IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, [DIVISION]

LEAGUE OF WOMEN VOTERS OF CALIFORNIA, LEGAL SERVICES FOR PRISONERS WITH CHILDREN, ALL OF US OR NONE, ROBERTA CRONIN, NICHOLAS KRASOWSKI, and JASON LOVE,	)
Petitioners,	)
vs.	)
BRUCE MCPHERSON, California Secretary of State, and JOHN ARNTZ, Director of the Department of Elections, County of San Francisco,	)
Respondents.	)

PETITION FOR WRIT OF MANDATE; MEMORANDUM OF POINTS AND AUTHORITIES; AND EXHIBITS

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Service on the California Attorney General required by rule 44.5(c)

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PETITION FOR WRIT OF MANDATE

To the Honorable Justices of the Court of Appeal, First Appellate District:

By this verified petition, petitioners allege:

INTRODUCTION

This original writ petition is brought to protect the fundamental voting rights of more than 100,000 California citizens. The issue is whether individuals confined in local jails pursuant to California Penal Code section 18 or as a condition of probation will be able to participate in the November 2006 and future elections. These individuals have registered to vote since 1974. The Secretary of State specifically interpreted California law to authorize felony probationers to vote in 1976. However, the situation abruptly changed in November 2005, when the Attorney General issued an Opinion concluding that a "person who is incarcerated in a local detention facility, such as a county jail, for the conviction of a felony is not entitled to vote." A true and correct copy of the Opinion is attached to this Petition as Exhibit 1, and incorporated herein by reference. The Secretary of State, relying on that Opinion, notified all California registrars that these individuals are no longer eligible to register or vote while confined in county jails. A true and correct copy of this notice is attached to this Petition as Exhibit 2 and incorporated herein by reference. This has resulted in the disenfranchisement of over 145,000 people, primarily young men of color who committed non-violent offenses, according to the California Department of Justice. True and correct copies of Department of Justice data documents are attached to this Petition as Exhibits 3–7, and incorporated herein by reference.

Petitioners believe that this new interpretation of the law is incorrect, and request this Court to clarify and protect the voting rights of these California citizens in time for the November 2006 and future elections.

JURISDICTIONAL STATEMENT

Petitioners respectfully invoke the original jurisdiction of this Court pursuant to Article VI, Section 10 of the California Constitution and Rule 56(a) of the California Rules of Court. Petitioners submit that exercise of this discretionary jurisdiction is appropriate in this case because:

1. The issue presented is of substantial statewide importance, involving the voting rights of thousands of California citizens.

2. Prompt resolution of this action is necessary so that voters and election officials throughout California will know who is eligible to vote at the November 2006 and future elections. The deadline for registration for the November 2006 election is October 23, 2006. Definitive resolution of the issue by an appellate opinion will also provide necessary guidance for future elections, including local elections presently scheduled in multiple counties in March and November 2007.

3. The issue presented is purely one of law, suitable for resolution by this Court in the first instance. Proceedings in the trial court will not narrow the issues or produce a factual record.

PARTIES

Petitioners

4. Petitioner League of Women Voters of California ("LWVC") is a nonpartisan political organization with over 11,000 members. LWVC encourages the informed and active participation of citizens in government, works to increase understanding of major public policy issues, and influences public policy through education and advocacy. LWVC seeks to increase participation in elections, and signed the ballot argument in support of the initiative that is at the core of this proceeding.

5. Petitioner Legal Services for Prisoners with Children ("LSPC") is a nonprofit organization that advocates for incarcerated parents, their family members, and people at risk for incarceration. LSPC works towards the

reintegration of individuals with felony convictions into their communities and believes that voting is an important step towards this goal. LSPC serves in part the population of individuals in jail who were disenfranchised by the Attorney General's Opinion. LSPC has standing to vindicate the public interest in ensuring that individuals with felony convictions have a voice in society, thereby countering discrimination, promoting reintegration, and lowering recidivism rates.

6. Petitioner All of Us or None ("AOUN") is a project of LSPC. AOUN is dedicated to fighting discrimination against people who have been incarcerated. AOUN actively works on felon re-enfranchisement issues, including spearheading voter registration efforts. AOUN has standing to vindicate the public interest in ensuring that individuals with felony convictions have a voice in society, thereby countering discrimination, promoting reintegration, and lowering recidivism rates.

7. Petitioner Roberta Cronin is a 49-year-old Caucasian woman incarcerated in San Francisco County Jail No. 8, who has resided in the San Francisco Bay Area her entire life. Ms. Cronin received an imposition of sentence suspended ("IOSS") and one year of county jail time as a condition of felony probation for sale/transport of a controlled substance. She registered to vote several years ago, but never cast a ballot because she was misinformed that she was disenfranchised after receiving a felony conviction. Ms. Cronin would like to vote in the November 2006 election because she believes that participation in civic activities will assist in her rehabilitation upon release. She is especially concerned about the war in Iraq and health care for low-income people. She is scheduled for release on November 14, 2006.

8. Petitioner Nicholas Krasowski is a 19-year-old Caucasian man incarcerated in San Francisco County Jail No. 7, who has resided in San Francisco most of his life. Mr. Krasowski received an IOSS and one year of county jail time as a condition of felony probation for stealing a car. He registered to vote at the Department of Motor Vehicles when he turned 18 because he believed that as an

adult it was his responsibility to be civically engaged. He is particularly concerned about the issue of gun control because he has seen a great deal of gun violence in his lifetime. Upon release he will return to work at his stepfather's construction company and hopes to continue his education. He is scheduled for release on December 26, 2006.

9. Petitioner Jason Love is a 24-year-old African-American man incarcerated in San Francisco County Jail No. 8. Mr. Love grew up in Richmond and he lived in Sacramento prior to his incarceration. He received an IOSS and one year of county jail time as a condition of felony probation for grand theft. He is the father of two young sons and is self-employed in his own graphic design business in Sacramento. He would like to vote so that his opinion counts on local and national issues. Mr. Love is scheduled for release on January 3, 2007.

Respondents

10. Respondent Bruce McPherson is sued in his official capacity as Secretary of State of California. As the State's Chief Elections official, he is responsible for ensuring voter registration and voter participation in every election. By implementing the interpretation of California law in the Attorney General's Opinion, he is disenfranchising a group of previously eligible voters and preventing them from participating in future elections.

11. Respondent John Arntz is sued in his official capacity as Director of Elections for the City and County of San Francisco. He is responsible for conducting all federal, state and local elections in San Francisco. By implementing the interpretation of California law in the Attorney General's Opinion, he is disenfranchising a group of previously eligible voters and preventing them from participating in future elections.

FACTS

12. In 1974, the Legislature proposed and the voters passed Proposition 10, which amended the California Constitution to expand the voting rights of former offenders. The initiative changed Article II, Section 3 (renumbered in

1976 to current Article II, Section 4), from a blanket disfranchisement of ex-felons to a limited exclusion, which granted voting rights to all except those "imprisoned or on parole for the conviction of a felony." The Legislature subsequently enacted Elections Code section 2101, which authorized registration by any citizen residing in the state, at least 18 years old at election time, and "not in prison or on parole for the conviction of a felony." A timeline of the California Constitution's criminal disenfranchisement provision is attached to this Petition as Exhibit 11, and incorporated herein by reference.

13. For three decades, the Secretary of State interpreted Article II, Section 4 as excluding from the disenfranchised population individuals confined in local jails pursuant to Penal Code section 18 and as a condition of felony probation. True and correct copies of the following are attached to this Petition, and incorporated herein by reference: the 1976 memorandum from Secretary of State to local counties is attached as Exhibit 30; Secretary of State's 1976 Answer to Respondents in *Flood v. Riggs* is attached as Exhibit 31; 1979 letter from Secretary of State's Office to election supervisor is attached as Exhibit 32.

14. The Secretary of State reaffirmed this position as to confined felony probationers in 2004 in a letter to petitioner LSPC. A true and correct copy of this letter is attached to this Petition as Exhibit 8, and incorporated herein by reference.

15. In 2005, the new Secretary of State, respondent Bruce McPherson, requested an Opinion from the Attorney General on the question of whether "a person convicted of a felony and incarcerated in a local facility (e.g. county jail) rather than in a state prison [is] eligible to register to vote and vote."

16. In November 2005, the Attorney General issued an Opinion concluding that Article II, Section 4 disenfranchised this population. As a result, the Secretary of State changed his position and issued a notice to local election officials that these individuals are not eligible to vote.

CLAIMS

17. The refusal to allow persons detained in local facilities pursuant to Penal Code section 18 or as a condition of probation to register and vote violates their fundamental right to vote, as secured by the California Constitution and Elections Code section 2101.

18. Individuals confined in local county jails pursuant to Penal Code section 18 are regarded as misdemeanants under the law and retain their voting rights. Article II, Section 4 disenfranchises only individuals with felony convictions.

19. The plain language of Article II, Section 4 preserves probationers' right to vote. Common definitions of relevant terms support this conclusion. True and correct copies of pages from Webster's and Black's Law Dictionaries are attached to this Petition as Exhibits 9 and 10, and incorporated herein by reference.

20. In addition, the Legislature, which drafted Proposition 10, and the voters who passed the initiative, intended to expand the franchise and preserve probationers' voting rights. While drafting Proposition 10, the Legislature considered and rejected language that would have disenfranchised probationers, and instead resolved to limit disenfranchisement to only those individuals in state prison or on parole. The voters adopted the Legislature's proposal at the ballot. True and correct copies of the following are attached to this Petition, and incorporated herein by reference: multiple versions of Assembly Constitutional Amendment No. 38 (ACA 38) introduced in the California Legislature are attached as Exhibits 12–16; multiple versions of ACA 38's companion bill Assembly Bill 1128 are attached as Exhibits 19–23; the California Constitution Revision Commission report is attached as Exhibit 17; Proposition 8 ballot information is attached as Exhibit 18; letters between the Senate Judiciary Committee and the Legislative Counsel are attached as Exhibits 24–25; 1973

versions of Penal Code sections 2600 and 3054 are attached as Exhibits 26–27; and the Proposition 10 ballot pamphlet is attached as Exhibit 28.

21. Since the enactment of Article II, Section 4, the Legislature has consistently interpreted the provision as disenfranchising individuals "in prison," not in jail. A true and correct copy of a Senate Committee report on Senate Bill 1142 is attached to this Petition as Exhibit 29, and incorporated herein by reference. For three decades, the Secretary of State interpreted Article II, Section 4 to preserve probationers' voting rights.

22. The Attorney General's Opinion is contrary to these legal and administrative precedents, and it produces unfair, unworkable results. The Opinion incorrectly relies on dicta in *People v. Montgomery*, 61 Cal. App. 3d 718 (1976). *Montgomery* did not raise and resolve this issue. True and correct copies of appellant's briefs in *Montgomery* are attached to this Petition as Exhibits 33–35, and incorporated herein by reference.

ENTITLEMENT TO WRIT RELIEF

23. Petitioners are beneficially interested in issuance of the writ. Petitioners LWVC, LSPC and AOUN bring this action to vindicate the public interest in ensuring that Californians qualified to vote do not face unlawful barriers to registration and that individuals with criminal convictions are not excluded from democratic participation crucial to rehabilitation. Petitioners Cronin, Krasowski, and Love, now confined in San Francisco County jails, will register to vote and vote if this Court grants relief.

24. Respondents have a mandatory duty to accept the registration affidavits of all qualified residents. Because they are following the Attorney General's invalid interpretation of Article II, Section 4, respondents have barred eligible voters from registering to vote and intend to bar them from voting at the November 2006 and future elections.

25. Unless this Court issues its peremptory writ of mandate, respondents will continue to refuse to allow individuals confined in county jails pursuant to Penal Code section 18 or as a condition of felony probation to register and vote.

26. Petitioners have no plain, speedy or adequate remedy at law to compel respondents to perform their duty. Damages cannot provide adequate relief for denial of voting rights. Time is of the essence, because the final day to register for the November 2006 election is October 23, 2006. In addition, local elections are scheduled in multiple counties in 2007.

27. By exercising its original jurisdiction, this Court may clarify these important questions in time for voters to participate in upcoming state and local elections. In contrast, a case in Superior Court will lack statewide jurisdiction and take years to resolve, potentially depriving thousands of people of their right to vote at elections in 2006, 2007, and 2008.

PRAYER FOR RELIEF

Petitioners respectfully request that this Court:

28. Issue an alternative writ commanding respondents to accept affidavits of registration from qualified individuals confined in local facilities pursuant to Penal Code sections 17 and 18 or as a condition of felony probation, and perform all ministerial tasks necessary to ensure that these individuals are duly registered and able to vote at the November 2006 and future elections; or show cause why they should not do so.

29. Issue an alternative writ commanding respondent McPherson to notify all local elections officials of this Court's opinion on the voting rights of individuals confined in local facilities pursuant to Penal Code sections 17 and 18 or as a condition of felony probation.

30. On the return of the alternative writ and after hearing argument, issue a peremptory writ of mandate commanding respondents forever to accept affidavits of registration from qualified individuals confined in local facilities pursuant to Penal Code sections 17 and 18 or as a condition of felony probation,

and perform all ministerial tasks necessary to ensure that these individuals are duly registered and able to vote at the November 2006 election and future elections.

31. Award petitioners their costs, including reasonable attorneys' fees.

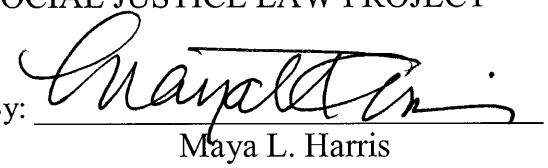
32. Order such other and further relief as is equitable, just, and proper.

San Francisco, California
August 19, 2006

Respectfully submitted,

Maya L. Harris
Margaret C. Crosby
Brian A. Lambert
Anupama K. Menon
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION OF
NORTHERN CALIFORNIA, INC.

Peter Sheehan
SOCIAL JUSTICE LAW PROJECT

By: 
Maya L. Harris

Attorneys for the Petitioners

VERIFICATION

I, Jacqueline Jacobberger, declare:

I am the President of the League of Women Voters of California, and am authorized to execute this verification on its behalf. I have read the Petition for Writ of Mandate filed with this Verification and know its contents. The matters stated in the Petition are true of my own knowledge, except as to those matters which are alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 21 day of August, 2006, in South San Francisco California.

Jacqueline Jacobberger

Jacqueline Jacobberger

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MEMORANDUM OF POINTS AND AUTHORITIES

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INTRODUCTION

This original writ petition is brought to protect the fundamental voting rights of more than 100,000 Californians. The issue is whether individuals confined in local jails pursuant to California Penal Code section 18 or as a condition of felony probation—who have voted for decades—will be able to participate in the November 2006 and future elections.[1]

In 1974, voters expanded the voting rights of former offenders by passing Proposition 10, which amended Article II, Section 3 (renumbered in 1976 to Article II, Section 4) of the California Constitution. While the initiative disenfranchised persons "imprisoned or on parole for the conviction of a felony," it allowed all others who had committed crimes to participate in elections. Thus, for three decades, both the Secretary of State and the Legislature interpreted this constitutional provision to retain the voting rights of individuals confined in county jails under Penal Code section 18 or as a condition of felony probation. But in November 2005, the Attorney General issued an official Opinion concluding that Article II, Section 4 disenfranchised these two classes of individuals. 88 Cal. Op. Att'y Gen. 207 (2005). Exh. 1. In response to the Attorney General's Opinion, the Secretary of State notified local election officials that these persons are not eligible to vote. Exh. 2. Over 145,000 people have

[1] For the timing of coming elections and the necessity for resolution of the issue by a writ proceeding in the appellate court, *see* Section IV, p. 33, *infra*.

been abruptly disenfranchised because of the Opinion.[2] These individuals are primarily young men of color, who committed non-violent offenses, according to the California Department of Justice.[3]

Petitioners, organizations committed to electoral participation and the reintegration of former offenders into society, and confined individuals who would register to vote if allowed, believe this new restrictive interpretation of constitutional voting rights is wrong. They have come to this Court for statewide clarification of voting rights in time for the November 2006 and future elections.

Background

California is one of forty-eight states with felony disenfranchisement laws that strip citizens of their right to vote.[4] Over the years, this state has expanded the ability of former offenders to participate in the democratic process. The California Supreme Court struck down the state's lifetime disenfranchisement of felons as a violation of equal protection in 1973. *Ramirez v. Brown*, 9 Cal. 3d 199, (1973), *rev'd sub nom. Richardson v. Ramirez,* 418 U.S. 24 (1974). In response, the Legislature proposed and voters adopted a narrow felony disenfranchisement

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[2] In 2004, 145,669 individuals received the disposition of confinement in a local county jail as a condition of probation for a felony conviction. Exh. 3. More than 119,000 persons were given felony probation with jail time in each year from 1999 to 2004. Exh. 4. These figures do not include individuals serving a county jail sentence pursuant to Penal Code section 18; petitioners were unable to locate such data.

[3] The majority (58%) of these individuals are Black and Latino, Exh. 3, 78.5% are male, Exh. 5, and over half the population is under age 30, Exh. 6. Less than 20% were convicted of a violent offense, according to preliminary Department of Justice data for 135,969 of the individuals who received a disposition of jail as a condition of probation for a felony offense in 2004. Exh. 7.

[4] *See* Sentencing Project, *Felony Disenfranchisement Laws in the United States* 1, 3 (Aug. 2006), *available at* http://www.sentencingproject.org/pdfs/1046.pdf.

provision in Proposition 10. The result was, for 30 years, a stable rule on the voting rights of individuals with felony convictions.

In recent years, however, through three statewide elections, the situation in California has been in a confused state of flux. In the last two years, incarcerated individuals have been both granted and denied the right to vote due to conflicting interpretations of the voting laws by two of the state's constitutional officers. In each instance, the decision of policymakers came just after a statewide election—too late for those citizens affected to exercise the franchise extended or to challenge its denial.

In 2004, after some jails barred organizations from registering confined felony probationers, petitioner Legal Services for Prisoners with Children requested clarification from then-Secretary of State, Kevin Shelley. The Secretary of State confirmed—in a letter issued a few days after the November 2004 election—that this population was eligible to vote. Exh. 8.

The following year, with another important statewide election looming in November, the new Secretary of State, Bruce McPherson, requested an opinion from the Attorney General on the question of whether "a person convicted of a felony and incarcerated in a local facility (e.g. county jail) rather than in a state prison [is] eligible to register to vote and vote." The Attorney General's answer came just after the November 2005 election. Exh. 1.

The result of this back-and-forth has been widespread confusion in recent elections about the right of certain incarcerated individuals to vote. Petitioners now ask this Court to clarify their voting rights.

Felony Disenfranchisement Laws

While racially neutral on their face, felony disenfranchisement laws have a racially disparate impact. Of the five million citizens denied the vote nationwide, 1.4 million are African-American men.[5] Thirteen percent of black men are barred

[5] *Id.* at 1.

from the ballot box—a rate seven times the national average.[6] A half million Latino citizens are disenfranchised in just ten states.[7]

California's numbers mirror these national disparities. Counting only those in prison and on parole for a felony conviction (not including the individuals recently disenfranchised by the Attorney General's opinion), over 272,000 Californians were prohibited from voting as of January 2005, approximately 28% of whom are African Americans.[8] Yet African Americans are only 6% of California's total population.[9] Similarly, while they constitute only 19% of California's citizen voting age population, Latinos are 36.5% of those disenfranchised.[10]

The disproportionate impact of these laws, coupled with their historical origins in racial discrimination, leads many to question the purposes and efficacy of felony disenfranchisement. For example, a significant purpose of probation specifically and the criminal justice system generally is rehabilitation; yet it has

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[6] *Id.*

[7] *See* Marisa J. Demeo & Steven A. Ochoa, Mexican American Legal Defense & Education Fund, *Diminished Voting Power in the Latino Community: The Impact of Felony Disenfranchisement Laws in Ten Targeted States* 21 (Dec. 2003), *available at* http://www.maldef.org/publications/pdf/FEB18-LatinoVotingRightsReport.pdf.

[8] *See* Data Analysis Unit, Cal. Dep't of Corrections and Rehabilitation, *California Prisoners & Parolees 2004* 5, 23, 82 (Tables 1, 11, 52) (2005), *available at* http://www.cya.ca.gov/ReportsResearch/OffenderInfoServices/Annual/CalPris/CALPRISd2004.pdf.

[9] *See* U.S. Census Bureau, *2005 American Community Survey* (2005), *at* http://factfinder.census.gov/servlet/ACSSAFFFacts?_event=&geo_id=04000US06&_geoContext=01000US%7C04000US06&_street=&_county=&_cityTown=&_state=04000US06&_zip=&_lang=en&_sse=on&ActiveGeoDiv=geoSelect&_useEV=&pctxt=fph&pgsl=040&_submenuId=factsheet_1&ds_name=null&_ci_nbr=null&qr_name=null&reg=null%3Anull&_keyword=&_industry.

[10] *See* Demeo & Ochoa, *supra* note 7, at 7.

been recognized that disenfranchisement undermines this goal. The American Correctional Association and American Bar Association note that collateral consequences such as disenfranchisement impede the successful reentry of individuals into the community.[11] A recent empirical study supports this view, finding a statistical correlation between voting and lower rates of arrest, incarceration, and self-reported criminal behavior.[12] Put simply, those who vote feel they have a stake in the society of which they are a part and they are less likely to be re-arrested as compared to those who do not vote.

California, along with many democracies worldwide,[13] has recognized that blanket disenfranchisement is a destabilizing policy. Accordingly, this state has narrowed disenfranchisement to the period when individuals are serving their

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[11] American Correctional Association, *Public Correctional Policy on Restoration of Voting Rights for Felony Offenders* (Jan. 2005), *available at* http://www.aca.org/government/policyresolution/ view.asp?ID=39; American Bar Association, *Criminal Justice Standards on Collateral Sanctions and Discretionary Disqualification of Convicted Persons* R-7 (Aug. 2003), *available at* http://www.abanet.org/leadership/2003/journal/101a.pdf.

[12] Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample*, 36 Colum. Hum. Rts. L.Rev. 193 (2004).

[13] The United States is the only democratic nation that still disenfranchises large numbers of non-incarcerated citizens and among the few that disenfranchises the incarcerated. *See* American Civil Liberties Union, *Out of Step with the World: An Analysis of Felony Disfranchisement in the U.S. and Other Democracies* 33 (May 2006), *available at* http://www.aclu.org/images/asset_upload_file825_25663.pdf. Indeed, the supreme courts of Canada and South Africa recently struck down voting prohibitions for incarcerated persons. *Sauvé v. Canada*, [2002] 3 S.C.R. 519, *available at* http://scc.lexum.umontreal.ca/en/2002/2002scc68/2002scc68.pdf; *Minister of Home Affairs v. Nat'l Inst. for Crime Prevention & the Reintegration of Offenders*, 2005 (3) SA 280 (CC), *available at* http://www.constitutionalcourt.org.za/Archimages/1333.PDF. And, last year, the European Court of Human Rights ruled the United Kingdom's blanket disenfranchisement of individuals in prison violated the European Convention on Human Rights. *Hirst v. United Kingdom (No. 2)*, 681 Eur. Ct. H.R. (2005), *available at* http://www.worldlii.org/eu/cases/ECHR/2005/681.html.

sentences, either imprisoned or on parole. The Attorney General's Opinion, *newly* barring two classes of individuals from voting, is wholly inconsistent with this state's Constitution, election laws and enlightened policies.

ARGUMENT

This case concerns the scope of Article II, Section 4, the felony disenfranchisement provision in the California Constitution. The Constitution provides: "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. The critical elements being: "imprisoned" with a "conviction" for a "felony." This writ is brought on behalf of two groups lacking one or more elements necessary to lose the right to vote: (1) individuals sentenced pursuant to California Penal Code section 18, and (2) felony probationers.

In his opinion, the Attorney General advocates an unprecedented and overbroad disenfranchisement policy. Any person, he argues, "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 (2005). For support, the Attorney General largely relies on the dictionary definition of a single word in Article II, Section 4: "imprisoned."

However, the Attorney General's analysis is flawed; it ignores legally important distinctions among the various populations incarcerated in local facilities—distinctions that determine whether one is permitted to vote. The analysis is not supported by the legislative history of Article II, Section 4 and contradicts three decades of constitutional interpretation by the Secretary of State. Moreover, adopting the Attorney General's position would lead to unfair, unworkable results concerning the fundamental right to vote.

I.
CURRENT LAW PROTECTS THE VOTING RIGHTS OF MANY INDIVIDUALS INCARCERATED IN COUNTY JAIL

In the California penal system, several classifications of individuals share space in local jails. Some are detained after arrest pending arraignment; others are incarcerated while awaiting trial. Some are confined while serving sentences for misdemeanor convictions, while others are detained as a condition of probation. There are also those who were convicted of a felony offense and sentenced to state prison, but who are housed in local jails pursuant to contracts between state and local officials. These are all legally distinct populations.

There is no dispute about some of these populations. For example, Article II, Section 4 does not disenfranchise individuals who are housed in local jails but who have no felony conviction, such as those detained pre-trial and those serving misdemeanor sentences.

Nor is there any dispute about individuals who are serving their state prison sentences in county jail under contract between state and local officials.[14] Rather, the argument here centers on two groups confined in county jails whom the Attorney General has swept into the disenfranchisement net: (1) individuals sentenced pursuant to California Penal Code section 18, and (2) felony probationers.

II.
INDIVIDUALS CONVICTED PURSUANT TO PENAL CODE SECTION 18 ARE REGARDED AS MISDEMEANANTS UNDER THE LAW AND RETAIN THEIR RIGHT TO VOTE

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[14] Petitioners do not dispute that these individuals are ineligible to vote. Their disenfranchisement, however, is not by virtue of their confinement in county jail, but rather because they are serving a sentence to state prison and remain under the legal custody of state prison authorities. Likewise, petitioners do not dispute that Article II, Section 4 disenfranchises individuals on parole, who may be confined in county jail due to a parole revocation; their status as parolees bars voting.

Under the plain language of Article II, Section 4, a necessary prerequisite to disenfranchisement is a "felony" conviction. Those with misdemeanor convictions retain their right to vote. Individuals sentenced to county jail under Penal Code section 18 fall into this category.

California Penal Code section 18 provides that every felony offense punishable either by payment of a fine *or* imprisonment in state prison may also be punishable as a misdemeanor offense.[15] Penal Code § 18 (2006). It is within the court's discretion to determine the appropriate sentence. Penal Code § 17(b) (2006).[16] If the court imposes any "punishment other than imprisonment in the state prison," the conviction is considered "a misdemeanor for all purposes." *Id.*

Taken together, Penal Code sections 18 and 17(b) expose the error underlying the Attorney General's assertion regarding those sentenced pursuant to Penal Code section 18. To the extent these individuals were sentenced to county jail terms, they are regarded as misdemeanants "for *all* purposes" under California law, including whether they may vote.

Courts have followed this principle. For example, in *People v. Trimble*, the court concluded that a conviction under California Vehicle Act section 146 should be treated as a misdemeanor subsequent to judgment, notwithstanding the characterization of the offense as a "felony," because the only important inquiry was the "nature and extent of the punishment imposed." 18 Cal. App. 2d 350, 351

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[15] Penal Code section 18 provides: "[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."

[16] Penal Code section 17(b) provides: "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...."

(1936). The legislature's characterization of the offense as a felony "is immaterial," wrote the court, "the sole test being the nature and extent of the punishment imposed. If the punishment imposed is other than death or imprisonment in state prison, the penalized act is for all purposes thereafter deemed a misdemeanor." *Id.* (Internal citations omitted). *See also People v. Isaia*, 206 Cal. App. 3d 1558, 1564 (1989) (stating that Penal Code section 18 allows court to reduce felonies punishable either by a prison term or fine to misdemeanors).

Accordingly, individuals sentenced to county jail under Penal Code section 18 are misdemeanants; they are not disenfranchised under Article II, Section 4.

III.
PROBATIONERS ARE LIKEWISE ENTITLED TO VOTE UNDER CALIFORNIA LAW

The Attorney General also argues that Article II, Section 4, disenfranchises probationers confined in county jail. As to this group, the Attorney General's argument falls short in several respects as well.

First, the plain language of the California Constitution does not disenfranchise probationers. To the extent such is deemed ambiguous, however, it should be interpreted in favor of protecting, not eradicating, the fundamental right to vote. Second, the legislative history of Article II, Section 4 demonstrates that neither the Legislature nor the voters intended to disenfranchise probationers. Third, the Legislature's implementing legislation reinforces a narrow reading of Article II, Section 4 that limits its reach to individuals serving a sentence in state prison or on parole for such sentence. Fourth, the Attorney General's position is at odds with three decades of constitutional interpretation by California's chief elections officer, the Secretary of State. And, finally, the Attorney General's interpretation leads to unfair, unworkable results from a constitutional provision that was enacted to bring certainty to the application of the law.

A. The Plain Language of the California Constitution Does Not Disenfranchise Probationers

Article II, Section 4 provides: "The Legislature...shall provide for the disqualification of electors while...imprisoned or on parole for the conviction of a felony." The Attorney General frames the question presented as "the meaning of the term 'imprisoned' as used in the phrase 'imprisoned or on parole for the conviction of a felony,'" and then argues, with reference to dictionary definitions and statutory usage, that "imprisoned" refers not only to incarceration in a state prison, but also "include[s] confinement in a local detention facility such as a county jail". 88 Cal. Op. Att'y Gen. 207. The result, according to the Attorney General, is that confined probationers are disenfranchised under Article II, Section 4. *Id.* at 212.

The Attorney General's logic may seem straightforward: When the meaning of a word is arguably ambiguous, consult the ordinary definition to determine its meaning. But some words, like "imprisoned" and "conviction," have more than one definition, particularly when "imprisoned" is used in conjunction with "imprisoned for the conviction of a felony" and "conviction" is used as a measure for disenfranchisement. In such instances, principles of construction provide guidance as to which definition is most appropriate.

Here, "imprisoned" should be afforded a non-disenfranchising meaning if one reasonably exists. *See Otsuka v. Hite*, 64 Cal. 2d 596, 603–604 (1966) ("every reasonable presumption and interpretation is to be indulged in favor of the right of the people to exercise the elective process...no construction of an election law should be indulged that would disenfranchise any voter if the law is reasonably susceptible of any other meaning") (internal quotations omitted).

Using the Attorney General's own approach, this Court may easily reach a conclusion contrary to that which the Attorney General advocates. One definition Webster's Dictionary uses to define "imprison," as the Attorney General notes, is: "to put in prison." 88 Cal. Op. Att'y Gen. at 209. "Prison" is defined by

Webster's as: "*often*: 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." Exh. 9 (emphasis in original). Similarly, Black's Law Dictionary defines "imprisonment" as the "act of confining a person, esp. in a prison," and defines "prison" as a "state or federal facility of confinement for convicted criminals, esp. felons." Exh. 10. A reasonable conclusion from these definitions is that "imprisoned" means confinement in state prison, "as distinguished from . . . local jail," such that the word "imprisoned" in Article II, Section 4 does not apply to probationers incarcerated in local jails. Indeed, the Court could more readily reach this conclusion (as opposed to that urged by the Attorney General) given that restricting the definition of "imprisoned" to state prison allows the Court to construe a meaning consistent with the principles of construction enunciated by the California Supreme Court in *Otsuka.*

But to "seek the meaning of a statute is not simply to look up dictionary definitions and then stitch together the results. Rather, it is to discern the sense of the statute, and therefore its words, in the legal and broader culture." *State v. Altus Finance*, 36 Cal. 4th 1284, 1295–1296 (2005) (internal citations omitted). The word "imprisoned" does not stand alone; it is part of a phrase—"imprisoned or on parole for the conviction of a felony"—and should be interpreted in the context of the phrase in which it is used. *See Pearson v. State Social Welfare Bd.*, 54 Cal. 2d 184, 194 (1960) (in determining meaning of a provision, examination "may well begin, but should not end, with a dictionary definition of a single word used therein"); *Coachella Valley Mosquito and Vector Control Dist. v. California Public Employment Relations Bd.*, 35 Cal. 4th 1072, 1089 (2005) (statute should be taken in context and "with reference to the whole system of law of which it is a part").

1. The phrase "imprisoned or on parole" refers to individuals who are under a continuum of custody of state prison authorities.

The specific reference to "parole" in Article II, Section 4 illuminates the meaning of "imprisoned" when the two words are read together in context. *See Otsuka v. Hite*, 64 Cal. 2d at 608 ("if reasonably possible, every provision of the Constitution should be given meaning and effect, and related provisions should be harmonized").

By the time Article II, Section 4 was adopted in 1974, it was well-settled that parole was an extension of state prison. As the court in *People v. Hernandez* explained: "Although a parolee is not a prison inmate in the physical sense, he is constructively a prisoner under legal custody of the State Department of Corrections." 229 Cal. App. 2d 143, 149 (1964). *See also* Penal Code § 3056 (2006) (parolees remain under legal custody of the department and are subject at any time to be taken back to prison); *People v. Howard*, 79 Cal. App. 3d 46, 49 (1978) (A "parolee is at all times in *custodia legis*. Although he is not a prison inmate in the physical sense, he is serving the remainder of his term outside rather than within the prison walls.") Simply put, prisoners and parolees are under a continuum of custody under the supervision of the California Department of Corrections, until their sentence to state prison, including time spent on parole, is complete.

A reasonable inference from the usage of the words "imprisoned" and "parole" in Article II, section 4 is that disenfranchisement is limited to those individuals under the supervision of state prison authorities.

In contrast to prisoners and parolees, probationers fall under the supervision of the court and local county probation officers. *See People v. Banks*, 53 Cal. 2d 370, 384 (1959) (individuals on probation are "in the actual or constructive custody of the court"); *People v. Howard*, 16 Cal. 4th 1081, 1092 (1997) (during probationary period, court retains jurisdiction over defendant); *People v. Atwood*, 221 Cal. App. 2d 216, 223 (1963) (probation calls for continuing supervision of

probationer and maintaining jurisdiction and power in trial court to act in respect to such supervision); Penal Code § 1203(a) (2006) ("probation" means suspension of imposition or execution of sentence and order of conditional and revocable release into community under supervision of probation officer).

Probationers are not under the custody of state prison authorities at any time during their probationary sentence; they do not fall within the scope of Article II, Section 4's "imprisoned or on parole" restriction.

2. Probationers are not "imprisoned . . . for the conviction of a felony."

Excluding probationers from the reach of Article II, Section 4 is also consistent with the fact that, under the law, an incarcerated probationer is not "imprisoned for the conviction of a felony" like a state prisoner, but rather is confined "as a condition of probation."

California law has long drawn a distinction between individuals confined "as a condition of probation" and those confined under a judgment and sentence of imprisonment. For example, in *People v. Wallach*, the court held that a term in jail as a condition of probation is not synonymous with serving a sentence of imprisonment:

> The fact that the defendant spent the first thirty days of her probationary period in the county jail does not amount to her having served a term of imprisonment in a penal institution. That period of detention was imposed not as a sentence but as a condition of probation, and the granting of probation suspended the execution of the ninety-day sentence previously imposed. It cannot be said that the thirty days spent by defendant in the county jail was served under the sentence, where that sentence had been suspended by the probation order. Furthermore, the order placing a defendant on probation, even though it include [sic] as a condition a period of detention in the county jail, is not a judgment and sentence. ... That a period of detention in a county jail as a condition of probation is not a sentence is also evident, when we consider that such a condition can be imposed where a defendant has been convicted of a crime which is not punishable by imprisonment in the county jail.

8 Cal. App. 2d 129, 133 (1935). *See also Atwood*, 221 Cal. App. 2d at 223 (suspension of execution of prison sentence and provision of time in county jail were "conditions of probation, not a judgment and sentence").

Similarly, statutes in effect when voters adopted Article II, Section 4 reflect this distinction between a prison sentence and confinement as a condition of probation. *See, e.g.,* Penal Code § 1208 (1974) ("convicted of a misdemeanor and sentenced to the county jail, or is imprisoned therein . . . as a condition of probation for any criminal offense"); Penal Code § 4017 (1974) ("persons confined in the county jail...under a final judgment of imprisonment rendered in a criminal action . . .and all persons confined in the county jail...as a condition of probation after suspension of imposition of a sentence or suspension of execution of sentence"); Penal Code § 4125.1 (1974) (referring to persons confined "under a final judgment of imprisonment...or as a condition of probation").[17]

And, with regard to imprisonment for a felony conviction, sentencing law reserved prison sentences specifically for those who were *not* placed on probation. *See* Penal Code § 1168 (1974) ("every person convicted of a public offense, for which imprisonment in any...state prison is now prescribed by law shall, unless such convicted person be placed on probation..., be sentenced to be imprisoned in a state prison").

Thus, probationers in county jail are not serving a sentence of imprisonment for the conviction of a felony; rather, they are confined as a condition of probation and may vote.

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[17] The Legislature has continued to differentiate in this manner since adoption of Article II, Section 4. *See, e.g.*, Penal Code § 4017.5 (1976) (referring to persons confined in a county jail "under a judgment of imprisonment...or as a condition of probation after suspension of imposition of a sentence or suspension of execution of sentence"); Penal Code § 4019 (1976) (separate paragraphs pertaining to a person confined in a county jail "under a judgment of imprisonment" and one confined "as a condition of probation after suspension of imposition of a sentence or suspension of execution of sentence").

3. Unsentenced probationers are not even "convicted" within the meaning of Article II, Section 4.

There are two classes of probationers: (1) those for whom the court has suspended "imposition" of sentence ("unsentenced") and (2) those for whom the court has suspended "execution" of sentence ("sentenced"). *See Howard*, 16 Cal. 4th at 1084 (1997). By 1974, when the voters adopted Article II, Section 4, California courts and the Attorney General had long recognized that the term "conviction," for purposes of imposing a civil disability like felony disenfranchisement, means an entry of judgment and sentence so that "unsentenced" probationers—who have no judgment or sentence—retain their voting rights.

Under California law, "conviction" has varying meanings depending upon the context. *Helena Rubenstein Int'l v. Younger*, 71 Cal. App. 3d 406, 421 (1977). In its narrowest sense, the term connotes just the verdict of "guilt." *See id.* at 413. In its broadest meaning, it encompasses the entry of "judgment." *Id. See also People v. Overstreet*, 42 Cal. 3d 891, 901 n.7 (1986).

However, as the court explained in *Helena Rubenstein*:

> In the context of statutes or constitutional provisions imposing civil penalties or disabilities, [the terms "convicted" and "conviction"] have never been construed to mean the verdict of guilt. Such penalties or disabilities have not been found applicable until at least a court judgment has been entered. The California decisions are in this respect in accord with the weight of authority in other jurisdictions.

Helena Rubenstein Int'l, 71 Cal. App. 3d at 418. *See also Boyll v. State Personnel Bd.*, 146 Cal. App. 3d 1070, 1074 (1983) (where civil disability flows from conviction, the "majority and better rule is that 'conviction' must include both the guilty verdict (or guilty plea) *and* a judgment entered upon such verdict or plea") (emphasis in original).

Unsentenced probationers have no "judgment." "When the trial court suspends imposition of sentence, no judgment is then pending against the probationer, who is subject only to the terms and conditions of the probation." *Howard*, 16 Cal. 4th at 1087 (1997). Therefore, unsentenced probationers have no "conviction" for purposes of imposing a civil disability such as felony disenfranchisement under Article II, Section 4.

Courts and the Attorney General consistently applied this reasoning to Article II, Section 1, a predecessor disenfranchisement provision, concluding that unsentenced probationers retain their voting rights. *See Truchon v. Toomey*, 116 Cal. App. 2d 736, 742 (1953) (holding term "convicted" as used in criminal disenfranchisement provision required both verdict or plea and imposition of judgment and sentence); *Stephens v. Toomey*, 51 Cal. 2d 864, 869 (1959) (stating "conviction" as used in disenfranchisement provision "must mean a final judgment of conviction"); 22 Cal. Op. Att'y Gen. 39, 41 (1953) (holding unsentenced probationers not "convicted" so "can continue voting while on probation"); 55 Cal. Op. Att'y Gen. 125, 126 (1972) (holding "'conviction'...resulting in disenfranchisement requires both a verdict of guilty *and* the imposition of sentence pursuant to such verdict") (emphasis in original); 57 Cal. Op. Att'y Gen. 374, 383 (1974) (noting that California appellate court opinions hold "suspension of imposition of sentence and placement upon probation" does "not constitute a conviction of a crime" for disenfranchisement).

In fact, as this Court noted in *Truchon*, this interpretation of "conviction" dates back over a century to California's original Constitution:

> [W]hen considering the impositions of penalties and disabilities, particularly such a serious disability as that of disenfranchisement, it is important that such imposition be made only when the proceeding causing it to be imposed is finally completed. Just as in 1822 when the New York Constitution was adopted, the People of New York had in mind...a broad definition of the word 'conviction,' in the disenfranchisement section, so, too, must the People of California

> have been similarly minded when they placed in the Constitution of 1849 practically the same provision [in Article II, Section 5].[18]

116 Cal. App. 2d at 744.

The Attorney General effectively concedes—yet disregards—this point in his analysis. 88 Cal. Op. Att'y Gen. at 212 ("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").

The well-established legal meaning of "conviction" as requiring a judgment and sentence for purposes of imposing disenfranchisement controls here; Article II, Section 4 should be interpreted accordingly. *See Arnett v. Dal Cielo*, 14 Cal. 4th 4, 19 (1996) ("when a word used in a statute has a well-established *legal* meaning, it will be given that meaning in construing the statute") (emphasis in original).

4. <u>The Legislature and the voters are presumed to be aware of the meaning of these terms.</u>

As set forth above, by the time Article II, Section 4 was adopted in 1974, it was well-settled that parole was an extension of state prison and that both were supervised by state prison authorities, as distinct from probationers who were supervised by the court and county probation officers. The law also drew a clear distinction between individuals confined "as a condition of probation" and those serving a sentence of imprisonment. Moreover, for over a century, the courts have interpreted "conviction" to mean entry of judgment and imposition of sentence for purposes of imposing a civil disability such as disenfranchisement.

The Legislature and the voters that adopted Article II, Section 4 are presumed to be aware of the legal and judicial construction of these terms. *People v. Weidert*, 39 Cal. 3d 836, 844 (1985) (enacting body deemed aware of existing laws and judicial constructions in effect at time legislation enacted, including

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[18] In 1849, Article II, Section 5 provided: "No idiot or insane person, or person convicted of any infamous crime, shall be entitled to the privilege of an elector."

legislation enacted by initiative). Indeed, where "language of a statute uses terms that have been judicially construed, 'the presumption is almost irresistible' that the terms have been used 'in the precise and technical sense which had been placed upon them by the courts.'" *Id.* at 845–846 (quoting *In re Jeanice D.*, 28 Cal. 3d 210, 216 (1980)); *People v. Curtis*, 70 Cal. 2d 347, 355 (1969).

"Imprisoned or on parole for the conviction of a felony" should be interpreted consistent with these legal and judicial constructions to preserve probationers' voting rights.

B. The Legislative History of Article II, Section 4 Supports Probationers' Right to Vote

That Article II, Section 4 preserves probationers' voting rights is not only consistent with existing law and principles of constitutional construction, but also with the legislative history of this provision. *People v. Birkett*, 21 Cal. 4th 226, 231–232 (1999) (where examination of statutory language leaves doubt about meaning, court may consult other evidence of legislative intent, such as history and background of measure).

Article II, Section 4 began as Assembly Constitutional Amendment No. 38 (ACA 38), a bill passed by the Legislature and placed on the ballot as Proposition 10.[19] California voters adopted the initiative in 1974.

Proposition 10 was a response to the California Supreme Court's landmark ruling in *Ramirez v. Brown*, 9 Cal. 3d 199 (1973), *rev'd sub nom. Richardson v. Ramirez*, 418 U.S. 24 (1974). In that case, the court held that California's disenfranchisement provision—which at that time permanently barred anyone convicted of an "infamous crime" from voting—violated equal protection.

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[19] The disenfranchisement provision in the California Constitution has evolved and been renumbered over time. A timeline, including the language of the various disenfranchisement provisions and other relevant authorities, is attached as Exh. 11.

Proposition 10 sought to implement *Ramirez* and expand the franchise by lifting the lifetime ban on voting by ex-felons. In the course of drafting Proposition 10's language, the Legislature considered and rejected language that would have disenfranchised probationers and instead opted to disenfranchise only those individuals in state prison or on parole.

1. <u>While drafting Proposition 10, the Legislature considered and rejected language that would have disenfranchised probationers.</u>

The Legislature's intent to expand the franchise was evident upon introduction of ACA 38: the amendment's original language eliminated *any* elector disqualification on the basis of criminal convictions. Exh. 12.

ACA 38 was subsequently amended in both Assembly and Senate committees. One version in the Assembly sought to add a provision "excluding persons from voting while under court order for conviction of a felony." Exh. 14. Arguably, by using the term under "court order" rather than "sentence," this language would have disenfranchised probationers. Confined probationers are under supervision by court order and they are not deemed serving a sentence. *See, e.g., People v. Howard*, 16 Cal. 4th 1081, 1092 (1997) (during probationary period, court retains jurisdiction over defendant); *People v. Atwood*, 221 Cal. App. 2d 216, 222 (1963) (probation calls for continuing supervision of probationer and maintaining jurisdiction and power in trial court to act in respect to such supervision). However, the Legislature deleted the "under court order" provision in the very next iteration of ACA 38. Exh. 15.

The Assembly's consideration—and then rejection—of language that would have disenfranchised probationers is powerful evidence that the Legislature intended ACA 38 to *preserve* probationers' voting rights. *WDT-Winchester v. Nilsson*, 27 Cal. App. 4th 516, 534 (1994) (omission of provision from final version of statute which was included in an earlier version is "strong evidence" that statute should not be construed to incorporate original provision).

Indeed, the Legislature had entertained probationer disenfranchisement language on at least two prior occasions.

Virtually identical "under court order" language had been proposed to the Legislature three years earlier by the California Constitution Revision Commission. In its 1970 report to the Legislature, the Commission recommended that the disenfranchisement provision be modified to disqualify electors only while "under court order for conviction of designated felonies." Exh. 17. The Commission elaborated that under such a provision, disqualification would "apply only while the elector is actually under sentence, or other court order," explaining:

> 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.

Id. This was an apparent reference to probationers, who are under court order, as opposed to prisoners and parolees, who are under sentence. The Legislature declined to adopt this recommendation when it submitted an earlier constitutional amendment, Proposition 7, to the voters in 1972. *Ramirez*, 9 Cal. 3d at 205 n.4 (1973).[20]

Similarly, in 1960, the Legislature placed a proposed constitutional amendment on the ballot (Assembly Constitutional Amendment No. 5, appearing on the ballot as Proposition 8) that would have disenfranchised individuals "convicted of any felony, while paying the penalties imposed by law therefor, including any period of *probation* or parole." Exh. 18 (emphasis added). The measure failed at the ballot.

The Legislature knew it had the authority to disenfranchise probationers, yet it declined to do so with ACA 38.

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[20] Proposition 7 substituted Article II, Section 3 for the earlier Article II, Section 1 disenfranchisement provision (*see* Exh. 11); the court in *Ramirez* stated that there was no substantive difference between the two provisions. 9 Cal. 3d at 204.

2. The Legislature resolved to limit disenfranchisement to individuals in state prison or on parole.

After rejecting language that would have disenfranchised probationers, the Assembly sent ACA 38 to the Senate as originally conceived, without any elector disqualification on the basis of criminal convictions. Exh. 15. The Senate amended ACA 38 by adding the provision requiring disenfranchisement while "imprisoned or on parole for the conviction of a felony." Exh. 16.

The Legislature's express purpose in enacting ACA 38 was to conform California law to *Ramirez*, without disturbing existing law that disenfranchised individuals whose terms of imprisonment and parole had not yet expired. *Flood v. Riggs*, 80 Cal. App. 3d 138, 149 n.12 (1978). The Legislature articulated this intent in Assembly Bill 1128, a companion bill to ACA 38:[21]

> It is the intent of the Legislature in...proposing Assembly Constitutional Amendment No. 38...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...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.

Exh. 23 at § 15.

Correspondence from the Chief Counsel to the Senate Committee on Judiciary, Bion M. Gregory, and the Legislative Counsel of California, George H. Murphy, during the time the Senate was considering the language of ACA 38 sheds light on the intended meaning—and limitation—of this provision.

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[21] Although the Governor subsequently vetoed AB 1128 after the U.S. Supreme Court's *Richardson* decision, this Court found it "nevertheless provides some 'impression' of the Legislature's intended meaning" and relied on it in *Flood* to interpret Article II, Section 4. *Flood*, 80 Cal. App. 3d at 152–153.

On May 9, 1974, the Chief Counsel requested an opinion from the Legislative Counsel on "existing restrictions…upon the right of suffrage" for individuals with felony convictions "considering existing constitutional, statutory, and decisional law." In his letter, the Chief Counsel wrote:

> 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 yet 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.

Exh. 24.

The Legislative Counsel responded on May 13, 1974, stating that the first category of persons could vote pursuant to *Ramirez*. Exh. 25. With regard to the second and third categories, the Legislative Counsel referenced California Penal Code sections 2600 and 3054, stating that "[c]onvicted felons who are out of prison but still on parole, or who are still in prison, may not vote." At that time, these Penal Code sections explicitly denied the right to vote to individuals in *state* prison and on parole.[22]

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[22] California Penal Code section 2600 then provided:

> 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

Two weeks later, on May 27, 1974, the Senate amended ACA 38 to add the "imprisoned or on parole for the conviction of a felony" language. Exh. 16. That same day, the Senate amended AB 1128 to add the Legislative intent language quoted above, using virtually identical language as that used in the Chief Counsel and Legislative Counsel correspondence: "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.*" Exh. 23 (emphasis added).

Based on the foregoing, it is a reasonable inference that, by adding the "imprisoned or on parole for the conviction of a felony" language, the Senate intended to continue the "existing restrictions" on voting as set forth in the Legislative Counsel's letter; namely, to limit disenfranchisement to those in state prison or on parole.

Ultimately, two-thirds of the Assembly and Senate agreed on this final language for ACA 38. While not entirely eliminating disenfranchisement on the basis of a criminal conviction as originally conceived, ACA 38 narrowed elector disqualification only to those "imprisoned or on parole for the conviction of a felony." Exh. 16. This version proceeded to the ballot as Proposition 10.

3. California voters endorsed the Legislature's expansion of the franchise and limitation on disenfranchisement.

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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…."

Exh. 26 (emphasis added). *See also* Penal Code § 3054 ("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….") Exh. 27. The *Ramirez* Court declined to review the constitutionality of Penal Code sections 2600 and 3054. *Ramirez*, 9 Cal. 3d at 217 n.18.

California voters passed Proposition 10 by a wide margin in 1974. Ballot arguments and an independent Legislative Analyst's opinion are part of the legislative history of Article II, Section 4; these materials informed voters that Proposition 10 would narrow disenfranchisement to only those individuals serving a sentence in prison or on parole. *See White v. Davis*, 13 Cal. 3d 757, 775 n.11 (1975) ("California decisions have long recognized the propriety of resorting to such election brochure arguments as an aid in construing legislative measures and constitutional amendments adopted pursuant to a vote of the people."). Neither jail nor probation are referenced anywhere in these ballot materials.

a. The Legislative Analyst advised voters that only those serving a prison sentence or on parole would be disenfranchised post-Proposition 10.

The Legislative Analyst's opinion advised voters that Proposition 10 would impose disenfranchisement for the duration of a prison and parole sentence, but not thereafter:

> 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.

Exh. 28 (emphasis added). *See also* Rebuttal to Argument in Favor of Prop 10, Exh. 28 ("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*.") (Emphasis added.)

The Legislative Analyst repeatedly used the terms "prison" and "prison sentence" in explaining to voters the purpose and effect of Proposition 10. As discussed in Section III(A) above, a common definition of "prison" is a state facility for imprisonment of felons, as distinct from a local county jail. Moreover, well-established legal precedents make clear that confined probationers are not deemed to be serving time under a "prison sentence," but rather are confined in local county jail as a "condition of probation."

Since the electorate is deemed to be aware of such laws and judicial constructions, *see, e.g.*, *In re Lance W.*, 37 Cal. 3d 873, 891 n.11 (1985), it is reasonable to assume that the electorate approved Proposition 10 with the intent to disenfranchise only those serving a sentence in state prison or on parole—a conclusion eminently more reasonable than the notion that the electorate rejected the Legislative Analyst's description of the disenfranchised class and instead intended to disenfranchise an entirely different class of persons even though the word "probation" does not appear anywhere in the measure.

b. The proponents' Proposition 10 ballot arguments emphasized expanding the franchise and eliminating unnecessary restrictions.

The proponents' ballot argument underscored that the goal of Proposition 10 was to expand the franchise and eliminate unnecessary restrictions on the fundamental right to vote:

> 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.

Exh. 28.

The argument then relied on *Ramirez* to show that it was no longer necessary to exclude felons from voting:

> 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.

Id. Proponents also argued that the "objective of reintegrating ex-felons into society is dramatically impeded by continued restriction of the right to vote." *Id.*

Thus, in approving Proposition 10, the voters intended to expand the franchise, remove unnecessary restrictions on voting, and promote reintegration and civic participation. Interpreting Proposition 10 to preserve confined probationer voting furthers these interests. Probationer voting aids rehabilitation and reintegration by connecting probationers to the community and issues of concern—a key purpose underlying probation itself. *See, e.g. In re Solis*, 274 Cal. App. 2d 344, 349 (1969) ("jail detention...ordered as a condition of probation...is not regarded as punishment but as part of the whole supervised program of rehabilitation"); *Howard*, 16 Cal. 4th at 1092 (1997) (probation is act of clemency in lieu of punishment; primary purpose is rehabilitative in nature). It promotes a representative government by allowing a large class of citizens to participate fully in the democratic process, when there is no justifiable basis for excluding them. And it brings fairness and uniformity to the application of the law concerning the fundamental right to vote. *See* Section III(E), *infra*.

Based on the foregoing legislative history, neither the Legislature nor the voters intended to disenfranchise confined probationers when they adopted Proposition 10. The intent to disenfranchise "must appear with great certainty and clearness." *People v. Elkus*, 59 Cal. App. 396, 404 (1922). Such clear intent is lacking here. Instead, the plain language and legislative history of Proposition 10

establish that the initiative language is "reasonably susceptible" of a reading that preserves probationers' voting rights. *See Otsuka*, 64 Cal. 2d at 603–604.

The Legislature's use of the term "in prison" in place of "imprisoned" in multiple Elections Code provisions related to Article II, Section 4 only reinforces this conclusion.

C. The Legislature Has Consistently Interpreted Article II, Section 4 As Disenfranchising Individuals "In Prison," Not In Jail

Since the adoption of Article II, Section 4 in 1974, the Legislature has enacted several Elections Code provisions relevant to voter qualifications and, more specifically, voter disqualification while "imprisoned or on parole for the conviction of a felony." In multiple provisions, the Legislature interprets "imprisoned" as meaning "in prison."

For example, 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.[23]

Elec. Code § 2101 (2006) (emphasis added). Similarly, Elections Code section 2106 requires that printed literature or media announcements made in connection with county voter outreach programs state that an eligible voter must not be "in prison or on parole for the conviction of a felony."[24] Elec. Code § 2106 (2006). And the Voters Bill of Rights passed by the Legislature in 2003 states, a "valid

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[23] Elections Code section 2101 was originally enacted in 1989 as Elections Code section 300.5 with identical language. 1989 Cal. Stat. 365, § 3. Elections Code section 300.5 was renumbered in 1994 to the current section 2101 as part of the reorganization of the Elections Code that had "only technical and nonsubstantive effect." 1994 Cal. Stat. 920, § 3.

[24] Elections Code section 2106 was originally enacted in 1982 as Elections Code section 304.5. 1982 Cal. Stat. 158, § 2.

registered voter means a United States citizen who is…not in prison or on parole for conviction of a felony." Elec. Code § 2300(a)(1)(B) (2006).

The Legislative Committee reports accompanying Senate Bill 1142 also reflect this interpretation. SB 1142 was introduced in 1979 to "bring the Elections Code into conformity with Article II, Section 4" by substituting earlier Elections Code language for the new "imprisoned or on parole for conviction of a felony" language. Exh. 29. The Legislature noted in its Committee reports that the new disenfranchisement provision provides for elector disqualification while "in prison or on parole." *Id.* It is "presumed that the Legislature adopted the proposed legislation with the intent and meaning expressed in committee reports" if "in accord with a reasonable interpretation of the statute." *Curtis v. County of Los Angeles*, 172 Cal. App. 3d 1243, 1250 (1985).

If the Legislature had intended to include jails in addition to prisons, it would have said "in jail" as well as "in prison." California law has long recognized a fundamental distinction between prisons and jails and enacted a separate system of laws governing the two since at least 1943; the Legislature is well aware of the distinction. *See* Penal Code §§ 2000 *et seq.* (2006); §§ 4000 *et seq.* (2006). Moreover, at least one ordinary meaning of "prison" specifically excludes "jail." *See People v. Birkett*, 21 Cal. 4th 226, 231 (1999) (in ascertaining Legislature's intent, turn first to language of statute, giving words ordinary meaning). Webster's dictionary, relied on in the Attorney General's Opinion, defines "prison" as: "*often*: 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." Exh. 9 (emphasis in original). Similarly, Black's Law Dictionary defines "prison" as a "state or federal facility of confinement for convicted criminals, esp. felons," in contrast to a local facility like jail. Exh. 10.

As the Legislature's interpretation of the initiative it had placed before the voters, the Elections Code provisions provide further support for the narrow

meaning of "imprisoned" for purposes of elector disqualification under Article II, Section 4. *See Methodist Hosp. of Sacramento v. Saylor*, 5 Cal. 3d 685, 692, 693 (1971) (settled principle of construction affords "strong presumption" in favor of Legislature's interpretation of a constitutional provision; no need to show Legislature's construction "more probably than not" meaning intended by those who framed or adopted proposal). The Legislature's use of the term "prison" in place of "imprisoned" to signify state prison as opposed to local jails is a reasonable, non-disenfranchising construction of the law. The court should adopt it. *See Otsuka v. Hite*, 64 Cal. 2d at 604 (no construction of election law should be indulged that disenfranchises any voter if law is reasonably susceptible of any other meaning); *San Francisco v. Indus. Accident Comm'n*, 183 Cal. 273, 279 (1920) (court should not annul statute unless "positively and certainly" opposed to constitution, which cannot be said of statute which adopts one of two "reasonable and possible constructions" of constitution); *Pac. Indem. Co. v. Indus. Accident Comm'n*, 215 Cal. 461, 464 (1932) (where more than one reasonable meaning exists, duty to accept that chosen by Legislature).

D. For Three Decades, the Secretary of State Interpreted Article II, Section 4 to Preserve the Voting Rights of Probationers

Against this backdrop, it is not surprising that California's chief elections officer, the Secretary of State, interpreted Article II, Section 4 for three decades as preserving probationers' voting rights and disenfranchising only those serving state prison sentences or on parole.

For example, within two years of the adoption of the Article II, Section 4, the Secretary of State cautioned local election officials that a "person on probation *may* register to vote":

> [The constitution] 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.)

Exh. 30 (emphasis in original).

The Secretary, represented by the Attorney General, also asserted this position to this Court in *Flood* in 1976. The state's brief acknowledged that "persons on probation and persons convicted only of misdemeanors may register to vote....such individuals may register because they are not disenfranchised by any provisions of law." Exh. 31.

In a subsequent letter, in 1979, the Secretary clarified that this interpretation applies equally to probationers confined in county jail: The Constitution "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 are sent [sic] to the county jail are not ineligible to register to vote." Exh. 32.

As recently as November 2004, the Secretary reaffirmed this interpretation in correspondence with petitioner Legal Services for Prisoners with Children, stating 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." Exh. 8.

"The construction of a statute by the officials charged with its administration must be given great weight, for their 'substantially contemporaneous expressions of opinion are highly relevant and material evidence of the probable general understanding of the times and of the opinions of men who probably were active in the drafting of the statute." *Whitcomb Hotel, Inc. v. California Employment Comm'n*, 24 Cal. 2d 753, 756–757 (1944). The Secretary of State's "substantially contemporaneous" opinion that Article II, Section 4 did not disenfranchise probationers (an opinion the Secretary maintained for almost

thirty years) should be afforded significant weight in interpreting the scope of the word "imprisoned" within the meaning of that section.

E. The Attorney General's Opinion Produces Unfair, Unworkable Results

The Attorney General's recent opinion dismisses the legislative history, voter intent and thirty years of administrative precedent in favor of a selective reading of Webster's Dictionary defining the word "imprisoned."[25] The Attorney General's position not only contradicts the historical record and existing precedent; it also produces unfair, unworkable results from a constitutional

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[25] The Attorney General also cites *People v. Montgomery*, 61 Cal. App. 3d 718 (1976), in support of his interpretation. 88 Cal. Op. Att'y Gen. at 211. However, the *Montgomery* case did not raise or resolve any substantive issues relevant to this case. *Conservatorship of Rodney M.*, 50 Cal. App. 4th 1266, 1270 (1996) ("cases are not authority for issues not raised and resolved").

The *Montgomery* court addressed only one issue relevant to criminal disenfranchisement: whether the disenfranchisement penalty in California Penal Code section 165 violated the equal protection clause in light of *Ramirez*. *Montgomery*, 61 Cal. App. 3d at 733. Penal Code section 165 permanently disenfranchises persons convicted of bribing public officials. Montgomery's opening brief confirms the limited nature of his challenge, Exh. 33, his closing brief did not discuss his disenfranchisement claim, Exh. 34, and his petition for review affirmatively stated that he did not challenge Article II, Section 4. Exh. 35. In other words, Montgomery did not raise any issue regarding the meaning of the terms in Article II, Section 4 or whether the provision applied to probationers, confined or otherwise.

After summarily rejecting defendant's Penal Code section 165 equal protection claim, the court added: "Moreover, defendant's complaint about Penal Code section 165 is premature because he is presently serving a sentence of two years probation granted on condition he serve six months in the county jail. Until he completes his current sentence, he is disqualified from voting under the California Constitution as well as Penal Code section 165." *Montgomery*, 61 Cal. App. 3d at 733. This statement is unexamined dictum. The Attorney General "assumes" that the court's dicta meant "his current [jail] sentence." 88 Cal. Op. Att'y Gen. at 211 n.2. However, the defendant's county jail probation term had been suspended. *Montgomery*, 61 Cal. App. 3d at 723.

provision intended to bring fairness and uniformity to the application of the law concerning an individual's fundamental right to vote.[26]

Adopting the Attorney General's interpretation of Article II, Section 4 means many probationers could lose, regain, then lose again the right to vote within a matter of months, even days, based on shifting confinement status which can occur several times during a multi-year probationary period.

Consider the following scenario, or some variation of it, which is "not uncommon" in the context of probation. *See People v. Arnold*, 33 Cal. 4th 294, 308 (2004). A probationer is confined in the county jail as a condition of probation. Under the Attorney General's theory, the probationer loses his right to vote. The probationer is then released with several years remaining on probation and regains his voting rights. Thereafter, the probationer is arrested and jailed for an alleged probation violation, losing the right to vote. The judge grants the probationer bail pending the court hearing. If the probationer makes bail, he is released from jail and can vote pending the hearing; if not, he remains disenfranchised during the period of incarceration, though there has been no finding of a probation violation. If the probationer is found in violation of probation, his voting rights are dependent upon the outcome: If the court grants

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[26] The proponents' Proposition 10 ballot argument advised voters that the measure would bring certainty to application of the law:

> 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.

Exh 28.

leniency and releases the probationer from custody with an extended probation term, the probationer can vote. If additional time in county jail is imposed as a condition of continued probation, the probationer loses his voting rights.

Thus, under the Attorney General's theory, an individual's fundamental right to vote would ebb and flow based on shifting circumstances that occur frequently in probation cases. This would include losing the right to vote merely because the individual was confined on a suspected probation violation, which eventually turned out to be a mistake, or the individual was without the financial resources to make bail pending a hearing on the matter. Moreover, the Attorney General's interpretation would require local election officials to cancel and then potentially renew voting registration on each of these occasions.

There is no reason to believe that the pro-franchise Legislature and electorate that adopted Article II, Section 4 would subject the fundamental right to vote to such an unfair, unworkable state of affairs. *See California Correctional Peace Officers Ass'n v. State Personnel Bd.*, 10 Cal. 4th 1133, 1147 (1995) (in construing statute, court may consider consequences that would follow from particular construction and will not readily imply unreasonable legislative purpose; practical construction is preferred); *Doe v. Saenz*, 140 Cal. App. 4th 960, 982 (2006) (where differing interpretations possible, court should interpret statutes in "workable and reasonable manner"). Rather, it is more likely that the Legislature and the voters opted for the bright line rule disenfranchising individuals while serving a sentence in state prison or on parole.

IV.
THE COURT SHOULD ISSUE A WRIT OF MANDATE TO PROTECT PROBATIONERS' FUNDAMENTAL RIGHT TO VOTE

Confined probationers' voting rights have been in a state of flux for three statewide election cycles. Petitioners respectfully request this Court to exercise its

jurisdiction[27] to hear this original mandamus proceeding to clarify fundamental voting rights by a statewide ruling that will allow these individuals to register in upcoming elections.[28]

The "issues presented are of great public importance and must be resolved promptly." *County of Sacramento v. Hickman*, 66 Cal. 2d 841, 845 (1967). At stake is the ability of thousands of Californians to vote on initiatives and candidates at this year's statewide election and next year's local elections. This represents the paradigm situation that warrants extraordinary relief through a writ action. *Ramirez v. Brown*, 9 Cal. 3d 199 (1973) (original writ of mandate issued to compel election officials to register ex-felons who have completed sentences). As the Supreme Court has stated:

> Cases affecting the right to vote and the method of conducting elections are obviously of great public importance. Moreover, the necessity of adjudicating the controversy before the election renders it moot usually warrants our bypassing normal procedures of trial and appeal. Thus we have exercised our original jurisdiction where electors sought to qualify an initiative for the ballot (*Perry v. Jordan*, (1949) 34 Cal.2d 87, 90-91); *Farley v. Healey* (1967) 67 Cal.2d 325, 326-327), where a proposed local election would have violated the city charter (*Miller v. Greiner* (1964) 60 Cal.2d 827, 830) and where an individual sought certification by the city clerk as a candidate for office (*Camera v. Mellon* (1971) 4 Cal.3d 714.)

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[27] This Court has jurisdiction over this original writ proceeding under Article VI, Section 10 of the California Constitution and Rule 56(a) of the California Rules of Court.

[28] The deadline for registration for the November 2006 election is October 23, 2006. Even if this proceeding is not resolved by that date, petitioners urge this Court to issue an opinion to allow for participation in elections next year. Local elections will be held in multiple counties in 2007. For example, Los Angeles County will hold elections in March 2007 in the cities of Signal Hill and South Pasadena, as will Sonoma County. Elections are also scheduled for November 2007 in San Bernardino and San Francisco counties. *See* Secretary of State website, "Local Elections – Summary," *at* http://www.ss.ca.gov/elections/localelections.

Jolicoeur v. Mihaley, 5 Cal. 3d 565, 570 n.1 (1971). In *Jolicoeur*, the Court heard and decided an original writ proceeding brought by two organizations and nine individuals to enforce the voting rights of 18 to 20 year olds in California. Newly enfranchised by the 26th Amendment, they were considered minors under existing state law. In reliance on a recent Attorney General opinion, local registrars declined to accept registrations of minors not living with their parents, effectively disenfranchising those whose parents lived outside the state. The Supreme Court took the case to determine registration eligibility in time for the young people to vote in the November 1971 election.

This case parallels *Jolicoeur*. Over 100,000 people will be disenfranchised because local registrars are, understandably, following an opinion issued by the Attorney General stating that felony probationers in local county jails are ineligible to vote. That conclusion, which petitioners contest, raises a pure issue of law that is appropriate for appellate resolution in the first instance. *See, e.g., Indus. Welfare Comm'n v. Superior Court*, 27 Cal. 3d 690, 699-700 (1980). By exercising its original jurisdiction, this Court may clarify these important questions in time for voters to participate in upcoming state and local elections. In contrast, a case in Superior Court will lack statewide jurisdiction and will take years to resolve, potentially depriving thousands of people of their right to vote at elections in 2006, 2007, and 2008.

This petition also satisfies the formal requisites for writ relief:

Petitioners are beneficially interested. This proceeding is brought by three (3) individuals confined in a local facility as a condition of felony probation. They seek to register in San Francisco county. They would directly benefit from a writ of mandate. *Cf. Jolicoeur*, 5 Cal. 3d at 565. The organizational petitioners are dedicated to supporting voting rights and the reintegration of former offenders into society. *Cf. Ramirez*, 9 Cal. 3d at 202 n.1 (petitioners included "League of Women Voters and three nonprofit organizations that support the interests of ex-

convicts"). Indeed, the League of Women Voters signed the ballot argument supporting Proposition 10, the initiative measure at the heart of this case. Where "a public right is at stake and the purpose of the mandamus action is to procure enforcement of a public duty," a petitioner "need not show he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced." *Green v. Obledo*, 29 Cal. 3d 126, 144 (1981).[29]

Mandate may be issued to the respondent election officials. Respondents are California officials charged with conducting elections: the Secretary of State and the registrar of voters of San Francisco county. "Voting registrars are public officers with the ministerial duty of permitting qualified voters to register. Mandamus is clearly the proper remedy for compelling an officer to conduct an election according to law." *Jolicoeur*, 5 Cal. 3d at 570 n.2. *See also Ramirez*, 9 Cal. 3d at 199; *Young v. Gnoss*, 7 Cal. 3d 189 (1972) (original writ of mandate issued to compel registration of people who had lived in county for 29 days); *Wenke v. Hitchcock*, 6 Cal. 3d 746, 750 (1972) (original writ of mandate issued to compel certification of candidate to run for office).

To protect the constitutional voting rights of felony probationers, petitioners ask this Court to issue a writ of mandate commanding respondents Secretary of State, Bruce McPherson, and San Francisco Director of Elections, John Arntz, to register all individuals, otherwise qualified to vote, who are detained in local jails under Penal Code sections 17 and 18 or as a condition of probation. Petitioners further request this court to issue a writ of mandate to respondent McPherson, directing him to take all ministerial actions to ensure that these new voters receive voting materials and are able to vote, and to notify all

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[29] This Court has frequently applied this principle. *See e.g., California Homeless & Hous. Coalition v. Anderson*, 31 Cal. App. 4th 450, 457-459 (1995); *Timmons v. McMahon*, 235 Cal. App. 3d 512, 518 (1991); *Planned Parenthood v. Van de Kamp*, 181 Cal. App. 3d 245, 256–257 (1986).

local registrars of voters of this Court's opinion on the voting rights of felony probationers.

CONCLUSION

For the foregoing reasons, the Court should hear the Petition and grant the relief requested by the Prayer.

Dated: August 22, 2006

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION
OF NORTHERN CALIFORNIA

SOCIAL JUSTICE LAW PROJECT

By: _____
Maya L. Harris

Attorneys for the Petitioners

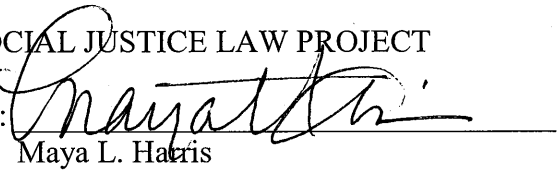
CERTIFICATION OF COMPLIANCE

Pursuant to California Rule of Court 13, I certify that the attached Petition for Writ of Mandate contains 13,981 words.

Dated: August 22, 2006

AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA

SOCIAL JUSTICE LAW PROJECT

By: 

Maya L. Harris

Attorneys for the Petitioners

PROOF OF SERVICE BY HAND DELIVERY

League of Women Voters of California, et al. v. McPherson, et al.

Case No. _____

I, Leah Cerri, declare that I am a citizen of the United States, employed in the City and County of San Francisco; I am over the age of 18 years and not a party to the within action or cause; my business address is 39 Drumm Street, San Francisco, California 94111.

On August 22, 2006, I served a copy of the attached

PETITION FOR WRIT OF MANDATE; MEMORANDUM OF POINTS AND AUTHORITIES; AND EXHIBITS

on each of the following by placing a true copy in a sealed envelope, and directing that the same be hand-delivered to the following:

Bruce McPherson, California Secretary of State
Office of the California Secretary of State
1500 11th Street, 6th Floor
Sacramento, CA 95814
(916) 653-6814

Bill Lockyer, Attorney General
Office of the Attorney General
1300 "I" Street
P.O. Box 944255
Sacramento, CA 94244-2550
(916) 445-9555

John Arntz, Director
Department of Elections
1 Dr. Carlton B Goodlett Place
San Francisco, CA 94102-4635
(415) 554-4375

I have been advised that each of these envelopes has been hand-delivered as directed. I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 22, 2006 at San Francisco, California.

_____

Leah Cerri