

1980

## Number of Jurors in Civil Cases

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## Official Title and Summary Prepared by the Attorney General

**NUMBER OF JURORS IN CIVIL CASES. LEGISLATIVE CONSTITUTIONAL AMENDMENT.** Amends Article I, Section 16, to authorize Legislature to reduce required size of juries in civil cases in municipal or justice court. Legislature may reduce juries in these courts from 12 persons to 8 persons, or a lesser number agreed on by the parties in open court. Fiscal impact on state and local governments: None.

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**FINAL VOTE CAST BY THE LEGISLATURE ON SCA 14 (PROPOSITION 6)**

Assembly—Ayes, 60  
Noes, 15

Senate—Ayes, 27  
Noes, 9

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**Analysis by the Legislative Analyst****Background:**

Historically, California courts have adopted the common law rule that a jury must consist of 12 persons. The California Constitution does not specify the number of persons comprising a jury, but it does provide that in civil and misdemeanor cases the jury *may* consist of 12 or a smaller number of persons as agreed on by the parties in open court.

The California Constitution permits waiver of a jury trial in any criminal case with the consent of the prosecution and the defense (criminal cases tried by juries may be classified as felonies or misdemeanors). The waiver agreement must be expressed in open court by the defendant and the defendant's attorney. The courts have held that a felony trial which begins with 12 jurors may continue with less than 12 jurors with the consent of the defendant and his or her attorney.

The municipal and justice courts generally handle misdemeanor cases, and civil cases wherein the amount of the claim is \$15,000 or less. The superior courts have jurisdiction over felony cases, and civil cases involving claims exceeding \$15,000.

**Proposal:**

This measure would provide that:

1. In civil cases in superior courts, the jury must consist of 12 persons, or of a smaller number agreed on by the parties in open court.
2. In civil cases in the municipal and justice courts, the Legislature may provide that the jury shall consist of eight (rather than 12) persons, or of a smaller number agreed on by the parties in open court. Therefore, if the Legislature so provides, the effect of this provision would be a reduction in the size of a jury in civil cases before these courts to eight persons unless the parties agreed in open court to a jury of less than eight members.
3. In felony cases the jury shall consist of 12 persons.

**Fiscal Effect:**

The cost of juries in civil cases is paid by the litigants. Therefore, this measure would have no significant state or local fiscal impact.

**Be sure to vote on November 4, 1980**

## Text of Proposed Law

This amendment proposed by Senate Constitutional Amendment 14 (Statutes of 1980, Resolution Chapter 47) expressly amends the Constitution by amending a section thereof; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be inserted or added are printed in *italic type* to indicate that they are new.

### PROPOSED AMENDMENT TO ARTICLE I

SEC. 16. Trial by jury is an inviolate right and shall be secured to all, but in a civil cause three-fourths of the jury may render a verdict. A jury may be waived in a criminal cause by the consent of both parties expressed in open court by the defendant and the defendant's counsel. In a civil cause a jury may be waived by the consent of the parties expressed as prescribed by statute.

In civil causes ~~and cases of misdemeanor~~ the jury ~~may~~ *shall* consist of 12 *persons* or a lesser number agreed on by the parties in open court. *In civil causes in municipal or justice court the Legislature may provide that the jury shall consist of eight persons or a lesser number agreed on by the parties in open court.*

*In criminal actions in which a felony is charged, the jury shall consist of 12 persons. In criminal actions in which a misdemeanor is charged, the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court.*

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**If you have any questions on voting  
call your County Clerk or  
Registrar of Voters**

### Argument in Favor of Proposition 6

This constitutional amendment would permit the Legislature to provide by statute that civil juries in municipal and justice courts shall consist of eight persons or a lesser number agreed upon by the litigants. The present requirement of a 12-person jury in criminal cases is not affected by this proposal.

Upon the passage of this amendment it is expected that the Legislature will set up an experimental program for a period of several years to determine whether or not to make it permanent. By this procedure the administration of justice will be streamlined and the cost of litigation to the parties reduced, but the quality of justice will remain the same. Reducing the number of jurors will permit a quicker selection process and the eight jurors will take less time to decide cases.

By speeding up the procedure, more cases can be tried, and greater participation in the process of government afforded to more citizens; yet, the quality control of a three-fourths

verdict (6 out of 8 instead of the current 9 out of 12) is preserved.

Thirty-eight states and most U.S. district courts already use juries which consist of less than 12 members; in fact, such juries are frequently used in major civil matters and criminal cases. There is no evidence that the quality of justice has deteriorated in those courts.

Vote yes on Proposition 6 to streamline trial procedures and to reduce court costs—without sacrificing the quality of justice.

**ROBERT G. BEVERLY**  
*State Senator, 27th District*

**DAVID EAGLESON**  
*Assistant Presiding Judge, Los Angeles Superior Court  
Immediate Past President, California Judges Association*

**MARZ GARCIA**  
*State Senator, 10th District*

### Rebuttal to Argument in Favor of Proposition 6

This proposal to "streamline" the lower courts makes no sense *except* as a first step toward abolishing your right to jury trial. There is no problem getting to trial promptly in municipal and justice courts once parties are ready for trial. The delay and congestion that you read about exists in a few superior courts, *not* in the lower courts. Yet this proposal applies *only* to the lower courts.

This proposal *WON'T shorten trials* in municipal and justice courts. Experience demonstrates that it takes as long to select a smaller jury as to select a jury of 12 and *both large and small juries take the same amount of time* to decide cases.

This proposal *WON'T maintain the quality of justice*. Evidence indicates that, as jury size is reduced, verdicts which affect your rights and property become less reliable and less consistent.

This proposal *WILL deprive you of your constitutional right* to a jury of 12 in cases up to \$15,000 while preserving that right for those with larger claims and for criminal defendants.

The *statement by proponents* that "most U.S. district courts already use juries which consist of fewer than 12 members" is *misleading!* Many U.S. district courts use 12 jurors; many others *permit* either the parties or the court to decide the number of jurors. In contrast, this proposal allows the Legislature to *force* you to accept a jury of eight whether you agree or not.

**DON'T LET THEM STREAMLINE YOUR RIGHTS AND THE JURY OUT OF EXISTENCE! VOTE NO ON PROPOSITION 6.**

**WILLIE BROWN JR.**  
*Member of the Assembly, 17th District  
Majority Floor Leader*

**KENNETH HAHN**  
*Los Angeles County Supervisor, 2nd District*

**WILLIAM H. LALLY**  
*Judge of the Superior Court, County of Sacramento*

**Study each issue carefully**

## Argument Against Proposition 6

### **ABOLISHES HISTORIC CONSTITUTIONAL RIGHT**

This proposition abolishes your constitutional right to a jury of 12 in civil cases in municipal and justice courts. It gives the Legislature a "blank check" to experiment with this historic right to save a small amount of money and relieve judges of some work.

### **MINIMAL SAVINGS DO NOT JUSTIFY SACRIFICING CONSTITUTIONAL RIGHTS**

Assertions that significant cost savings will result are purely speculative and are directly contradicted by a study of the results of smaller juries in the federal court system. Judicial Council of California statistics indicate annual cost savings of only \$83,000 statewide. This minimal cost saving does not justify sacrificing a constitutional right when other methods exist to achieve greater judicial economy and efficiency.

### **ELIMINATES CONSTITUTIONAL FREEDOM TO CHOOSE**

You *already* have the constitutional right to agree to a jury of fewer than 12 persons. This proposition permits the Legislature to *force* you to accept a jury of eight whether you agree or not.

### **CREATES SYSTEM OF SECOND-CLASS JUSTICE**

This proposition makes the quality of justice to which you are entitled depend on the size of your claim. The "little guy" whose claim is less than \$15,000 will be treated as a second-class citizen, entitled only to a jury of eight. Those with larger claims, including big business and commercial interests, and criminal defendants, will continue to have the right to a jury of 12.

### **12—A BETTER CROSS SECTION OF THE COMMUNITY**

The wisdom of 12 people, collectively applying their experience and common sense, is greater than that of only eight and more fairly represents the community. A jury of 12 allows more complete recall of testimony, more different points of view to be expressed and insures greater ability to over-

come the biases of individual members and obtain a just verdict.

### **FULLER CITIZEN PARTICIPATION INCREASES ACCOUNTABILITY OF SYSTEM**

Cutting jury size to eight drastically reduces the number of citizens able to serve as jurors and to share in this important community responsibility. We should be encouraging more, not less, citizen participation in our system of justice. This will insure that the system remains accountable to us through our decisions as jurors.

### **SMALLER JURIES THREATEN FAIRNESS OF DECISIONS AFFECTING YOUR RIGHTS AND PROPERTY**

Numerous scientific studies show that decisions of smaller juries are less reliable and consistent than decisions of 12-member juries. This means decisions of eight-person juries affecting your rights and property will not be as dependable and as fair as they have been. The quality of justice should not be jeopardized to save the courts a little money and make work a little easier for judges.

### **NEXT STEP—ABOLITION OF JURIES**

If this proposition passes, the next step will be an effort to eliminate your right to jury trial by arguing that it's cheaper not to use juries. Many judges supporting this proposition are convinced that *they* can make better decisions than 8 or 12 citizens. Protect your right to participate fully in our system of justice and reject this attack on the jury system. Vote **NO** on Proposition 6.

**WILLIE BROWN JR.**  
Member of the Assembly, 17th District  
Majority Floor Leader

**KENNETH HAHN**  
Los Angeles County Supervisor, 2nd District

**WILLIAM H. LALLY**  
Judge of the Superior Court, County of Sacramento

## Rebuttal to Argument Against Proposition 6

Proposition 6 does not give a "blank check" to the Legislature; it lets the voter decide whether eight-member juries will be used in certain civil cases.

Because a trial's duration and verdict depend upon many factors—such as the case's facts and the persuasiveness of counsel—it is impractical to attach a precise dollar amount to cost savings which will occur under Proposition 6 or to compare verdicts rendered by different juries. However, judges and attorneys who have worked with smaller juries have observed that trials proceed more efficiently, with little, if any, difference in final results. With a resulting decrease in court congestion, jury duty will be fulfilled more quickly. More people from the community will be then able to participate in our judicial process. Additionally, litigants and taxpayers will benefit from significant cost savings.

Legal historians are unable to determine where the requirement of 12 jurors originated. The United States Supreme Court has repeatedly held that juries containing less than 12 members guarantee people's rights under the United

States Constitution. Additionally, studies have shown that such juries encourage greater participation by each juror in the decisionmaking process.

Proposition 6 is designed to lessen court congestion by improving and streamlining the court system while preserving citizens' constitutional rights and to encourage greater community participation in the jury process by shortening the duration of jury duty.

Judges believe in retaining the jury system, but feel it needs to be streamlined.

**ROBERT G. BEVERLY**  
State Senator, 27th District

**DAVID EAGLESON**  
Assistant Presiding Judge, Los Angeles Superior Court  
Immediate Past President, California Judges Association

**MARZ GARCIA**  
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