued disqualification of felons imprisoned or on parole. "A constitutional provision may be said to be self-executing if it supplies a sufficient rule by means of which . . . the duty imposed may be enforced. . . ." Cooley's Constitutional Limitations, 8th ed., p. 167, cited with approval in Chesney v. Byram, 15 Cal.2d 460, 462, 101 P.2d 1106 (1940); People v. Western Air Lines, Inc., 42 Cal.2d 621, 636 (1954), Taylor v. Madigan, 53 Cal.App.3d 943, 950 (1975). Clearly in the instant case the duty imposed is the "disqualification" of felons imprisoned or on parole. No legislation is required to make such felons ineligible to vote.

Article II, § 3 is unlike the provision considered recently in Taylor v. Madigan, supra. In that case, the appellate court held that Article XVII, § 1 of the California Constitution was not self-executing. That section provides:

> "The Legislature shall protect, by law, from forced sale a certain portion of the homestead and other property of all heads of families."

It is clear from reading that provision that the section does not supply "a sufficient rule required for a self-executing provision.

Nor is Article II, § 3 similar to the provision considered by the Court in California Gas Retailers v. Regal Petroleum Corp., 50 Cal.2d 844, 848-49 (1958). In that case the Court held that Article IV, § 26 of the California Constitution, at that time requiring the Legislature "to prohibit the sale in this State of lottery or gift enterprise tickets in any scheme in the nature of a lottery," was not self-executing since it was apparent that "a lottery is not defined." 50 Cal.2d at 848-849. Certainly in the instant case the definition of "felony" is clear, the Legislature already having provided clarification by statute at the time of the passage of Proposition 10. Penal Code § 17.

The fact that the Legislature has, subsequent to the passage of Proposition 10, enacted legislation relative to the subject matter in no way supports the notion that Proposition 10, to the extent that it continues the disfranchisement of felons who are imprisoned or on parole, is not self-executing. Notwithstanding the fact that a particular provision may be self-executing, legislation enacted in aid thereof is appropriate. First Unitarian Church v. County of Los Angeles, 48 Cal.2d 419, 429, 311 P.2d 508 (1957), Chesney v. Byram, supra. In the case of Proposition 10, legislation was and still is needed to assure that persons no longer imprisoned or on parole for the conviction of a felony are not denied the right to vote. Similarly, legislation was and still is needed to assure that those who are either imprisoned or on parole for the conviction of a felony are not permitted to vote.

The Legislature has traditionally provided machinery for assuring that those who are disqualified from voting are not permitted to vote. See, e.g., Sections 310, 321, 321.5, 321.7, 383, 389, 390, 14240, 14246. The obvious intent of including the language "The Legislature shall provide" in Propositions 7 and 10 was to mandate the Legislature to take the steps required to assure that felons imprisoned or on parole did not vote. In the instant case, the continued disqualification of felons imprisoned or on parole is self-executing. The only thing left for the Legislature to do is to take appropriate steps to assure that this disqualification, in practice, is operative.

III. EVEN IF ARTICLE II, § 3 OF THE CALIFORNIA CONSTITUTION REQUIRES LEGISLATIVE IMPLEMENTATION, THE LEGISLATURE HAS ACTED CONSISTENTLY WITH THE CONSTITUTIONAL MANDATE.

Although Assembly Bill 1128, which was intended to conform the Elections Code to the provisions of ACA 38, was vetoed by the Governor, subsequent steps have been taken in an effort to carry out the mandate of Proposition 10. Thus, certain provisions of the Elections Code which previously disqualified from voting persons convicted of a felony have been amended. (See, e.g., Sections 310, 321, 14240 and new Sections 321.5 and 321.7,

enacted by Statutes of 1975, Chapters 490, 704, and 1211.) Other provisions of the Elections Code continue to provide for the disfranchisement of convicted felons, regardless of the status of their imprisonment or parole. (*See*, e.g., Sections 383, 389, and 390.)

Absent the language of Article II, § 3 of the California Constitution, it might be argued that the newly amended provisions of the *Elections Code* suggest that not all felonies for which a person is imprisoned or paroled disqualify such person from registering and voting. *Elections Code* § 310, for example, now provides, in applicable part:

> "The affidavit of registration shall show: . . . (j) That the affiant is currently not imprisoned or on parole for the conviction of a felony which disqualifies him from voting."

Elections Code § 321.5 provides:

> The county clerk, upon request, shall determine whether a person who has been convicted of a felony is qualified to vote. If the county clerk determines in the person's favor, the person may lawfully swear that he has not been convicted of a felony which disqualifies him from voting, and the county clerk shall so inform him. If the county clerk does not determine in the person's favor, the county clerk shall inform the person of his right to file in the superior court under Section 350 for a judicial determination of his eligibility to register and vote.

Section 321.7, operative until July 1, 1976, provides:

> Each affiant who has doubt as to his right to register and vote because he has been convicted of a felony shall be given a printed statement by the deputy registrar advising him that not all felony convictions disqualify him from voting under the Constitution, that he should contact the county clerk to obtain a legal determination of his eligibility to register and vote based on his felony conviction, and that if the county clerk determines he has been convicted of a felony which disqualifies him from voting, he has a right to file in the superior court under Section 350 for a judicial determination of his eligibility to register and vote.

Section 321.7, operative July 1, 1976, provides:

> The informational portion of the voter registration card shall inform each person who states he is either

imprisoned or on parole for the conviction of a felony that his registration will be reviewed by the county clerk who will inform him of its acceptance or rejection.

Section 14240, operative July 1, 1976, provides, in applicable part:

> A person offering to vote may be orally challenged within the polling place only by a member of the precinct board upon any or all of the following grounds: (3) That he is presently on parole for the conviction of a felony, which, pursuant to Section 321.5, disqualifies him from voting.

But these sections must be interpreted in light of Article II, § 3 of the California Constitution which requires the Legislature to ". . . provide for the disqualification of electors while . . . imprisoned or on parole for the conviction of a felony." The Legislature has no discretion in the matter. "The provisions of the Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise." Article I, § 28, California Constitution. The Legislature cannot ". . . either by its silence or by direct enactment . . . modify, curtail, or abridge . . ." a constitutional mandate. People v. Western Airlines, Inc., 42 Cal.2d 621, 637, 268 P.2d 723 (1954). Everything done in violation of the State Constitution is void. Oakland Paving Co. v. Hilton, 69 Cal. 479 (1886).

Thus, the foregoing statutes must be interpreted so as to preserve their constitutionality by carrying out the constitutional mandate. Kay, In re, 1 Cal.3d 930, 83 Cal.Rptr. 686, 464, P.2d 142 (1970). Given this basic rule of statutory construction, it is clear that the provisions of Chapters 490, 704 and 1211 are not inconsistent with the constitutional mandate.1/

The applicable language of Section 310 provides only that the registration affidavit show "[t]hat the affiant is currently not imprisoned or on parole for the conviction of a felony which disqualifies him from voting." Given the Legislature's constitutional mandate, this section must be interpreted to be a restatement of the law, i.e., that being imprisoned or on parole for the conviction of a felony disqualifies the person from voting. To interpret that section to mean that some felonies for which persons are imprisoned or on parole do not result in disqualification would be to ignore the constitutional mandate.

1/ Moreover, were these newly amended sections intended to mean that some felons imprisoned or on parole could vote, it is almost certain that the Legislature would have inserted some standard for determining which felonies did and which felonies did not result in disqualification. The failure of the Legislature to provide any guidance is cogent evidence that the Legislature did not foresee any need to differentiate between particular felonies relative to felons imprisoned or on parole.

The addition of Section 321.5 is consistent with the above interpretation. This section merely permits one who has been convicted of a felony to ". . . swear that he has not been convicted of a felony which disqualifies him from voting." This section recognizes that not all felony convictions result in disfranchisement but only those resulting in current imprisonment or parole. Also in accord are Sections 321.7 and 14240.

In addition to the foregoing amendments and additions to the Elections Code, the Legislature in 1975 amended Penal Code § 2600 which, prior to the amendment, suspended the civil rights of persons imprisoned in a state prison. The new section provides:

> A person sentenced to imprisonment in a state prison may, during any such period of confinement, be deprived of such rights, and only such rights, as is necessary in order to provide for the reasonable security of the institution in which he is confined and for the reasonable protection of the public. [Statutes of 1975, Chapter 1175, Section 3.]

As part of the same amendment Penal Code § 2601 was added which provides that persons sentenced to imprisonment in a state prison shall have certain rights such as the right to initiate civil actions, to marry, and to make a will notwithstanding any other provision of law. See Statutes of 1975, Chapter 1175, § 3. The right to vote was not included in the list of enumerated rights.

Absent the constitutional mandate, it might be argued that Chapter 1175 was intended to restore the right to vote to all persons imprisoned for the conviction of a felony. But, given that mandate, Penal Code § 2600 cannot be so interpreted. Moreover, it is doubtful that the Legislature in fact intended Penal Code § 2600 to be construed so as to restore the right to vote to these persons. Had that been the Legislature's intent, it is likely that Penal Code § 2601, which enumerates a prisoner's inalienable rights, would have included such a reference. Furthermore, an interpretation of Penal Code which would enfranchise imprisoned felons would mean that those persons incarcerated for the conviction of a felony could vote whereas persons on parole for the conviction of a felony could not vote. This conclusion would be compelled because Penal Code § 3054 precludes the Adult Authority permitting such a person to "exercise the privilege of an elector." Such a result would be irrational

and almost certainly violative of the Equal Protection Clause of the United States and California Constitutions. A construction that will lead to absurd results should not be given if it can be avoided. Dempsey v. Market Street Railroad Co., 23 Cal.2d 110, 142 P.2d 929 (1943).

SUMMARY

A review of the language and legislative history of Article II, § 3 of the California Constitution compels a conclusion that continued disqualification of persons imprisoned or on parole for the conviction of a felony was intended with the passage of Proposition 10 -- and is now required. Recent legislative enactments can not and, properly interpreted, do not ignore that constitutional mandate. This is not to say that such a result is necessarily desirable from the standpoint of public policy. But, as Mr. Justice Rehnquist said in Richardson v. Ramirez, supra:

> Pressed upon us . . . are contentions that these notions are outmoded, and that the more modern view is that it is essential to the process of rehabilitating the ex-felon that he be returned to his role in society as a fully participating citizen when he has completed the serving of his term. . . . But it is not for us to choose one set of values over the other. If . . . [those advocating the more modern view] are correct, and the view which they advocate is indeed the more enlightened and sensible one, presumably the people of the State of California will ultimately come around to that view. And if they do not do so, their failure is some evidence, at least, of the fact that there are two sides to the argument. [481 U.S. at 55]

What was true for the Court in Richardson relative to the voting rights of those no longer imprisoned or on parole is equally true for those charged with administering the election laws of California relative to persons still imprisoned or on parole for the conviction of a felony. The people of California indicated their position in 1974 with the passage of Proposition 10. The Legislature and the elections officials are bound to implement it.

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