

1972

DEATH PENALTY

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DEATH PENALTY. Initiative Constitutional Amendment. Amends California Constitution to provide that all state statutes in effect February 17, 1972 requiring, authorizing, imposing, or relating to death penalty are in full force and effect, subject to legislative amendment or repeal by statute, initiative or referendum; and that death penalty provided for under those state statutes shall not be deemed to be, or constitute, infliction of cruel or unusual punishments within meaning of California Constitution, article I, section 6, nor shall such punishment for such offenses be deemed to contravene any other provision of California Constitution. Financial impact: None.

17

YES

NO

(For Full Text of Measure, See Page 20, Part II)

General Analysis by the Legislative Counsel

A "Yes" vote on this initiative constitutional amendment is a vote to make effective, to the extent permissible under the United States Constitution, the statutes of this state requiring, authorizing, imposing, or relating to the death penalty; and to prohibit the death penalty from being deemed to be unconstitutional under any provision of the California Constitution.

A "No" vote is a vote to reject the proposal.

For further details, see below.

Detailed Analysis by the Legislative Counsel

The California statutes now contain numerous provisions which provide for imposition of the death penalty on persons convicted of certain crimes. The California Supreme Court has held that the imposition of the death penalty is prohibited by Section 6 of Article I of the California Constitution, which prohibits the infliction of cruel or unusual punishments.

Adoption of this measure would specifically prevent the provisions in Section 6 of Article I, or any other provision, of the California Constitution from being held to prohibit the death penalty.

(Continued in column 2)

Cost Analysis by the Legislative Analyst

The main purpose of this initiative is to maintain the statutory and constitutional authority for imposition of the death penalty as it existed prior to February 17, 1972. The adoption of this initiative does not involve any significant direct added state or local cost or revenue consideration.

(Continued from column 1)

If this measure is adopted, every statutory law of California relating to the death penalty that was rendered ineffective by the decision of the California Supreme Court would be reinstated (subject to amendment or repeal) insofar as their validity under the California Constitution is concerned. Their validity under the United States Constitution, however, is a separate issue.

The United States Supreme Court has held that the United States Constitution bars imposition of the death penalty in certain criminal cases under statutes giving uncontrolled discretion to judges or juries to decide whether or not to impose the death penalty. The United States Supreme Court, however, did not hold that the United States Constitution precludes the imposition of the death penalty in all cases. This measure would, therefore, make effective the statutes of this state relating to the death penalty to the extent permitted under the United States Constitution.

Argument in Favor of Proposition 17

The California Supreme Court has ruled that the death penalty is unconstitutional under our state constitution. Proposition 17, if passed by the voters, will amend our state constitution and overturn the Court's decision.

It will also allow the Legislature to revise our laws so as to conform them to the United States Supreme Court decision authorizing the death penalty if certain guidelines are followed.

THE DEATH PENALTY IS AN EFFECTIVE DETERRENT TO SOME WOULD BE KILLERS. With this deterrent now eliminated, the lives of countless innocent people (especially law enforcement officers, prison guards, and prison inmates) have been placed in grave jeopardy.

CAPITAL PUNISHMENT IS AN AP-

PROPRIATE PENALTY FOR CERTAIN CRIMES AND CRIMINALS. The 107 condemned persons on death row in California at the time of the Court's ruling were responsible for the deaths of 116 victims.

AND WHAT OF THESE VICTIMS? WHO WERE THEY; HOW DID THEY DIE? Some were helpless, aged persons . . . two young girls ages 13 and 9 . . . women assaulted, raped repeatedly and killed . . . many shot to death . . . a number stabbed . . . some beaten to death with a sledgehammer . . . all races, colors and creeds. Their killers showed no mercy, no compassion. They killed ruthlessly.

The death penalty is an appropriate punishment for the willful, deliberate, premeditated murder; the mass murderers such as Charles Manson and Richard Speck; the hired killers;

the assassins who would rob us of our proven political leaders; the traitors; the bombers and jackers; the senseless joy killers; the prison mates bent on escape at any cost and the cop-killers.

Our criminal legal system, with its overriding concern for the rights of the accused, insures a fair trial to every person charged with murder regardless of his wealth, education or race. The public provides competent defense counsel and all incidents of defense free of charge to those who cannot afford them.

Both common sense and experience teach us that the death penalty deters many potential murderers. **IF THE DEATH PENALTY SAVES THE LIFE OF ONE POLICEMAN OR ONE PRISON INMATE OR ONE PRISON GUARD, OR ONE CHILD OR ONE PRIVATE CITIZEN, ITS EXISTENCE IS JUSTIFIED.**

This proposition qualified for a place on this ballot because over one million Californians signed petitions in one of the most successful initiative drives in the history of California. They did this so that the people of this state would have the opportunity to vote on this critical issue.

We are faced with a question of the utmost gravity. The people of this state, rather than the Court, now have the opportunity to decide whether or not they need the death penalty for the protection of innocent citizens. Accept that responsibility and vote YES on proposition 17.

GEORGE DEUKMEJIAN
(Republican—Long Beach)
State Senator, 37th District

S. C. MASTERSON
Judge, Superior Court

JOHN W. HOLMDAHL
(Democrat—Oakland)
State Senator, 8th District

Rebuttal to Argument in Favor of Proposition 17

Proponents assert:

1. The death penalty deters murderers;
2. Since murderers show no mercy, we should show no mercy—"a life for a life";
3. Accused murderers always receive a fair trial, regardless of wealth, education or race.

THESE ASSERTIONS ARE FALSE OR MISLEADING.

1. Studies for 40 years show that murder rates for policemen, guards and private citizens are LOWER in states WITHOUT the death penalty.
2. All civilized people are horrified by the crimes described by proponents and grieve for the victims; but Manson, Speck, Sirhan and most other murderers and ALL such assassins commit their beastly crimes in states WITH the death penalty.

WHERE WAS THE DETERRENCE?

Since the death penalty has not protected us against murderers we have no excuse to adopt jungle law of "a life for a life". We must use other ways and not stoop to the murderer's level by killing in cold blood.

3. As good as it is, our system of justice is human. The innocent have been executed, but well-to-do, educated white men who have committed grisly murders are never executed.

Our founding fathers in their great wisdom assigned the courts the job of protecting our inalienable rights against discriminatory and abusive exercise of power. Yet this initiative would take away from the courts the power to protect the most important right—life. What other of our rights will be next?

Would you kill in cold blood? If not, don't ask others to do it for you. **VOTE "NO" ON PROPOSITION 17.**

EDMUND G. ("PAT") BROWN
Former Governor of California
(1959-1967)

ERWIN LORETZ, President
California Probation, Parole and
Correctional Association

BILL COSBY

Argument Against Proposition 17

Vote NO to the Death Penalty. California has not killed a human being since 1967. Do not cast your vote to start killing again. We must be concerned with preventing rather than revenging crime.

Killing is not the answer to the crime problem. Most civilized countries no longer use the death penalty. States and countries without the death penalty have the lowest murder rates. Forty years of studies show that the death penalty does not prevent murders or other violent crimes. In recent decades the rates of all crimes have increased, but since executions have stopped in the United States the increase in the murder rate has been only half as much as the increase for other serious crimes. Stopping executions has not led to more murders.

Most murders are committed in passion by people who do not think about penalties. In other cases, the death penalty causes murders. Recently, a girl killed two children because she wanted to die but was afraid to kill herself. Such suicide-murders are common. Political assassinations have occurred only in states which have the death penalty.

Dangerous criminals need not be killed to protect society. Capital punishment does not deter crime—increasing the likelihood of capture does. The death penalty aggravates the crime problem by wasting resources needed to fight crime. Long trials and appeals in death-penalty cases clog the courts so that other criminal offenders cannot be swiftly brought to justice. Death row requires large expendi-

tures that could be used instead to make the correctional system more effective in rehabilitating criminals.

It is cheaper to imprison a person for life than to execute him. The death penalty costs taxpayers millions of dollars yearly in court and death row expenses which could be better spent directly for increased police protection, safety of correctional officials and financial aid for the families of murdered victims.

It is not true that murderers imprisoned for life will soon be paroled. No murderer can be paroled unless the Parole Board is convinced that he is safe to release. If he is not rehabilitated, he is never paroled. We rely upon the good judgment of the Parole Board regarding hundreds of thousands of dangerous criminals, including those convicted of murder for whom the death penalty has not been imposed. Through legislation we can also provide for life imprisonment without possibility of parole.

The death penalty bloodies all of us. Human life is not sacred when the state sets an example of violence by executing someone simply because it seems a convenient disposal for the problem of crime. The decision to kill is made unequally because each jury is different with no specific standards to guide its decision. Some juries sentence men to die for crimes that other juries would punish with imprisonment. Defendants without money and racial minorities are far more likely to be executed.

Do not vote to take life this senseless way. Vote to respect life universally and to fight crime sensibly. Vote NO on the Death Penalty.

EDMUND G. ("PAT") BROWN
Former Governor of California
(1959-1967)

ERWIN LORETZ, President
California Probation, Parole and
Correctional Association

BILL COSBY

**Rebuttal to Argument Against
Proposition 17**

A society that respects human life must protect the lives of its innocent citizens.

THE UNITED STATES SUPREME COURT HAS NOT PREVENTED CALIFORNIA FROM REINSTATING THE DEATH PENALTY, but to do so, we must first overturn the decision of the California Supreme Court by voting yes on this Proposition.

Stopping executions has led to more killings. Since 1963, the courts have allowed only one execution (in 1967). During this period the homicide rate, which takes into account the growth in population, has increased 250%.

The fact that the death penalty does not deter all killers is no more a valid argument against its use than suggestion that all criminal laws be abolished because they do not deter all crime.

OTHER FACTS IN REBUTTAL:

- The sentence of life without parole is not permanent. The Legislature can change the law and a Governor can commute sentences. The median time served for those first degree murderers released in 1971 was 145 months.
- The death penalty is the law of the land for 95% of the world's population.
- Passion killings are not first degree murder and not subject to the death penalty.
- Responsibility for long trials and appeals lies with the courts—not with the death penalty.
- The facts prove that in California there no racist component in the unanimous decision by a jury to impose death.

This initiative is supported by the California Correctional Officers' Association, the California Peace Officers' Association, the District Attorneys' Association of California, and the California State Sheriffs' Association.

SAVE INNOCENT LIVES—VOTE YES ON PROPOSITION 17.

GEORGE DEUKMEJIAN
(Republican—Long Beach)
State Senator, 37th District
S. C. MASTERSON
Judge, Superior Court
JOHN W. HOLMDAHL
(Democrat—Oakland)
State Senator, 8th District

each class of position of policemen or deputy sheriffs employed by such city or county.

(b) Effective July 1, 1973 and effective July 1 of each year thereafter, the board shall adjust and determine the maximum rate of salary for each class of position of uniformed members of the California Highway Patrol to be at least equal to the highest maximum rate of salary then established for any policemen or deputy sheriffs employed within the State in a comparable class of position.

(c) The Board shall make an annual written report to the Governor of its findings and the adjustments and determinations of rates of salary made pursuant to this section.

(d) Commencing with the budget for fiscal year 1973-74, any budgetary provisions required to fully implement the periodic salary adjustments and determinations re-

quired by this section shall be included in each annual budget submitted by the Governor to the Legislature and shall be modified or stricken therefrom except by two-thirds (2/3) vote of each of the Senate and of the Assembly voting solely on the issue of such provisions and on no other matter.

(e) As used herein, the term "comparable class of position" shall mean a group of positions substantially similar with respect to qualifications or duties or responsibilities.

(f) The provisions of this section shall prevail over any otherwise conflicting provisions of this article which may relate generally to salaries of civil service employees or to salaries of State Employees who are not elected by popular vote.

17 **DEATH PENALTY. Initiative Constitutional Amendment.** Amends California Constitution to provide that all state statutes in effect February 17, 1972 requiring, authorizing, imposing, or relating to death penalty are in full force and effect, subject to legislative amendment or repeal by statute, initiative or referendum; and that death penalty provided for under those state statutes shall not be deemed to be, or constitute, infliction of cruel or unusual punishments within meaning of California Constitution, article I, section 6, nor shall such punishment for such offenses be deemed to contravene any other provision of California Constitution. Financial impact: None.

YES

NO

(This Initiative Constitutional Amendment proposes to add a new section to the Constitution. Therefore, the provisions thereof are printed in **BOLDFACE TYPE** to indicate that they are **NEW**.)

**PROPOSED AMENDMENT TO
ARTICLE I**

Sec. 27. All statutes of this state in effect on February 17, 1972, requiring, author-

izing, imposing, or relating to the death penalty are in full force and effect, subject to legislative amendment or repeal by statute, initiative, or referendum.

The death penalty provided for under those statutes shall not be deemed to be, or to constitute, the infliction of cruel or unusual punishments within the meaning of Article 1, Section 6 nor shall such punishment for such offenses be deemed to contravene any other provision of this constitution.

18 **OBSCENITY LEGISLATION. Initiative.** Amends, deletes, and adds Penal Code statutes relating to obscenity. Defines nudity, obscenities, sadomasochistic abuse, sexual conduct, sexual excitement and other related terms. Deletes "redeeming social importance" test. Limits "contemporary standards" test to local area. Creates misdemeanors for selling, showing, producing or distributing specified prohibited materials to adults or minors. Permits local governmental agencies to separately regulate these matters. Provides for county jail term and up to \$10,000 fine for violations. Makes sixth conviction of specified misdemeanors a felony. Creates defenses and presumptions. Permits injunctions and seizures of materials. Requires speedy hearing and trial. Financial impact: None.

YES

NO

(This Initiative Measure proposes to amend and add sections and chapters of the Penal Code. Therefore, **EXISTING PROVISIONS** proposed to be **DELETED** are printed in **STRIKEOUT TYPE** and **NEW PROVISIONS** proposed to be **INSERTED** or **ADDED** are printed in **BOLDFACE TYPE**.)

PROPOSED LAW

SECTION 1. Section 311 of the Penal Code is amended to read:

311. As used in this chapter:

(a) "Obscene matter" means matter, taken as a whole, the predominant appeal of which to the average person, applying contemporary standards, is to prurient interest, i.e., a shameful or morbid interest in nudity, or excretion; and is matter which taken as a whole goes substantially beyond customary limits of candor in description or representation of such matters; and is matter which