

1986

Elected District Attorney

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Official Title and Summary Prepared by the Attorney General

ELECTED DISTRICT ATTORNEY. LEGISLATIVE CONSTITUTIONAL AMENDMENT. Presently the State Constitution does not provide for elected district attorneys. State statutory law provides for elected district attorneys but provides that office may be made appointive office by local popular vote. This measure amends the Constitution to require the Legislature provide for an elected district attorney in all counties. Summary of Legislative Analyst's estimate of state and local government fiscal impact: This measure would have no direct state or local fiscal effect.

Final Vote Cast by the Legislature on SCA 26 (Proposition 59)

Assembly: Ayes 68	Senate: Ayes 37
Noes 2	Noes 0

Analysis by the Legislative Analyst
Background

The office of district attorney in all of the state's 58 counties is filled by election. This could be changed to an appointive office with the approval of the voters.

Proposal

This constitutional amendment requires the office of the district attorney to be filled by election in all counties.

Fiscal Effect

This measure would have no direct state or local fiscal effect.

Celebrate your freedom . . . Vote

Dayna Carr, Fremont

Text of Proposed Law

This amendment proposed by Senate Constitutional Amendment 26 (Statutes of 1986, Resolution Chapter 66) expressly amends the Constitution by amending sections thereof; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO ARTICLE XI, SECTIONS 1 AND 4

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

SEC. 1. (a) The State is divided into counties which are legal subdivisions of the State. The Legislature shall prescribe uniform procedure for county formation, consolidation, and boundary change. Formation or consolidation requires approval by a majority of electors voting on the question in each affected county. A boundary change requires approval by the governing body of each affected county. No county seat shall be removed unless two-thirds of the qualified electors of the county, voting on the proposition at a general election, shall vote in favor of such removal. A proposition of removal shall not be submitted in the same county more than once in four years.

(b) The Legislature shall provide for county powers, an elected county sheriff, *an elected district attorney*, and an elected governing body in each county. Except as provided in subdivision (b) of Section 4 of this article, each governing body shall prescribe by ordinance the compensation of its members, but the ordinance prescribing such compensation shall be subject to referendum. The Legislature or the governing body may provide for other officers whose compensation shall be prescribed by the governing body. The governing body shall provide for the number, compensation, tenure, and appointment of employees.

Second—That Section 4 of Article XI thereof is amended to read:

SEC. 4. County charters shall provide for:

(a) A governing body of 5 or more members, elected (1) by district or, (2) at large, or (3) at large, with a requirement that they reside in a district. Charter counties are subject to statutes that relate to apportioning population of governing body districts.

(b) The compensation, terms, and removal of members of the governing body. If a county charter provides for the Legislature to prescribe the salary of the governing body, such compensation shall be prescribed by the governing body by ordinance.

(c) An elected sheriff, *an elected district attorney*, other officers, their election or appointment, compensation, terms and removal.

(d) The performance of functions required by statute.

(e) The powers and duties of governing bodies and all other county officers, and for consolidation and segregation of county officers, and for the manner of filling all vacancies occurring therein.

(f) The fixing and regulation by governing bodies, by ordinance, of the appointment and number of assistants, deputies, clerks, attachés, and other persons to be employed, and for the prescribing and regulating by such bodies of the powers, duties, qualifications, and compensation of such persons, the times at which, and terms for which they shall be appointed, and the manner of their appointment and removal.

(g) Whenever any county has framed and adopted a charter, and the same shall have been approved by the Legislature as herein provided, the general laws adopted by the Legislature in pursuance of Section 1(b) of this article, shall, as to such county, be superseded by said charter as to matters for which, under this section it is competent to make provision in such charter, and for which provision is made therein, except as herein otherwise expressly provided.

(h) Charter counties shall have all the powers that are provided by this Constitution or by statute for counties.

Counties fifty-eight. Vote: cooperate.

Donald Way, Los Angeles

Argument in Favor of Proposition 59

County district attorneys are important and powerful public officials. They are integral parts of both the law enforcement and criminal justice systems. They hold considerable discretion over the prosecution of criminals and the enforcement of state laws and local ordinances. As such, they must be held accountable, not by some political appointing power, but directly by the people. Californians have ensured that district attorneys remain both accountable by, and responsive to, the people by making the office of district attorney an elective office. California voters thus have the right to judge their district attorneys and render that judgment at the polls.

Now, however, there are those who would deprive us of this right. The law currently contains a loophole: a means by which district attorneys can be appointed instead of being elected. In some counties there are those who would use this loophole to change a position dependent on the voters into a position dependent on political power brokers. This threat to the right of Californians to elect their county district attorneys is the reason why Proposition 59 is before you. We wrote Proposition 59 to ensure that district attorneys will always remain elected—not ap-

pointed—officials. Proposition 59 does this by amending the State Constitution to specify that district attorneys, along with county sheriffs and members of county boards of supervisors, must be elected by the people.

Almost two hundred years ago, James Madison, arguing for the adoption of the Federal Constitution, wrote that it is essential that government "should have an immediate dependence on, and sympathy with, the people. Frequent elections are unquestionably the only policy by which this dependence and sympathy can be effectually secured." **PROTECT YOUR RIGHTS. GUARANTEE THAT DISTRICT ATTORNEYS REMAIN DIRECTLY ACCOUNTABLE TO THE PEOPLE. VOTE YES ON PROPOSITION 59.**

DAVID ROBERTI
State Senator, 23rd District

DAN MCCORQUODALE
State Senator, 12th District

CECIL HICKS
District Attorney, County of Orange
President, California District Attorneys Association

Rebuttal to Argument in Favor of Proposition 59

Proposition 59 would strip local voters of the power to decide whether their county district attorney will be elected or appointed (by the elected county board of supervisors).

Proponents argue that forcing voters in every county to elect their district attorney will make these "important and powerful public officials" more accountable.

In fact, many county district attorneys (especially in large counties) run *unopposed* for reelection every four years because of the BIG MONEY from SPECIAL INTEREST GROUPS needed to mount a countywide campaign against a powerful incumbent.

As a result, VOTERS OFTEN HAVE NO CHOICE ON ELECTION DAY. This is not accountability—it is a sham.

If voters really want to make public officials (including large county district attorneys) more accountable, WE NEED TO CHANGE THE WAY POLITICAL CAM-

PAIGNS ARE FINANCED.

We need to encourage good people to run for public office and not simply leave candidates to raise money from special interest groups, such as businesses which generate toxic pollution. How can we expect our local and state officials to restrict and, if necessary, prosecute major campaign contributors?

Of course, we all cringe at the idea that our tax dollars would be spent on slick, perhaps dishonest, campaign literature and commercials. But use of public campaign funds can be restricted.

For now, if you believe that local voters should be allowed to retain the power to amend their own county charters to provide for the election or appointment of local district attorneys, vote "no" on Proposition 59.

GARY B. WESLEY
Attorney at Law

Vote today; do it the California way.

Melinda Styles, San Bernardino

Argument Against Proposition 59

This measure is a proposal by the Legislature to add to the California Constitution two provisions:

One provision would require that county charters provide for the election of district attorneys.

The second provision would authorize the Legislature to "provide for" "an elected district attorney" in every county.

The district attorney is responsible for the prosecution of felony offenses committed in the county. In addition, the county district attorney prosecutes less serious, "misdemeanor" offenses committed in portions of the county not within a city and in cities which do not prosecute misdemeanors on their own. Further, the district attorney in each county may handle child support and consumer fraud prosecutions.

The first question is whether California voters want to make sure that district attorneys are elected by voters in each county and not, for example, appointed by the elected board of supervisors.

In my view, the decision should be left to voters in each county. Any attorney can run for the position of county district attorney. Voters often select the candidate who

sounds as if he will be "tougher" on crime. An attorney with little experience and ability could be elected district attorney based on campaign rhetoric. Voters in some counties may prefer to allow their elected board of supervisors to appoint a qualified attorney to serve as county district attorney and remove the appointee if he or she is not tough enough on crime (or otherwise unsatisfactory).

The second question is whether the Legislature should be empowered to "provide for" the election of district attorneys in each county. Under this provision, the Legislature could prescribe that all district attorneys throughout the state be elected in June or November when we nominate or elect a Governor, for example, and prevent counties, such as San Francisco, from electing their district attorneys in conjunction with the election of other county officers. Why shouldn't the decision of *when* to elect a district attorney be left to voters in each of California's 58 counties?

For these reasons, I respectfully recommend a "no" vote.

GARY B. WESLEY
Attorney at Law

Rebuttal to Argument Against Proposition 59

The opponent to Proposition 59 says that the primary question "is whether California voters want to make sure that district attorneys are elected by voters in each county and not . . . appointed. . . ." We agree completely. The entire issue is whether Californians want their district attorneys to be responsible to the voters or to some political power broker whom a district attorney may be called upon to investigate. We authored Proposition 59 to give the people the opportunity to guarantee once and for all that district attorneys remain independent, subject only to the judgment of the people.

The opponent raises a false and misleading argument about the Legislature playing games with election dates. Proposition 59 does not give any new power to anyone. The language cited by the opponent has been in the Con-

stitution for years. In charter counties, Proposition 59 calls for the county charters, not the Legislature, to provide for elected district attorneys. In noncharter counties, the Legislature already has the right to determine the dates of local elections. Proposition 59 simply preserves a right currently enjoyed in each of California's counties—the right of the voters to elect their district attorney.

The question is simple. Do you want the people or the power brokers to choose district attorneys? If you want the people to decide, vote YES on Proposition 59.

DAVID ROBERTI
State Senator, 23rd District

DAN McCORQUODALE
State Senator, 12th District

Vote; the proof's in the polling!

Jeffrey Dennis Webster, Fresno