

2002

## COURT CONSOLIDATION

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**COURT CONSOLIDATION.  
LEGISLATIVE CONSTITUTIONAL AMENDMENT.**

## OFFICIAL TITLE AND SUMMARY

*Prepared by the Attorney General*

**COURT CONSOLIDATION.  
LEGISLATIVE CONSTITUTIONAL AMENDMENT.**

- Amends Constitution to delete references to the municipal courts. These references are now obsolete due to the consolidation of superior and municipal trial courts into unified superior courts previously approved by voters.
- Deletes from Constitution the provisions providing for municipal courts in each county and vesting judicial power of the state in municipal courts.
- Makes certain conforming and related changes in Constitution to reflect consolidation.
- Provides that the constitutional provision governing the transition process to a unified superior court will be automatically repealed on January 1, 2007.

**SUMMARY OF LEGISLATIVE ANALYST'S ESTIMATE OF NET STATE AND LOCAL GOVERNMENT  
FISCAL IMPACT:**

- No additional cost to state or local government.

**FINAL VOTES CAST BY THE LEGISLATURE ON ACA 15 (PROPOSITION 48)**

Assembly:	Ayes 72	Noes 0
Senate:	Ayes 38	Noes 0

## ANALYSIS BY THE LEGISLATIVE ANALYST

### BACKGROUND

In 1998, California voters approved Proposition 220, which permitted superior and municipal courts, known as “trial courts,” within a county to consolidate their operations if approved by a majority vote of the superior court judges and municipal court judges in the county. Under consolidation, the superior court assumes jurisdiction over all matters handled previously by superior and municipal courts; municipal court judges become superior court judges and the municipal courts are abolished. All 58 California counties have since voted to consolidate their trial court operations. At the request of the Legislature, the California Law Revision Commission has made recommendations on repealing statutes that are obsolete because of trial court reforms, including those resulting from court consolidation.

### PROPOSAL

This measure makes technical and conforming changes to the Constitution recommended by the

California Law Revision Commission related to court consolidation. Specifically, the measure deletes obsolete provisions relating to the creation of municipal courts, eligibility requirements for municipal court judges, and the consolidation of municipal and superior courts. As regards the consolidation of municipal and superior courts, constitutional provisions relating specifically to the transition period will be repealed effective January 1, 2007. Finally, the measure makes conforming changes to the Constitution with respect to the membership of superior court judges on the California Judicial Council and the membership of the Commission on Judicial Performance. The California Judicial Council oversees and administers the trial courts. The Commission on Judicial Performance handles complaints against judges.

### FISCAL EFFECTS

This measure would not result in additional costs to state or local government.

### ARGUMENT IN FAVOR OF PROPOSITION 48

This is a non-controversial change that updates the California Constitution. It passed each house of the Legislature unanimously.

Currently the state Constitution provides for two types of trial courts, superior and municipal courts, in each county. But due to unification of the trial courts, there are no longer any municipal courts in California.

However, the California Constitution still contains provisions dealing with municipal courts. These provisions are obsolete and need to be removed.

This proposition deletes these obsolete municipal court references from the California Constitution.

The proposition implements recommendations of the California Law Revision Commission, which was directed by law to recommend repeal of provisions that have become obsolete because of trial court unification.

HOWARD WAYNE, *Assembly Member*  
78th District

### REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 48

#### LOST “CHECKS AND BALANCES”

As we explain in our main ARGUMENT AGAINST PROPOSITION 48 on the next page, removing all references in the California Constitution to “municipal courts” removes the possibility that the State Legislature or individual counties will ever re-establish a two-tier trial court system with its “checks and balances.”

#### UN-ELECTED JUDGES

Not many years ago, many “justice court” and “municipal court” judges were elected by districts within counties. Under consolidation, all local judges are elected on a county-wide basis and are seldom challenged. As a result, the incumbents routinely win by default, and their names do not even appear on the ballot. Under consolidation, the local judiciary has become more insular.

#### WHAT KEEPS JUDGES IN LINE?

Without the prospect of an election challenge, judges are restricted only by (1) their own integrity and

diligence, (2) some chance of reversal by an appellate court in individual cases, (3) the workings or non-workings of something called the “Commission on Judicial Performance,” and (4) if a crime is involved, the vigilance of prosecutors—especially the elected California Attorney General.

Based on our experience, we think the vast majority of California trial court judges are great; however, we need a system that makes every trial court judge accountable for following the law. Eliminating any chance of re-establishing municipal courts is a step in the wrong direction.

For more information, please see [www.VoterInformationAlliance.org](http://www.VoterInformationAlliance.org).

GARY B. WESLEY

*Attorney at Law*

MELVIN L. EMERICH

*Attorney at Law*

### ARGUMENT AGAINST PROPOSITION 48

In this measure, the State Legislature is proposing that we permanently delete from the California Constitution any provision for “municipal courts.”

The main drawback to the proposal is that it would preclude the re-establishment of municipal courts in any of California’s 58 counties.

Why might a county want to re-establish a “municipal court” below its “superior court”? One reason might be to save money. Superior Court Judges are paid more.

An even more important reason, though, is that some counties (or even the State Legislature sometime in the future) may realize that having all of the trial court judges in a county part of the same “superior court” creates at least the appearance of unfairness. Allow us to explain.

Trial courts handle two kinds of cases that have been particularly affected by the “consolidation” of the municipal and superior courts in the 58 counties.

The first kind of case involves a criminal charge lodged by a local or state prosecutor. A criminal charge may be a “felony” or a less-serious “misdemeanor.” Both kinds of criminal charges potentially call for examination of the case by two or more judges.

A felony case is initiated by the filing of a charge which is presented either to a local criminal grand jury or, in over 95% of the cases, to a local judge sitting as a “magistrate.” If the grand jury or magistrate decides that the prosecutor has presented enough evidence of guilt (i.e., probable cause) to justify a trial, the prosecutor is authorized to proceed to trial.

At that point, the decision to allow the prosecutor to proceed may be challenged by the accused. Here we encounter a problem created by court consolidation. The judge who will hear the challenge will almost always be a

judge in the very same court as the judge whose decision is being challenged!

A misdemeanor case is ordinarily set for trial without any hearing to determine whether a trial appears justified. If you are convicted in a misdemeanor trial, you may appeal; however, the appeal is decided by a panel of 3 judges from the very same “superior court” in which you would have already been convicted!

Finally, a civil case which seeks \$25,000 or less is called a “limited jurisdiction case.” An appeal from a judgment in such a case, once again, is decided by a panel of 3 judges from the very same “superior court” in which you would have lost the case!

The basis for seeking review of what a judge has done in a case is that the judge ruled or acted wrongly. A one-court system which asks judges of the very same court to correct or rebuke their colleagues creates at least the appearance of unfairness.

Separate municipal and superior courts in the counties offered more “checks and balances” than the consolidated superior courts which have now been established. Some counties (or the State Legislature) may wish, in the future, to return to the former system.

For these reasons, we recommend that voters *not* permanently delete “municipal courts” from the California Constitution.

GARY B. WESLEY, *Co-Chair*  
*Voter Information Alliance (VIA)*  
MELVIN L. EMERICH, *Co-Chair*  
*Voter Information Alliance (VIA)*

### REBUTTAL TO ARGUMENT AGAINST PROPOSITION 48

In 1998 the voters of California overwhelmingly approved Proposition 220 to authorize the elimination of the municipal courts. Municipal courts have been eliminated in every county, for estimated savings of \$23,000,000 a year for the taxpayers.

What remains to be done is the removal of obsolete language in the state constitution that references the no longer existing municipal courts. Proposition 48 accomplishes that goal.

The argument against Proposition 48 ignores what is before the voters. Instead, it argues for the advantages of having municipal courts. The voters already decided that issue four years ago by passing Proposition 220. It was approved because eliminating municipal courts allows more efficient use of judicial resources and eliminates administrative costs necessary to maintain two separate trial court systems.

The ONLY issue before us is, should obsolete provisions of the Constitution be eliminated? The

answer is clearly YES. Leaving obsolete references to municipal courts on the books would only clutter the law, while serving no useful purpose.

Any necessary improvements to the law regarding review of magistrate decisions that there is sufficient evidence to try a defendant for a crime, or for appeals in misdemeanor and smaller civil cases can be made to the existing appeals court system. It should not be accomplished by re-creating another level of courts that the public has already voted to eliminate.

Proposition 48 would prune deadwood from the California Constitution. Obsolete language unnecessarily complicates the law.

Vote YES on Proposition 48.

HOWARD WAYNE, *Assembly Member*  
*78th District*  
DAVID HUEBNER, *Chair*  
*California Law Revision Commission*