

California

SUPPLEMENTAL BALLOT PAMPHLET

This supplemental ballot pamphlet is sent to you separately from the pamphlet containing Propositions 181 through 188 and the statewide candidate statements because the measures contained herein qualified for the ballot after the printing deadline for the principal ballot pamphlet. Please check to be sure you receive two ballot pamphlets for the November 8, 1994 General Election. In order to distinguish between the two, this supplemental pamphlet is printed in blue ink. If you do not receive your main pamphlet, contact your county elections official or call 1-800-345-VOTE.

General Election

NOVEMBER 8, 1994

CERTIFICATE OF CORRECTNESS

I, Tony Miller, Acting Secretary of State of the State of California, do hereby certify that the measures included herein will be submitted to the electors of the State of California at the GENERAL ELECTION to be held throughout the State on November 8, 1994, and that this pamphlet has been correctly prepared in accordance with law.



Witness my hand and the Great Seal of the State in Sacramento, California,
this 22nd day of September 1994.

Tony Miller

TONY MILLER
Acting Secretary of State



Secretary of State

SACRAMENTO 95814

Dear Californians:

This is the supplemental ballot pamphlet, containing information about Propositions 189 through 191 for the November 8, 1994 General Election. These measures were placed on the ballot by the Legislature and the Governor after the printing deadline for the principal ballot pamphlet (which contains information about Propositions 181 through 188 and candidate statements).

All of those involved in the preparation of this pamphlet are constantly looking for ways to make the California Ballot Pamphlet better. Many suggestions made by voters have been put to use this year. New features this election include expanded statements from candidates for statewide office, an explanation of the job duties of each office, and an explanation of the electoral procedure for justices of the Supreme Court and courts of appeal. This information is contained in the principal ballot pamphlet. We hope these features prove useful and informative as you make your choices in this general election. We invite you to send your comments, suggestions, and new ideas for possible inclusion in future ballot pamphlets. Send your ideas to California Ballot Pamphlet, 1230 J Street, Sacramento, California 95814.

Please vote on November 8!

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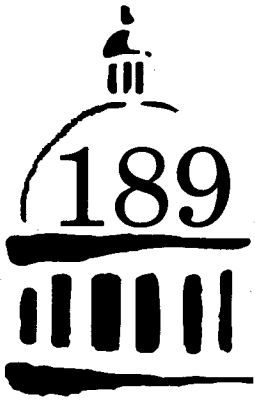
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November 8, 1994 Ballot Measures

	SUMMARY	WHAT YOUR VOTE MEANS	
		YES	NO
<p style="text-align: right;">189</p> <p>BAIL EXCEPTION. FELONY SEXUAL ASSAULT.</p> <p>Legislative Constitutional Amendment</p> <p>Put on the Ballot by the Legislature</p>	<p>Amends State Constitution to add felony sexual assault to crimes excepted from right to bail. Other exceptions already include capital offenses and felonies involving violence or threats of bodily harm to others. Fiscal impact: Unknown, but probably not significant, costs to local governments; unknown, but probably not significant, savings to the state.</p>	<p>A Yes vote on this measure means: The circumstances under which courts could deny bail would be broadened to include individuals accused of committing any felony "sexual assault."</p>	<p>A No vote on this measure means: The court could deny bail to individuals accused of certain types of sexual offenses involving violence and serious bodily harm.</p>
<p style="text-align: right;">190</p> <p>COMMISSION ON JUDICIAL PERFORMANCE.</p> <p>Legislative Constitutional Amendment</p> <p>Put on the Ballot by the Legislature</p>	<p>Transfers disciplinary authority over judges from California Supreme Court to Commission on Judicial Performance; provides for public proceedings; specifies circumstances warranting removal, retirement, suspension, admonishment, or censure of judges; increases Commission's citizen membership. Fiscal impact: Not likely to have a significant fiscal impact on the state.</p>	<p>A Yes vote on this measure means: A majority of the members of the Commission on Judicial Performance would be from the public; all formal charges and proceedings of the commission regarding misconduct by a judge would be open to the public.</p>	<p>A No vote on this measure means: A majority of the members of the Commission on Judicial Performance would be judges; only certain matters before the commission regarding misconduct by a judge would be open to the public.</p>
<p style="text-align: right;">191</p> <p>JUSTICE COURTS.</p> <p>Legislative Constitutional Amendment</p> <p>Put on the Ballot by the Legislature</p>	<p>Abolishes justice courts; incorporates their operations, judges, and personnel within municipal courts. Authorizes Legislature to provide for organization, jurisdiction of municipal courts and qualification and compensation of municipal court judges, staff. Fiscal impact: Probably no significant fiscal impact on state or local governments.</p>	<p>A Yes vote on this measure means: Justice courts would be eliminated and these courts would become municipal courts; all justice court judges would become full-time municipal court judges.</p>	<p>A No vote on this measure means: Justice courts would continue to serve portions of counties with 40,000 or fewer residents. Justice court judges would continue to divide their time between their own courts and other trial courts.</p>

November 8, 1994 Ballot Measures—Continued

ARGUMENTS		WHOM TO CONTACT FOR MORE INFORMATION	
PRO	CON	FOR	AGAINST
<p>PROPOSITION 189 WOULD ALLOW JUDGES TO DENY BAIL TO SEXUAL PREDATORS. When an accused rapist or child molester has a record of previous convictions a judge should be able to keep him off the streets until the trial.</p> <p>PROTECT OUR COMMUNITIES! PROTECT OUR CHILDREN! VOTE YES ON 189!</p>	<p>Proposition 189 is unnecessary. Violent felons can be denied bail now. This is just election year pandering by politicians who want to look tough on crime. Unless the accused is a flight risk or has threatened someone specifically, bail should be granted. In America you are innocent until proven guilty.</p>	<p>Assemblyman Cruz M. Bustamante State Capitol, Room 4144 Sacramento, CA 95814 (916) 445-8514</p>	<p>Libertarian Party of California 1-800-637-1776</p>
<p>Proposition 190 will reform California's judicial discipline system, which is comprised of a majority of judges who discipline their peers in secret. Proposition 190 will open formal disciplinary proceedings against judges to the public and will change the membership of the commission so that the public is in the majority.</p>	<p>Voting NO on Proposition 190 will prevent political appointments from dominating the Commission on Judicial Performance, will retain the power to impose judicial discipline in the California Supreme Court, and provide the legislature more time to consider necessary changes in the disciplinary system for judges.</p>	<p>Speaker Willie L. Brown, Jr. Attention: Cary Rudman (916) 445-8077</p>	<p>Quentin L. Kopp 655 Montgomery Street, 16th Floor San Francisco, CA 94111</p>
<p>Voting Yes on 191 will streamline California's court structure and promote the equal administration of justice. Justice court judges have the same jurisdiction, qualifications, and workload as municipal court judges. Using two names wrongly implies that the brand of justice you get depends on the population of your county.</p>	<p>Proposition 191 goes too far. It does NOT simply eliminate justice courts. It would guarantee a job in newly-created municipal courts to every justice court judge and court employee—regardless of whether there are better qualified applicants or even a need for some of these former justice court employees.</p>	<p>Constance Dove or Richard S. Piedmonte California Judges Association 301 Howard Street, Suite 1040 San Francisco, CA 94105 (415) 495-1999</p>	<p>NOT PROVIDED</p>



**Bail Exception. Felony Sexual Assault.
Legislative Constitutional Amendment.**

Official Title and Summary Prepared by the Attorney General

**BAIL EXCEPTION. FELONY SEXUAL ASSAULT.
LEGISLATIVE CONSTITUTIONAL AMENDMENT.**

- Amends State Constitution to add felony sexual assault offenses to crimes currently excepted from right to bail, which are 1) capital crimes; 2) felonies involving acts of violence when there is a substantial likelihood of harm to others if bail is granted; and, 3) any felony when the accused has threatened another with great bodily harm and the court finds a substantial likelihood that release would result in such harm.
- Requires judicial findings upon clear and convincing evidence of likelihood that release would result in great bodily harm to others.

**Summary of Legislative Analyst's
Estimate of Net State and Local Government Fiscal Impact:**

- Unknown, but probably not significant, costs to local governments for jailing individuals denied bail.
- Unknown, but probably not significant, savings to the state because some individuals held without bail and then convicted can receive credit for their jail time, thereby reducing the length of stay in prison.

Final Votes Cast by the Legislature on ACA 37 (Proposition 189)

Assembly: Ayes 69 Senate: Ayes 30
 Noes 0 Noes 0

Analysis by the Legislative Analyst

Background

Bail is one means by which a person who is accused of a crime may obtain release from custody after arrest. The bail procedure generally requires the accused person to put up money, property, or other security that will be forfeited if the individual fails to return to court to stand trial.

The California Constitution generally requires the courts to release on bail all persons accused of committing crimes, while they await trial. The courts may deny bail only for those persons who are accused of committing any of the following offenses:

- A crime that is punishable by death.
- A felony offense where the court finds that the accused person has threatened another person with serious bodily harm and there is a substantial likelihood that the accused person would carry out the threat if released.
- A felony offense involving violence against another person, when the court finds that there is a substantial likelihood that the person's release would result in serious bodily harm to others.

For purposes of these provisions, existing statutory law specifies that certain types of sexual offenses are to be

considered felony offenses involving violence and serious bodily harm.

Proposal

This constitutional amendment would permit the courts to deny bail for a wider range of sexual offenses. Specifically, this measure would allow the courts to deny bail if a person is accused of committing any felony "sexual assault" offense.

Fiscal Effect

By broadening the circumstances under which bail could be denied, this measure would increase costs to local governments to operate jails because it would increase the number of persons held in jail while they are awaiting trial. These costs are unknown, but probably not significant.

There would be savings to state government, however, if the person for whom bail is denied is later convicted. This is because persons who are held in jail can receive credit for their jail time, thereby reducing their stay if later sentenced to state prison. This would reduce the state's costs of operating the prison system by an unknown, but probably not a significant amount.

For the text of Proposition 189 see page 18

Argument in Favor of Proposition 189

KEEP SEXUAL PREDATORS OFF OUR STREETS

Currently, persons accused of crimes are entitled to remain free until their trial unless they are accused of murder or a violent crime—and the judge believes the accused to be a danger to society.

PROPOSITION 189 WOULD ALLOW JUDGES TO DENY BAIL TO SEXUAL PREDATORS—PEOPLE CHARGED WITH FELONY SEXUAL ASSAULT OFFENSES ON ANOTHER PERSON.

30% of those convicted of sex offenses commit another offense within two years of their release—higher than any other crime.

When an accused rapist or child molester has a record of previous convictions a judge should be able to keep him off the streets until the trial.

Protect our communities! Protect our children!

VOTE YES ON PROPOSITION 189.

LET'S KEEP SEXUAL PREDATORS OFF OUR STREETS.

DEDE ALPERT

Assemblywoman, 78th District

MARGARET SNYDER

Assemblywoman, 25th District

ROBERT PRESLEY

State Senator, 36th District

Rebuttal to Argument in Favor of Proposition 189

Nothing in Proposition 189 says that the accused sexual offender must have a record of previous convictions in order for the judge to deny bail. A person accused of a first-time non-violent offense (perhaps “date rape”) could be denied bail.

For over 200 years, our laws have held that those accused are innocent until proven guilty. The main reason for bail at all is to give a financial incentive for the accused to show up in court. There’s no way to know if someone will attack after being released on bail.

Proposition 189 is really designed to boost the chances of politicians in an election year. Supporters can say they

are tough on crime, and thus rake in votes from Californians justly concerned about violence in the streets.

Don’t be fooled. Don’t tinker with the state constitution to chip away at the presumption of innocence. Vote NO on Proposition 189.

TED BROWN

Chairman, Libertarian Party of Los Angeles County

RICHARD BURNS

Attorney at Law

RICHARD RIDER

Stockbroker/Financial Planner

Bail Exception. Felony Sexual Assault. Legislative Constitutional Amendment.

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Argument Against Proposition 189

Proposition 189 is totally unnecessary. Violent felons can be denied bail now. To specifically add "sexual assault offenses" looks like election year pandering to us.

We certainly believe that rapists should be kept off the street. But in America you are innocent until proven guilty. Bail should be granted in most cases—but should be high enough to guarantee that the accused will appear in court.

The U.S. luckily has no history of preventive detention. It's almost impossible to know if someone will cause "great bodily harm to others." An exception would be if the accused criminal specifically threatens the victim or a witness.

Let's be reasonable. Proposition 189 is a waste of time. It allows politicians to tell voters they are tough on crime. It will cost taxpayers money to keep accused people in county jails before their trials. It will deny courts some bail money.

Worst of all, the Legislature placed Propositions 189, 190, and 191 on the ballot over two months past the legal deadline. The November Ballot Pamphlet has already been printed. It will cost taxpayers over \$1 million to send out a supplemental ballot pamphlet to over 13 million registered voters. This is downright thievery! Couldn't these propositions wait until the 1996 primary election?

Don't let legislators take advantage of your desire to lock up dangerous criminals. Proposition 189 is only window dressing for their irresponsibility and contempt for taxpayers. We urge you to vote NO.

TED BROWN
Chairman, Libertarian Party of Los Angeles County

RICHARD BURNS
Attorney at Law

RICHARD RIDER
Stockbroker/Financial Planner

Rebuttal to Argument Against Proposition 189

Yes on 189—No to Sexual Predators

This proposition isn't about money or politics, it's about protecting innocent, law-abiding citizens from the lowest and most vicious variety of criminals that prowl our streets—sexual predators.

We have all become prisoners in our own homes because of a "revolving door" criminal justice system. Repeat sex offenders keep breaking the law and being put back on the streets in our communities.

Bail can already be denied to someone who is accused of committing a capital crime, such as kidnapping or murder, if the judge believes that the person is a threat to the public. But there are loopholes in the law with regard to sexual deviants.

No civil liberties would be harmed. The judge would still be required to provide clear and convincing evidence that the person is a danger to society.

The opposition argument callously tries to turn a human tragedy into a profit center. They would propose we tell a grief-stricken parent or spouse, who has just left the hospital with a rape victim, that "we are sorry for your loss, but we didn't want to deny our court system its bail money."

This isn't about profit and loss, it's about making our streets safe for our families and children.

Vote Yes on Proposition 189!

DEDE ALPERT
Assemblywoman, 78th District

MARGARET SNYDER
Assemblywoman, 25th District

CRUZ M. BUSTAMANTE
Assemblyman, 31st District



**Commission on Judicial Performance.
Legislative Constitutional Amendment.**

Official Title and Summary Prepared by the Attorney General

**COMMISSION ON JUDICIAL PERFORMANCE.
LEGISLATIVE CONSTITUTIONAL AMENDMENT.**

- Transfers authority to remove or discipline judges from California Supreme Court to Commission on Judicial Performance.
- Provides for public disciplinary proceedings against judges and former judges and specifies the circumstances warranting their removal, retirement, suspension, admonishment, or censure.
- Increases non-judicial citizen membership on the Commission.
- Specifies authority of Commission to discipline former judges.
- Provides immunities to persons employed by or making statements to the Commission.
- Specifies review processes for Commission determinations and requires the Supreme Court to issue Code of Judicial Ethics.

**Summary of Legislative Analyst's
Estimate of Net State and Local Fiscal Impact:**

- Not likely to have a significant fiscal impact on the state.

Final Votes Cast by the Legislature on ACA 46 (Proposition 190)

Assembly: Ayes 74	Senate: Ayes 29
Noes 1	Noes 1

Analysis by the Legislative Analyst

Background

Under the California Constitution, the Commission on Judicial Performance handles complaints against judges. The commission investigates charges of misconduct by a judge in office or failure or inability of a judge to perform his or her duties.

The commission is composed of nine members. The members include five judges, who are appointed by the California Supreme Court; two members of the State Bar of California, who are appointed by the State Bar's governing body; and two public members, who are appointed by the Governor and approved by the California Senate. Each member is appointed to a four-year term, and no member may serve more than two terms.

The commission receives complaints against judges each year (950 complaints in 1993). The complaints and investigations are handled on a confidential basis. For less serious cases of misconduct, the commission may privately reprimand a judge; the Supreme Court may review such a reprimand. The commission may also publicly reprimand a judge if the judge consents.

In other cases, the commission makes formal charges and a hearing is held. In 1993, nine cases (out of 950 complaints) proceeded to a hearing. The commission may recommend to the Supreme Court that a judge be censured, retired, or removed. Such actions may then be taken by the Supreme Court. Since 1961, the commission has made 32 recommendations to the Supreme Court to censure or remove a judge. The Court upheld the recommendations in 29 cases; one case is pending.

Proposal

This constitutional amendment changes the composition of the commission and makes a number of changes to the procedures for disciplining judges. Among its provisions, the measure increases the membership of the commission from nine to eleven members and increases the number of public members so that they are a majority on the commission. Specifically, the members would include three judges, who would be appointed by

the Supreme Court; two members of the State Bar of California, who would be appointed by the Governor; and six public members (two representatives appointed by each of the following: the Governor, the Senate Rules Committee, and the Speaker of the Assembly).

The amendment provides that, when the commission begins formal proceedings against a judge, the charges and all subsequent papers and proceedings shall be open to the public. Also, this measure permits the commission, rather than the Supreme Court, to retire or remove a judge, or to censure a judge or former judge. Such actions could be reviewed by the Supreme Court. In a case against a Supreme Court Justice, a special panel of appellate court judges would review the case. The measure also permits the commission to publicly reprimand a judge without the judge's consent. The commission could disqualify a judge from performing his or her duties when the commission begins a formal proceeding that charges the judge with misconduct or disability. The commission also may bar a *former* judge who has been censured or removed from receiving a judicial appointment or assignment to serve any California state court.

The measure provides that persons who give statements to the commission are protected from civil lawsuits or adverse actions that may be taken against them by their employers as a result of their statements. Also, it protects commission members and employees against lawsuits that may be brought as a result of their work.

Finally, the amendment requires the commission to provide, upon request of the Governor of any state, the President of the United States, and the California Commission on Judicial Appointments, confidential information on disciplinary actions taken against a judge who is an applicant for another judicial appointment.

Fiscal Effect

This measure is not likely to have a significant fiscal impact on the state because its changes are largely procedural in nature.

For the text of Proposition 190 see page 18

Commission on Judicial Performance. Legislative Constitutional Amendment.

Argument in Favor of Proposition 190

THE TIME HAS COME TO REFORM
CALIFORNIA'S JUDICIAL DISCIPLINE SYSTEM.
VOTE "YES" ON PROPOSITION 190.

In 1960, California created the first judicial discipline commission in the United States. It was a model for all 50 states and the District of Columbia. But now California has fallen behind the rest of the nation. A system that was once innovative has become antiquated. The California commission, which is made up of a majority of judges, has held *only one public hearing in the last six years*. Clearly, it is inappropriate to have judges disciplining their peers in a secret environment.

PROPOSITION 190 ENSURES PUBLIC CONTROL OF JUDICIAL DISCIPLINE.

The California commission is currently composed of five judges, two lawyers and two public citizens and there is no requirement that formal disciplinary proceedings be open to the public. Proposition 190 would eliminate judicial domination of the commission in favor of a public majority. Specifically, under Proposition 190, the Commission on Judicial Performance would be made up of three judges, two attorneys and six public members. **A PUBLIC MAJORITY WILL ENSURE A FAIR AND FIRM SYSTEM OF JUDICIAL DISCIPLINE.**

THE PUBLIC HAS A RIGHT TO KNOW WHEN JUDGES ARE CHARGED WITH MISCONDUCT.

Under Proposition 190, the commission would be required to open *all formal proceedings* against judges to the public. Currently, all hearings and commission documents, including the actual charges against the judge, are secret. **WITHOUT KNOWLEDGE OF CHARGES OR PROCEEDINGS, THE PUBLIC CANNOT HAVE CONFIDENCE IN THE JUDICIAL SYSTEM.** Just as we require criminal proceedings and attorney discipline proceedings to be open, we should also

hold judges to the same standard where serious misconduct is at issue.

PROPOSITION 190 STOPS JUDGES FROM ESCAPING DISCIPLINE BY RETIRING OR RESIGNING WITH CHARGES OF MISCONDUCT PENDING AGAINST THEM.

Proposition 190 will prevent judges charged with misconduct from avoiding discipline by retiring or resigning with charges pending. Judges should be held accountable for improper conduct on the bench. Proposition 190 allows the commission to publicly discipline former judges for conduct which occurred while they held judicial office. This will provide the public with important information about judges who resign with charges pending and then go to work in the private sector as arbitrators or private judges.

Proposition 190 is an important and timely reform measure. Judges are public servants and play a critical role in our society. The public must have confidence and trust in those holding judicial office. **PROPOSITION 190 PLACES JUDICIAL DISCIPLINE IN THE HANDS OF A BROAD PANEL OF PUBLIC CITIZENS, JUDGES AND ATTORNEYS AND OPENS ALL FORMAL PROCEEDINGS TO THE PUBLIC. JUST AS OTHER STATES HAVE DONE IN RECENT YEARS, CALIFORNIA MUST ELIMINATE SECRECY AND ENSURE INTEGRITY IN THE DISCIPLINARY PROCESS.**

VOTE "YES" ON PROPOSITION 190.

WILLIE L. BROWN, JR.

Speaker, California State Assembly

ALFRED E. ALQUIST

California State Senator

MARC POCHE

Associate Justice, California Court of Appeal

Rebuttal to Argument in Favor of Proposition 190

There's no question but that the current system of hearings by the California Commission on Judicial Performance should be changed. There's no argument about that. Creating a requirement of open, public hearings respecting the relatively few formal complaints against California judges, however, is far different from turning the Commission into a politically-appointed body. That's the vice of Proposition 190. Instead simply of changing the Constitution to require open, public hearings of charges against judges (which are relatively few compared to the 2,000 judges in California) Speaker Willie Brown has written a measure which transcends that elemental principle. While it may seem difficult to divorce the desired constitutional revision in the nature of the hearings on judicial discipline from the selection process for the Commission, Californians should realize it is injurious to our separation of powers form of government and the independence of the judicial branch of government to adopt Proposition 190. Rather, as the American Bar Association has stated, the members of the

Commission on Judicial Performance should be comprised equally of judges, public members and lawyers in order to balance viewpoints and distribute the power of appointment among the branches of government. Appointments should reflect the diversity of California's population and not be made on the basis of politics or ideology. The Commission's independence must be protected from the appearance of outside interference. We should reject Proposition 190 and re-write it with the public hearing requirement and equal power of appointment among the branches of state government.

QUENTIN L. KOPP

State Senator

(Independent-San Francisco/San Mateo)

JUDGE JOSEPH A. WAPNER

Retired Judge, Los Angeles Superior Court

ARLEIGH WOODS

Presiding Justice, California Court of Appeal

Argument Against Proposition 190

DON'T BE FOOLED! This alleged attempt to regulate the judiciary is really an attempt to politicize the Commission on Judicial Performance. This power grab changes the structure of the Commission by allowing politicians to appoint a majority of its members. Eight out of the 11 members would be appointed by politicians, giving them a degree of power over the judicial branch unknown anywhere else in the United States.

The public needs a judicial disciplinary system uninfluenced by partisan politics. Proceedings before the Commission should be opened to the public, but this proposal threatens the independence of the Commission and will divert its focus to the expectations of the appointing parties.

There is a better alternative, which the Legislature ignored. The American Bar Association has just completed a five year study conducted by prominent citizens, judges and lawyers and adopted its first national model for judicial disciplinary proceedings. The model recommends a commission with equal numbers of citizens, judges, and lawyers appointed by the Governor, State Supreme Court and the State Bar. This measure, however, takes the commendable, worthwhile goal of producing an accountable, open system of judicial discipline and turns it into a dangerous, irresponsible attack on the judicial branch of government. Its proposed commission has virtually unchecked power; its so-called

“public member majority” in reality will be a majority of people with close political ties to the Governor, the Assembly Speaker and State Senate leadership.

The framers of our Constitution knew that an independent judiciary is one of the greatest safeguards of liberty. While California needs a strong, effective Commission on Judicial Performance, it does not need and can't afford, an ill-conceived, poorly drafted constitutional amendment which gives a handful of insiders unprecedented control over judicial conduct.

The proposal also removes disciplinary powers from the California Supreme Court and transfers such powers to the politicized Commission. Such shift raises serious due process issues and will result in costly and needless litigation at taxpayer expense.

Vote No! California deserves a judiciary that is accountable and independent. Send a message to the Legislature to keep partisan politics out of the judicial disciplinary process. Send them back to the drawing board to examine the work done by leading national authorities and give California a system which will place us in the forefront of judicial discipline.

QUENTIN L. KOPP

State Senator

(I-San Francisco/San Mateo)

JUDGE JOSEPH A. WAPNER

Retired Judge, Los Angeles Superior Court

Rebuttal to Argument Against Proposition 190

The opponents claim that Proposition 190 will create a politicized body. **TWENTY-FOUR STATES HAVE CREATED COMMISSIONS WITH EQUAL OR GREATER PUBLIC MEMBERSHIP ON THEIR JUDICIAL DISCIPLINARY COMMISSIONS.** These commissions represent a variety of appointing powers. Just as with Proposition 190, these states recognized that a broad base of constitutional appointing powers does not sacrifice the integrity of the Judiciary.

IN FACT, NO STATE HAS ADOPTED THE ABA MODEL. Instead, a number of states have successfully changed to a public majority membership after having commissions dominated by judges. The drafters of the ABA model specifically refused to recommend that disciplinary commissions have a majority of public members because they thought the issues would be too complicated. Everyday, jurors are asked to decide serious legal issues, yet the lawyers and judges who drafted the ABA proposal feared the public would not understand

when a judge has acted inappropriately.

PROPOSITION 190 WILL CREATE A MORE INDEPENDENT COMMISSION BY MAKING IT AN INSTITUTION SEPARATE FROM ANY ONE INFLUENCING BODY. Proposition 190 specifically provides for a broad base of appointing powers—the Supreme Court, the Governor, and the Legislature—so that no one branch of government can dominate this important body.

Proposition 190 protects the public by providing for their participation. It is good, sound public policy.

VOTE “YES” ON PROPOSITION 190.

WILLIE L. BROWN, JR.

Speaker, California State Assembly

ALFRED E. ALQUIST

California State Senator

TERRY B. O'ROURKE

Judge, San Diego Superior Court



Justice Courts. Legislative Constitutional Amendment.

Official Title and Summary Prepared by the Attorney General

JUSTICE COURTS. LEGISLATIVE CONSTITUTIONAL AMENDMENT.

- Effective January 1, 1995, eliminates justice courts; elevates existing justice courts to municipal courts; and unifies justice courts within municipal courts. Continues number, qualifications, compensation of judges and personnel, until modified by Legislature.
- Authorizes Legislature to provide for organization and jurisdiction of municipal courts, and to prescribe number, qualifications and compensation of municipal court judges, staff.
- Makes conforming changes to composition of Judicial Council, appellate jurisdiction of Superior Court.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Probably no significant fiscal impact on state or local governments.

Final Votes Cast by the Legislature on SCA 7 (Proposition 191)

Assembly: Ayes 79	Senate: Ayes 39
Noes 0	Noes 0

Analysis by the Legislative Analyst

Background

The California Constitution currently provides for superior, municipal, and justice courts. These courts are referred to as the state's "trial courts."

Superior courts generally have jurisdiction over cases involving felonies, family law (for example, divorce cases), juvenile law, civil law suits involving more than \$25,000, and appeals from municipal and justice court decisions. Each of the state's 58 counties has a superior court.

Municipal and justice courts generally have jurisdiction over misdemeanors and infractions and most civil law suits involving disputes of \$25,000 or less. Counties are divided into municipal and justice court districts based on population. Municipal court districts have more than 40,000 residents; justice court districts have 40,000 or fewer residents.

As of August 1, 1994, there were 37 justice courts in California. Currently, most justice court judges divide their time between their own courts and other trial courts.

Proposal

This constitutional amendment eliminates justice courts and provides that all justice courts would become municipal courts. In addition, all justice court judges would become full-time municipal court judges. The amendment would become effective on January 1, 1995.

Fiscal Effect

This measure probably would have no significant fiscal impact on the state or local governments. This is because these changes are primarily organizational in nature.

For the text of Proposition 191 see page 20

Argument in Favor of Proposition 191

Proposition 191 finishes a job that the voters of California began when they overwhelmingly approved Proposition 91 in November of 1988. They decided that there should be one standard of equal access to justice in both rural areas and urban areas. Proposition 91 made most of the changes necessary to equalize the justice courts that serve less populous counties with the municipal courts that serve most Californians. Proposition 191 is the culmination of the process of professionalizing and equalizing the administration of justice in rural areas.

Already today:

- The jurisdiction of justice courts is the same as that of municipal courts.
- Justice court judges are subject to the same rules of judicial conduct and discipline as municipal court judges.
- Justice court judges serve terms of the same length and are accountable to the public at the same elections as municipal court judges.

By approving Proposition 91, the voters:

- Put the judgments and decisions rendered in justice courts on an equal footing with those of municipal courts and any other court of record.
- Required justice court judges to have the same legal experience as judges of the municipal courts throughout the state.
- Imposed the requirement that justice court judges work full time for full salary, sitting by assignment as needed anywhere in the state when their home courts do not require the judge's presence.

All of these changes have proven extremely successful. The full time justice court judges' program saved the state the cost of more than two dozen new judgeships!

Proposition 191 neither increases nor decreases the current number of judges, courts, or judicial districts. But the time has come to reflect the full compliance of justice courts with the standards of municipal courts by granting them the same title. The label "municipal court" commands greater respect than the designation "justice court," and will increase respect for the court's authority. As the courts come to grips with the increased work required to put the "3 strikes" felony sentencing legislation into effect, the terms used in our courts should not raise doubts that erect barriers to the use of all available judges.

Under Proposition 191, Californians who appear in any of the 47 remaining justice courts will no longer be given the false impression that they are receiving a second-class brand of justice. Your Yes vote helps California fulfill the voter mandate to provide citizens in our state's less populous counties with courts of equal stature and judges of equal quality to those found in Los Angeles, San Francisco, and other cities.

VOTE YES ON PROPOSITION 191!

ROBERT PRESLEY

State Senator, 36th District

E. MAC AMOS, JR.

President, California Judges Association

CARLOS C. LAROCHE

Judge of the Mariposa Justice Court

Rebuttal to Argument in Favor of Proposition 191

Proponents argue that, under the "3 strikes" law on the books (and certainly under the "3 strikes" initiative on the ballot as Proposition 184), California will need all of the judges and court personnel it can find.

It is true that these new "tough on crime" laws will require thousands of new state employees and perhaps twice as much prison space. The cost of locking up so many people will be astronomical. Under Proposition 184, for example, the defendant need not even have displayed any real threat to the rest of us to get life in prison. The third "strike" would be any "felony" which might include possession of more than an ounce of marijuana (H&S Code Section 11359) or possession of

someone else's prescription drug (H&S Code Section 11350).

Even if we fall for the "tough on crime" election talk and pass overly-broad laws that will require thousands of new state employees, there is no reason former "justice court" judges and court personnel should be guaranteed some of the jobs.

In the private sector, jobs are not guaranteed. Let them compete for the new positions.

GARY B. WESLEY

Attorney at Law

Argument Against Proposition 191

This measure is a proposal by the Legislature to amend the California Constitution so as to eliminate justice courts and elevate all justice court judges in the State to municipal court judges. It also provides for the retention of all "officers, attachés, and employees" of existing justice courts. Justice courts still exist in some small counties in California.

The principal problem with this measure is its elevation of justice court judges to municipal court judges and the retention of all employees. If justice courts are to be eliminated, the judges and employees should have to apply for jobs in the municipal court. Perhaps they will not be needed or sufficiently qualified.

GARY B. WESLEY
Attorney at Law

Rebuttal to Argument Against Proposition 191

The opponent presents no serious argument against Proposition 191. There is no question of lesser qualifications for justice court judges. In 1988, the voters required all justice court judges to have the same experience to qualify for office as is required of municipal court judges, and today every single justice court judge is fully qualified for the municipal court bench. Most, if not all, have twice the experience required—enough to qualify for the superior court as well.

Proposition 191 will neither add nor subtract judges or court employees from the current rosters of the affected courts. It is not intended to do so. Continuation in office of all current court employees is not a burden on state or local government, as the opponent implies. The language in Proposition 191 merely ensures that the level of

service provided to the public remains the same and to protect the rights of current employees.

The time has come to complete the job of providing our rural population with the same access to quality justice as provided to urban residents. Proposition 191 is good government. Streamline court structure and put an end to the appearance of second-class justice based on population numbers.

VOTE YES ON PROPOSITION 191

ROBERT PRESLEY
State Senator, 36th District
E. MAC AMOS, JR.
President, California Judges Association
CARLOS C. LAROCHE
Judge of the Mariposa Justice Court

Proposition 189: Text of Proposed Law

This amendment proposed by Assembly Constitutional Amendment 37 (Statutes of 1994, Resolution Chapter 95) expressly amends the Constitution by amending a section thereof; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO ARTICLE I, SECTION 12

SEC. 12. A person shall be released on bail by sufficient sureties, except for:

(a) Capital crimes when the facts are evident or the presumption great;

(b) Felony offenses involving acts of violence on another person, or *felony sexual assault offenses on another person*, when the facts are evident or the presumption great and the court finds based upon clear and convincing evidence that there is a substantial

likelihood the person's release would result in great bodily harm to others; or

(c) Felony offenses when the facts are evident or the presumption great and the court finds based on clear and convincing evidence that the person has threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released.

Excessive bail may not be required. In fixing the amount of bail, the court shall take into consideration the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case.

A person may be released on his or her own recognizance in the court's discretion.

Proposition 190: Text of Proposed Law

This amendment proposed by Assembly Constitutional Amendment 46 (Statutes of 1994, Resolution Chapter 111) expressly amends the Constitution by adding a section thereto and amending sections thereof; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENTS TO ARTICLE VI

First—That Section 8 of Article VI thereof is amended to read:

SEC. 8. (a) The Commission on Judicial Performance consists of ~~2 judges of courts of appeal, 2 judges of superior courts~~ *one judge of a court of appeal, one judge of a superior court*, and one judge of a municipal court, each appointed by the Supreme Court; 2 members of the State Bar of California who have practiced law in this State for 10 years, *each appointed by its governing body the Governor*; and ~~2~~ *6* citizens who are not judges, retired judges, or members of the State Bar of California, ~~appointed by the Governor and approved by the Senate, a majority of the membership concurring 2 of whom shall be appointed by the Governor, 2 by the Senate Committee on Rules, and 2 by the Speaker of the Assembly.~~ Except as provided in subdivision (b), all terms are *for 4 years*. No member shall serve more than 2 4-year terms, *or for more than a total of 10 years if appointed to fill a vacancy.*

Commission membership terminates if a member ceases to hold the position that qualified the member for appointment. A vacancy shall be filled by the appointing power for the remainder of the term. A member whose term has expired may continue to serve until the vacancy has been filled by the appointing power. *Appointing powers may appoint members who are already serving on the commission prior to March 1, 1995, to a single 2-year term, but may not appoint them to an additional term thereafter.*

(b) To create staggered terms among the members of the Commission on Judicial Performance, the following members shall be appointed, as follows:

(1) ~~The court of appeal member appointed to~~

~~immediately succeed the term that expires on November 8, 1988, shall serve a 2-year term.~~

~~(2) Of the State Bar members appointed to immediately succeed terms that expire on December 31, 1988, one member shall serve for a 2-year term.~~

(1) Two members appointed by the Supreme Court to a term commencing March 1, 1995, shall each serve a term of 2 years and may be reappointed to one full term.

(2) One attorney appointed by the Governor to a term commencing March 1, 1995, shall serve a term of 2 years and may be reappointed to one full term.

(3) One citizen member appointed by the Governor to a term commencing March 1, 1995, shall serve a term of 2 years and may be reappointed to one full term.

(4) One member appointed by the Senate Committee on Rules to a term commencing March 1, 1995, shall serve a term of 2 years and may be reappointed to one full term.

(5) One member appointed by the Speaker of the Assembly to a term commencing March 1, 1995, shall serve a term of 2 years and may be reappointed to one full term.

(6) All other members shall be appointed to full 4-year terms commencing March 1, 1995.

Second—That Section 18 of Article VI thereof is amended to read:

SEC. 18. (a) A judge is disqualified from acting as a judge, without loss of salary, while there is pending (1) an indictment or an information charging the judge in the United States with a crime punishable as a felony under California or federal law, or (2) a ~~recommendation~~ *petition to the Supreme Court to review a determination* by the Commission on Judicial Performance ~~for removal or retirement of the~~ *to remove or retire a judge.*

~~(b) On recommendation of the~~ *The Commission on Judicial Performance may disqualify a judge from acting as a judge, without loss of salary, upon notice of formal proceedings by the commission charging the judge with judicial misconduct or disability.*

~~(c) The Commission on Judicial Performance or on its own motion, the Supreme Court may shall~~ *suspend a judge from office without salary when in the United*

States the judge pleads guilty or no contest or is found guilty of a crime punishable as a felony under California or federal law or of any other crime that involves moral turpitude under that law. If the conviction is reversed, suspension terminates, and the judge shall be paid the salary for the judicial office held by the judge for the period of suspension. If the judge is suspended and the conviction becomes final, the ~~Supreme Court Commission on Judicial Performance~~ shall remove the judge from office.

~~(c) On recommendation of~~

~~(d) Except as provided in subdivision (f), the Commission on Judicial Performance the Supreme Court may (1) retire a judge for disability that seriously interferes with the performance of the judge's duties and is or is likely to become permanent, and or (2) censure a judge or former judge or remove a judge for action occurring not more than 6 years prior to the commencement of the judge's current term or of the former judge's last term that constitutes wilful willful misconduct in office, persistent failure or inability to perform the judge's duties, habitual intemperance in the use of intoxicants or drugs, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The Commission on Judicial Performance may, or (3) publicly or privately admonish a judge or former judge found to have engaged in an improper action or dereliction of duty, subject to review in the Supreme Court in the manner provided for review of causes decided by a court of appeal. The commission may also bar a former judge who has been censured from receiving an assignment, appointment, or reference of work from any California state court. Upon petition by the judge or former judge, the Supreme Court may, in its discretion, grant review of a determination by the commission to retire, remove, censure, admonish, or disqualify pursuant to subdivision (b) a judge or former judge. When the Supreme Court reviews a determination of the commission, it may make an independent review of the record. If the Supreme Court has not acted within 120 days after granting the petition, the decision of the commission shall be final.~~

~~(d)~~

~~(e) A judge retired by the Supreme Court commission shall be considered to have retired voluntarily. A judge removed by the Supreme Court commission is ineligible for judicial office, including receiving an assignment, appointment, or reference of work from any California state court, and pending further order of the court is suspended from practicing law in this State. The State Bar may institute appropriate attorney disciplinary proceedings against any judge who retires or resigns from office with judicial disciplinary charges pending.~~

~~(e)~~

~~(f) A recommendation of determination by the Commission on Judicial Performance for the to admonish or censure, removal or retirement of a judge or former judge of the Supreme Court or remove or retire a judge of the Supreme Court shall be determined reviewed by a tribunal of 7 court of appeal judges selected by lot.~~

~~(f) If, after conducting a preliminary investigation, the Commission on Judicial Performance by vote determines that formal proceedings should be instituted:~~

~~(1) The judge or judges charged may require that~~

~~formal hearings be public, unless the Commission on Judicial Performance by vote finds good cause for confidential hearings.~~

~~(2) The Commission on Judicial Performance may, without further review in the Supreme Court, issue a public reproof with the consent of the judge for conduct warranting discipline. The public reproof shall include an enumeration of any and all formal charges brought against the judge which have not been dismissed by the commission.~~

~~(3) The Commission on Judicial Performance may in the pursuit of public confidence and the interests of justice, issue press statements or releases or, in the event charges involve moral turpitude, dishonesty, or corruption, open hearings to the public.~~

~~(g) The Commission on Judicial Performance may issue explanatory statements at any investigatory stage when the subject matter is generally known to the public.~~

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

~~(g) No court, except the Supreme Court, shall have jurisdiction in a civil action or other legal proceeding of any sort brought against the commission by a judge. Any request for injunctive relief or other provisional remedy shall be granted or denied within 90 days of the filing of the request for relief. A failure to comply with the time requirements of this section does not affect the validity of commission proceedings.~~

~~(h) Members of the commission, the commission staff, and the examiners and investigators employed by the commission shall be absolutely immune from suit for all conduct at any time in the course of their official duties. No civil action may be maintained against a person, or adverse employment action taken against a person, by any employer, public or private, based on statements presented by the person to the commission.~~

~~(i) The Commission on Judicial Performance shall make rules implementing this section, including, but not limited to, the following:~~

~~(1) The commission shall make rules for the investigation of judges. The commission may provide for the confidentiality of complaints to and investigations by the commission.~~

~~(2) The commission shall make rules for formal proceedings against judges when there is cause to believe there is a disability or wrongdoing within the meaning of subdivision (d).~~

~~(j) When the commission institutes formal proceedings, the notice of charges, the answer, and all subsequent papers and proceedings shall be open to the public for all formal proceedings instituted after February 28, 1995.~~

~~(k) The commission may make explanatory statements.~~

~~(l) The budget of the commission shall be separate from the budget of any other state agency or court.~~

~~(m) The Supreme Court shall make rules for the conduct of judges, both on and off the bench, and for judicial candidates in the conduct of their campaigns. These rules shall be referred to as the Code of Judicial Ethics.~~

~~Third—That Section 18.5 is added to Article VI thereof, to read:~~

SEC. 18.5. (a) Upon request, the Commission on Judicial Performance shall provide to the Governor of any State of the Union the text of any private admonishment, advisory letter, or other disciplinary action together with any information that the Commission on Judicial Performance deems necessary to a full understanding of the commission's action, with respect to any applicant whom the Governor of any State of the Union indicates is under consideration for any judicial appointment.

(b) Upon request, the Commission on Judicial Performance shall provide the President of the United States the text of any private admonishment, advisory letter, or other disciplinary action together with any information that the Commission on Judicial Performance deems necessary to a full understanding of the commission's action, with respect to any applicant whom the President indicates is under consideration for any federal judicial appointment.

(c) Upon request, the Commission on Judicial Performance shall provide the Commission on Judicial

Appointments the text of any private admonishment, advisory letter, or other disciplinary action together with any information that the Commission on Judicial Performance deems necessary to a full understanding of the commission action, with respect to any applicant whom the Commission on Judicial Appointments indicates is under consideration for any judicial appointment.

(d) All information released under this section shall remain confidential and privileged.

(e) Notwithstanding subdivision (d), any information released pursuant to this section shall also be provided to the applicant about whom the information was requested.

(f) "Private admonishment" refers to a disciplinary action against a judge by the Commission on Judicial Performance as authorized by subdivision (c) of Section 18 of Article VI, as amended November 8, 1988.

Fourth—That this measure shall become operative on March 1, 1995.

Proposition 191: Text of Proposed Law

This amendment proposed by Senate Constitutional Amendment 7 (Statutes of 1994, Resolution Chapter 113) expressly amends the Constitution by amending sections thereof; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENTS TO ARTICLE VI

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

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

Second—That Section 5 of Article VI thereof is amended to read:

SEC. 5. (a) Each county shall be divided into municipal court ~~and justice court~~ districts as provided by statute, but a city may not be divided into more than one district. Each municipal ~~and justice~~ court shall have one or more judges. *Each municipal court district shall have no fewer than 40,000 residents; provided that each county shall have at least one municipal court district. The number of residents shall be determined as provided by statute.*

(b) *On the operative date of this subdivision, all existing justice courts shall become municipal courts, and the number, qualifications, and compensation of judges, officers, attachés, and employees shall continue until changed by the Legislature. Each judge of a part-time municipal court is deemed to have agreed to serve full time and shall be available for assignment by the Chief Justice for the balance of time necessary to comprise a full-time workload.*

~~There shall be a municipal court in each district of more than 40,000 residents and a justice court in each district of 40,000 residents or less. The number of residents shall be ascertained as provided by statute.~~

(c) The Legislature shall provide for the organization and prescribe the jurisdiction of municipal ~~and justice~~

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

(b)

(d) Notwithstanding ~~the provisions of~~ subdivision (a), any city in San Diego County may be divided into more than one municipal court ~~or justice court~~ district if the Legislature determines that unusual geographic conditions warrant such division.

Third—That Section 6 of Article VI thereof is amended to read:

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

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

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

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

The Chief Justice shall seek to expedite judicial business and to equalize the work of judges. The Chief Justice may provide for the assignment of any judge to

another court but only with the judge's consent if the court is of lower jurisdiction. A retired judge who consents may be assigned to any court.

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

Fourth—That Section 11 of Article VI thereof is amended to read:

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

Superior courts have appellate jurisdiction in causes

prescribed by statute that arise in municipal ~~and justice~~ courts in their counties.

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

Fifth—That Section 15 of Article VI thereof is amended to read:

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

**WHAT A DIFFERENCE A VOTE MAKES!
REGISTER AND VOTE.**

WANTED! Polling Place Workers

If you would like to work at a polling place on election day, call your county elections office. Polling place workers are paid to work on election day. Do your part for democracy—call today !!

You may wish to tear out this page and use it to write down your ideas on improving this pamphlet. Send your suggestions to: California Ballot Pamphlet, 1230 J Street, Sacramento, CA 95814. Thank you.

Secretary of State
1230 J Street
SACRAMENTO, CA 95814

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This supplemental ballot pamphlet is sent to you separately from the pamphlet containing Propositions 181 through 188 and the statewide candidate statements because the measures contained herein qualified for the ballot after the printing deadline for the principal ballot pamphlet. Please check to be sure you receive two ballot pamphlets for the November 8, 1994 General Election. In order to distinguish between the two, this supplemental pamphlet is printed in blue ink. If you do not receive your main pamphlet, contact your county elections official or call 1-800-345-VOTE.

IMPORTANT NOTICE

The State produces a cassette-recorded version of this ballot pamphlet. These tape recordings are available from most public libraries. If you have a family member or friend who is *visually impaired*, please inform him or her of this service. Cassettes can be obtained by calling your local public library or your county elections official.

In an effort to reduce election costs, the State Legislature has authorized the State and counties having this capability to mail only one ballot pamphlet to addresses where more than one voter with the same surname resides. If you wish additional copies, you may obtain them by calling or writing to your county elections official.

**ELECTION
MATERIAL**