RESOLUTION 12-01-2018

DIGEST
Legislative Conflicts of Interest: Limitations on Employment
Amends Government Code section 8920 to specify that a member of the Legislature may not accept employment that would impair the member's judgment or induce disclosure of legislative confidences.

RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE

History:
Similar to Resolution 11-08-2016, which was withdrawn and Resolution 02-05-2017, which was disapproved.

Reasons:
This resolution amends Government Code section 8920 to specify that a member of the Legislature may not accept employment that would impair the member's judgment or induce disclosure of legislative confidences. This resolution should be disapproved because it is unnecessary and will not result in any practical differences.

Current law states that no member of the Legislature shall accept other, presumably concurrent, employment which they have reason to believe will either impair their independence of judgment as to official duties or require or induce them to disclose confidential information acquired in the course of official duties. The resolution seeks to eliminate the phrase "which he has reason to believe" based on the premise that this is a subjective determination, lacking in objectivity, and could allow a legislator to remain in office even while being employed with an actual conflict of interest solely on the basis that the legislator did not have reason to believe the employment would be compromising. First, there does not appear to be any need for the change. While there have been legislators who remained active in their pre-legislative employment situations, there have been few, if any, cases in which a legislator endeavored to accept new employment while in office. In none of those cases was the legislator identified as compromised pursuant to Government Code section 8920. Second, from a practical perspective, in the event that a legislator's employment is challenged and investigated on the basis that he/she accepted employment that impairs their independence or requires/induces the disclosure of legislative confidences, the standard against which that legislator's conduct will be measured will be a reasonable or prudent legislator in a similar position. In other words, the same standard that is now applied would apply even if the language proposed in this resolution is adopted because the determination of having a "reason to believe" would be based on a reasonableness standard.

Finally, as a general rule, employment by a legislator is neither considered an impairment to be independent, nor likely to result in inducement to divulge legislative confidences, even when the legislator has been a medical doctor, an attorney, a farmer or rancher, or any other profession. In fact, this professional experience is often not only the basis for the legislator's decision to run for office, but often a basis upon which legislation is sponsored, and/or argued for or against. Consider, for example, the fact that legislation in recent years has been enacted impacting the

medical profession (mandatory vaccinations for school children), the legal profession (the State Bar reorganization) and farm work (health, safety and housing rights for agricultural workers) by legislators with professional experience/employment as medical doctors, attorneys, farmers, and union organizers.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Government Code section 8920, to read as follows:

§ 8920

(a) No Member of the Legislature, state elective or appointive officer, or judge or justice shall, while serving as such, have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest and of his responsibilities as prescribed in the laws of this state.

(b) No Member of the Legislature shall do any of the following:

(1) Accept other employment ~~which he has reason to believe will~~ that is of such a character to either impair his independence of judgment as to his official duties or require him, or induce him, to disclose confidential information acquired by him in the course of and by reason of his official duties.

(2) Willfully and knowingly disclose, for pecuniary gain, to any other person, confidential information acquired by him in the course of and by reason of his official duties or use any such information for the purpose of pecuniary gain.

(3) Accept or agree to accept, or be in partnership with any person who accepts or agrees to accept, any employment, fee, or other thing of monetary value, or portion thereof, in consideration of his appearing, agreeing to appear, or taking any other action on behalf of another person before any state board or agency.

This subdivision shall not be construed to prohibit a member who is an attorney at law from practicing in that capacity before any court or before the Workers' Compensation Appeals Board and receiving compensation therefor. This subdivision shall not act to prohibit a member from acting as an advocate without compensation or making inquiry for information on behalf of a constituent before a state board or agency, or from engaging in activities on behalf of another which require purely ministerial acts by the board or agency and which in no way require the board or agency to exercise any discretion, or from engaging in activities involving a board or agency which are strictly on his or her own behalf. The prohibition contained in this subdivision shall not apply to a partnership or firm of which the Member of the Legislature is a member if the Member of the Legislature does not share directly or indirectly in the fee, less any expenses attributable to that fee, resulting from the transaction. The prohibition contained in this subdivision as it read immediately prior to January 1, 1983, shall not apply in connection with any matter pending before any state board or agency on or before January 2, 1967, if the affected Member of the Legislature was an attorney of record or representative in the matter prior to January 2, 1967. The prohibition contained in this subdivision, as amended and operative on January 1, 1983, shall not apply to any activity of any Member in connection with a matter pending before any state board or agency on January 1, 1983, which was not prohibited by this

section prior to that date, if the affected Member of the Legislature was an attorney of record or representative in the matter prior to January 1, 1983.

(4) Receive or agree to receive, directly or indirectly, any compensation, reward, or gift from any source except the State of California for any service, advice, assistance or other matter related to the legislative process, except fees for speeches or published works on legislative subjects and except, in connection therewith, reimbursement of expenses for actual expenditures for travel and reasonable subsistence for which no payment or reimbursement is made by the State of California.

(5) Participate, by voting or any other action, on the floor of either house, in committee, or elsewhere, in the passage or defeat of legislation in which he has a personal interest, except as follows:

(i) If, on the vote for final passage by the house of which he is a member, of the legislation in which he has a personal interest, he first files a statement (which shall be entered verbatim on the journal) stating in substance that he has a personal interest in the legislation to be voted on and, notwithstanding that interest, he is able to cast a fair and objective vote on that legislation, he may cast his vote without violating any provision of this article.

(ii) If the member believes that, because of his personal interest, he should abstain from participating in the vote on the legislation, he shall so advise the presiding officer prior to the commencement of the vote and shall be excused from voting on the legislation without any entry on the journal of the fact of his personal interest. In the event a rule of the house requiring that each member who is present vote aye or nay is invoked, the presiding officer shall order the member excused from compliance and shall order entered on the journal a simple statement that the member was excused from voting on the legislation pursuant to law.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: Legislators are prohibited from accepting other employment that he or she "has reason to believe" will impair his or her judgment. That is a subjective test and easy to get around.

The Solution: This resolution makes the test on other employment (moonlighting) objective by replacing "has reason to believe" to "is of such a character to."

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

AUTHOR AND/OR PERMANENT CONTACT: Ben Rudin, 3830 Valley Centre Dr., Ste. 705 #231, San Diego, CA 92130, (858) 256-4429, ben_rudin@hotmail.com.

RESPONSIBLE FLOOR DELEGATE: Ben Rudin

RESOLUTION 12-02-2018

DIGEST
Local Government: Prohibition on Acquisition of Federal Surplus Property Without Approval
Amends Government Code section 54141 and adds section 54145 to prohibit a local agency from receiving surplus military equipment without an affirmative vote of the legislative body of the local agency.

RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE

History:
Similar to Resolutions 07-07-2015 and 02-12-2017, which were approved in principle.

Reasons:
This resolution amends Government Code section 54141 and adds section 54145 and to prohibit a local agency from receiving surplus military equipment without an affirmative vote of the legislative body of the local agency. This resolution should be disapproved because there is no evidence that local agencies are buying military surplus equipment for improper purposes, it is overbroad, and unnecessarily adds another layer of bureaucracy.

Current law allows local agencies to acquire certain surplus military and other federal property and equipment without requiring public hearings, as is the case for the acquisition of non-federal or military equipment such agencies purchase on a regular basis to do their jobs. There is no evidence that law enforcement agencies are abusing the right to obtain such equipment or that once they receive the equipment the agencies use it in a way that harms the public.

The resolution is also overbroad because it includes basic weapons and ammunition that police departments use on a daily basis that must be approved by the local legislative body. There is no reason to subject such purchases to legislative approval because the law does not require similar purchases to be approved by the legislative body if they are not bought from the federal government, but from a private company. Buying such equipment from the federal government or the military might be the least expensive option or have the highest quality.

This resolution is similar to Assem. Bill 36 (Campos) (Reg. Sess. 2014) which Governor Brown vetoed. It is also similar to Sen. Bill 242 (Monning) which added section 38004.5 of the Education Code and was enacted into law effective January 1, 2016. Education Code section 39004.5 requires a school district's police department to obtain approval from its governing board prior to receiving federal surplus military equipment.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Government Code section 54141 and to add section 54145 to read as follows:

§ 54141

(a) “Local agency” means county, city, whether general law or chartered, city and county, town, school district, municipal corporation, ~~or public district.~~ district, political subdivision, or any board, commission, or agency thereof, or other local public agency.

(b) “United States” includes any department, board, or agency thereof.

(c) “State” includes any department or agency thereof.

(d) “Legislative body” means a legislative body as defined in Section 54952.

§ 54145

(a) A local agency shall not receive surplus military equipment pursuant to Section 2576a of Title 10 of the United States Code unless the legislative body of the local agency approves the acquisition at a meeting held pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950)).

(b) The Legislature finds and declares that this section constitutes a matter of statewide concern and shall apply to charter cities and charter counties. The provisions of this section shall supersede any inconsistent provisions in the charter of any city, county, or city and county.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: National Lawyers Guild, San Francisco Bay Area Chapter

STATEMENT OF REASONS

The Problem: Current law allows certain surplus military and other federal property and equipment to be acquired by local agencies in California without any requirement that the local agency hold a public hearing or notify the public of the type of equipment or property sought to be acquired by the agency or the use to which it will or may be put by the public agency, as there is no requirement for such public disclosure or public input in the federal law that allows distribution of surplus equipment to local agencies.

The Solution: The proposed legislation requires all federal surplus property acquisitions by a local agency in California be approved by the governing body of the local agency after a public hearing. This requirement gives citizens of the community the opportunity to express their views on the appropriateness for the community of the proposed acquisition.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

AUTHOR AND/OR PERMANENT CONTACT: Richard P. Koch, 268 Bush St. #3237, San Francisco, CA 94104 (415) 397-1060, Fax (415) 397-3077, rpkoch1@sbcglobal.net

RESPONSIBLE FLOOR DELEGATE: Richard P. Koch

RESOLUTION 12-03-2018

DIGEST
Public Holidays: Replacing Columbus Day with "'Indigenous Peoples' Day"
Amends Government Code section 6700 to celebrate "'Indigenous Peoples' Day" instead of Columbus Day on the second Monday of October.

RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE

History:
No similar resolutions found.

Reasons:
This resolution amends Government Code section 6700 to celebrate "'Indigenous Peoples' Day" instead of Columbus Day on the second Monday of October. The resolution should be disapproved because California already celebrates "Native American Day" and the argument that Columbus's achievements are outweighed by his moral deficits begs the question of how well the 'indigenous peoples' would fare, if subjected to the same postmodern critique.

Under existing law, California celebrates "Native American Day," on the fourth Friday of September. (Gov. Code, § 6700, subd. (a)(11).) It does not make sense to celebrate the same holiday ten days later. If the resolution's purpose is to purge California's recognition of an Italian immigrant who sailed under a Spanish flag, the state holiday bearing his name should simply be stricken.

Instead, the resolution seeks to replace a holiday about a historically-significant individual, with a political narrative about 'indigenous peoples' that overlooks the inconvenient truth that they, like their brethren in Europe, Asia, Africa, and elsewhere, had seized lands through conquest, wiped out native inhabitants, and practiced slavery. (See, e.g., Snyder, "Slavery in Indian Country," (Harvard University Press 2012), http://www.hup.harvard.edu/catalog.php?isbn=9780674064232; Smith, "How Native American Slaveholders Complicate the Trail of Tears Narrative," Smithsonian.com (Mar. 6, 2018), https://www.smithsonianmag.com/smithsonian-institution/ how-native-american-slaveholders-complicate-trail-tears-narrative-180968339.)

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Government Code Section 6700 to read as follows:

§ 6700
(a) The holidays in this state are:
(1) Every Sunday.
(2) January 1st.
(3) The third Monday in January, known as "Dr. Martin Luther King, Jr. Day."

(4) February 12th, known as “Lincoln Day.”
(5) The third Monday in February.
(6) March 31st, known as “Cesar Chavez Day.”
(7) The last Monday in May.
(8) July 4th.
(9) The first Monday in September.
(10) September 9th, known as “Admission Day.”
(11) The fourth Friday in September, known as “Native American Day.”
(12) The second Monday in October, known as “Indigenous Peoples’ Day” “~~Columbus Day.” “~~
(13) November 11th, known as “Veterans Day.”
(14) December 25th.
(15) Good Friday from 12 noon until 3 p.m.
(16) (A) Every day appointed by the President or Governor for a public fast, thanksgiving, or holiday.
(B) Except for the Thursday in November appointed as Thanksgiving Day, this paragraph and paragraphs (3) and (6) shall not apply to a city, county, or district unless made applicable by charter, or by ordinance or resolution of the governing body thereof.
(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, the memorandum of understanding shall be controlling without further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bay Area Lawyers for Individual Freedom

STATEMENT OF REASONS

The Problem: Christopher Columbus was not a hero, in fact, his men killed, raped, and enslaved thousands of Indigenous people, nor was America discovered by Columbus. By celebrating Columbus Day, we support the oppression and genocide of minorities. While the past cannot be changed, we can realize and remember the pain that millions suffered throughout the nation’s history.

The Solution: Indigenous Peoples’ Day recognizes and celebrates the heritage of Native Americans and the history of their Tribes within the United States of America. By changing the holiday from Columbus Day to Indigenous Peoples' Day, the holiday recognizes the historic and ongoing painful impacts that Columbus's and other European colonists' arrival in the Americas had on Indigenous peoples. By changing the name from Columbus Day to Indigenous People’s day, we educate Californians, the Country and the World about the history of the United States before the arrival of colonizers. Through Indigenous Peoples’ Day, we can refocus the conversation away from genocide that was started by Columbus and his men and instead to the ongoing resilience and resistance of Indigenous people throughout the Americas.

IMPACT STATEMENT
The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT AND PRIOR LEGISLATION
None known.

AUTHOR AND/OR PERMANENT CONTACT: Michael Wolchansky, 2370 Market Street, Suite 180, San Francisco, CA, 94114; 415.404.7971; Michael@Wolchanskylaw.com

RESPONSIBLE FLOOR DELEGATE: Michael Wolchansky

RESOLUTION 12-04-2018

DIGEST
Public Information Requests: Administrative Appeals
Amends Government Code section 6258 to permit an individual to petition the Government Claims Board to enforce the individual's right to inspect or receive a copy of public records, as defined.

RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE

History:
Similar to Resolution 02-03-2017, which was disapproved.

Reasons:
This resolution amends Government Code section 6258 to permit an individual to petition the Government Claims Board to enforce the individual's right to inspect or receive a copy of public records, as defined. This resolution should be disapproved because the Government Claims Program was transferred to the Department of General Services from the Victim Compensation and Government Claims Board by a function of executive branch reorganization as of July 1, 2016.

The current appeals process that an individual must pursue if denied access to public records, is through the courts if a satisfactory resolution cannot be reached between the requestor and the State. The resolution is predicated upon the claim that California is sorely lacking in providing access to public information, and describes the process of appealing a denial of public information as daunting. However, there is no information or data that supports either that the State fails to provide responses to requests for public records, or that the appeals process is daunting.

More significantly, the resolution seeks to create a new path, through the Government Claims Board, for the appeal of a public records request denial. The Government Claims Board was replaced, by executive reorganization, by the Department of General Services (DGS) effective July 1, 2016, and there is no evidence from the past fiscal year and a half that an improved process for addressing appeals of public records request denials is needed, or that changing the process will make appeals of denials of access to public records less daunting. It is not reasonable, without more time or recent data, to presume that DGS would be more efficient than the courts, or that DGS has capacity to manage appeals of public records request denials in addition to managing its historical responsibilities as well as the new duties of the Government Claims Board. Additionally, there is insufficient information to conclude that the process proposed in the resolution, even if modified to reflect the current government claims process through DGS, would be less daunting than the current appeals process through the courts.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Government Code section 6258, to read as follows:

§ 6258
Any person may:
(a) I~~i~~nstitute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this chapter. The times for responsive pleadings and for hearings in these proceedings shall be set by the judge of the court with the object of securing a decision as to these matters at the earliest possible time; or
(b) Petition the Board, as defined in Government Code sections 900.2(b) or 940.2(b), to enforce his or her right to inspect or receive a copy of any public record or class of public records under this chapter. The Board shall not have jurisdiction to hear such claims against the judicial or legislative branches of state government, or any entity, officer, or employee of those branches, or the Governor or the Office of the Governor. The Board shall not have jurisdiction to hear such claims against counties, cities, or other local governmental entities or employees, provided the Board as defined in Government Code sections 900.2(a) or 940.2(a) accepts and hears such claims. The Board shall not have jurisdiction to hear such claims against a University of California or California State University campus, provided the University of California Regents, or the Board as defined in Government Code sections 900.2(d) or 940.2(d), respectively, accepts and hears such claims. The Board shall not have jurisdiction to hear such claims against school districts or community college districts, provided the respective district accepts and hears such claims. Petitioning the Board or other respective agency shall not prejudice the person's rights under subsection (a) after the Board or agency has made its determination.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: California is sorely lacking in providing public access to information. Whenever a government official denies a Californian access to information, the only remedy is to go through the court system. Although attorney fees are reimbursed upon prevailing, tons of money and years of waiting and energy may be spent just to get to that point. Challenging a denial of public information should not be such a daunting task that can deter people who do not have the means, or who need information sooner than the years that the litigation process can take.

The Solution: This resolution offers an efficient alternative to the court process. The person denied access may instead petition the Government Claims Board to determine whether a violation of our rights to public records has occurred and if so, order the respective government agency to disclose the information immediately. The Government Claims Board already hears people's claims against state employees and entities for damages to person or property, contract

disputes, and tax/fee/penalty refunds; it should be equipped to handle public records claims. It does not currently hear claims against local governments, because the responsible local agency hears them. The same is true with UC and CSU, because the UC Regents and CSU campuses hear them. Finally, the same is true with school districts and community college districts, because the districts themselves hear the claims. This resolution permits those entities to also hear public records claims to maintain consistency in where claims get filed. Additionally, for separation of powers reasons, the Board's authority would not extend to the Governor, Legislature, or Judicial branches.

Requests through the Government Claims Board can be resolved quickly and much cheaper than through the courts, for the petitioners and taxpayers.

IMPACT STATEMENT
This resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

AUTHOR AND/OR PERMANENT CONTACT: Ben Rudin, 3830 Valley Centre Dr., Ste. 705 #231, San Diego, CA 92130, (858) 256-4429, ben_rudin@hotmail.com.

RESPONSIBLE FLOOR DELEGATE: Ben Rudin

COUNTERARGUMENTS AND STATE BAR SECTION COMMENTS

BAR ASSOCIATION OF SAN FRANCISCO

This resolution should not be implemented for a number of reasons. First, the resolution is internally contradictory. Proposed Government Code section 6258(b) would cross-refer to the definition of the "Board" in Government Code sections 900.2(b) or 940.2(b). These sections are substantially identical and, "in the case of a local public entity" define the "Board" as "the governing body of the local public entity." However, proposed section 6258(b) states that "The Board shall not have jurisdiction to hear such claims against counties, cities, or other local governmental entities or employees, provided the Board as defined in Government Code sections 900.2(a) or 940.2(a) accepts and hears such claims." This language is circular: as an example, it could simultaneously require a city council to hear a petition regarding a public records act request, while also providing that the council does not have jurisdiction to hear claims against the city (or city clerk) in the event the council accepts and hears such claims against the city (or city clerk).

Second, the resolution would add yet another layer of bureaucracy to government, increasing costs for already cash-strapped public entities that would need to potentially oppose an unnecessary "middle man" level of appeal that can be further appealed through the court system—an appeal process already available under the Government Code. Government Code

section 6258(a) already provides a means for redress in the event a local agency denies a request for a public record that complies with due process; such an individual can "[i]nstitute proceedings for injunctive or declarative relief or writ of mandate . . . to enforce his or her right to inspect or to receive a copy of any public record[.]"

Proposed section 6258(a) would keep this ultimate appeal process in place, but inserts an unnecessary "middle" level of appeal, without providing any guidelines as to a standard of review of a local agency's decision regarding a public records act response. Public agencies are already required under the Public Records Act to provide suggestions for overcoming any practical basis for denying access to the records or information sought, and to assist members of the public regarding their requests, and agencies bear a heavy burden to show why a particular request should be denied, either in whole or in part. (See Gov. Code §§ 6250 *et seq*.) Moreover, as Proponent mentions, attorney's fees are available to requestors if the agency wrongfully denied their request. The current judicial appeal process works just fine; let's not change it.

Additionally, most local agencies already provide a method and process to appeal a decision or action of the local agency or one of its agents. This resolution would override the appeals process carefully considered and established by local agencies. Agencies subject to a public records request are most familiar with the particular circumstances involved with these records and their reasons for denial. Accordingly, requestors should exhaust any administrative remedies available to them and allow the agency to review its own decision, preserving our scarce judicial resources.

RESOLUTION 12-05-2018

DIGEST
Coroner: Precludes County Sheriff or District Attorney from serving as Coroner
Amends Government Code sections 24300, 24304, 24304.1, adds section 27459, and deletes section 27469 to preclude a county sheriff or district attorney from also serving as coroner.

RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:
No similar resolutions found.

Reasons:
This resolution amends Government Code sections 24300, 24304, 24304.1, adds section 27459, and deletes section 27469 to preclude a county sheriff or district attorney from also serving as coroner. This resolution should be approved in principle because it will allow coroners in each county to work independently and be free from the influence of a sheriff or district attorney who may have different objectives.

A similar proposal is now before the Legislature (Sen. Bill No.1303 (2017-2018 Reg. Sess.)), introduced by Senator Pan and Senator Galgiani on February 16, 2018. That bill would require any county with a population of 500,000 or greater to replace a coroner or sheriff's coroner's office with an office of the medical examiner without a public vote or election operating independently from any other county agency or official. The chief medical officer would be appointed by the board of supervisors by the county or by the county executive officer. The proposed resolution, as well as Sen. Bill 1303, are designed to address recent mistrust against sheriff-coroners who perform autopsies related to police shootings. Recently Dr. Bennet Omalu, the chief forensic pathologist of San Joaquin County resigned, accusing the Sheriff and Coroner of trying to change autopsy findings.

While there will be an obvious benefit to the public from non-biased coroners outside of the management of a county sheriff or district attorney, there will be a financial burden to small rural counties to maintain an independent coroner if they must form and manage alone. As suggested by the San Diego County Bar Assocation in a possible proposed amendment, a solution could be to allow counties the option of forming a regional medical examiner's office with jurisdiction across multiple counties or the option of contracting with adjacent counties that have an independent medical examiner or coroner's office.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Government Code sections 24300, 24304, 24304.1, add section 27459 and delete section 27469, and to to read as follows:

§ 24300

By ordinance the board of supervisors may consolidate the duties of certain of the county offices in one or more of these combinations:

(a) Sheriff and tax collector.

(b) Auditor and recorder.

(c) County clerk, auditor, and recorder.

(d) County clerk and public administrator.

(e) County clerk and recorder.

(f) County clerk and auditor.

(g) Treasurer and tax collector.

(h) Treasurer and recorder.

(i) Treasurer and assessor.

(j) Treasurer and public administrator.

(k) Public administrator and coroner.

(l) District attorney and public administrator.

~~(m) District attorney and coroner.~~

~~(n) Sheriff and coroner.~~

(~~o~~ m) Sheriff and public administrator.

(~~p~~ n) County agricultural commissioner and county sealer of weights and measures.

(~~q~~ o) Road commissioner and surveyor. A county may create an office entitled public works director, combining the duties of road commissioner and surveyor and any other compatible duties not legally required to be performed by another county officer.

(~~r~~ p) County surveyor and director of transportation.

By the ordinance that consolidates the duties of the appointive county offices described in subdivision (p), notwithstanding Section 2122 and Sections 2181 to 2187, inclusive, of the Food and Agricultural Code, and Sections 12200 and 12214 of the Business and Professions Code, the board of supervisors may provide that the first term only of the newly consolidated office expires when the first of the remaining unexpired terms of the two unconsolidated offices would have expired. Where a vacancy in either of the unconsolidated offices exists the term of office of the newly consolidated office shall be the longer of the remaining unexpired terms.

§ 24304

Notwithstanding the provisions of Section 24300, in counties of the 13th to 58th classes, inclusive, the board of supervisors by ordinance may consolidate the duties of certain of the county offices in one or more of these combinations:

(a) Sheriff and tax collector.

(b) Auditor and recorder.

(c) County clerk, auditor, and recorder.

(d) County clerk and public administrator.

(e) County clerk and recorder.

(f) County clerk and auditor.

(g) Treasurer and tax collector.

(h) Treasurer and recorder.

(i) Treasurer and assessor.

(j) Treasurer and public administrator.
(k) Public administrator and coroner.
(l) District attorney and public administrator.
~~(m) District attorney and coroner.~~
~~(n) Sheriff and coroner.~~
(~~o~~ m) Sheriff and public administrator.
(~~p~~ n) County agricultural commissioner and county sealer of weights and measures.
(~~q~~ o) County clerk and tax collector.
(~~r~~ p) Treasurer, tax collector, and recorder.
(~~s~~ q) Sheriff, and tax collector~~, and coroner~~.
(~~t~~ r) Coroner and health officer.
(~~u~~ s) Road commissioner and surveyor. A county may create an office entitled public works director, combining the duties of road commissioner and surveyor and any other compatible duties not legally required to be performed by another county officer.
(~~v~~ t) Sheriff~~, coroner,~~ and public administrator.
(~~w~~ u) Treasurer, tax collector, and public administrator.
(~~x~~ v) County clerk, assessor, and recorder.
(~~y~~ w) Assessor and recorder.
(~~z~~ x) Tax collector/county clerk and treasurer.

§ 24304.1

Notwithstanding the provisions of Section 24300, in counties of the 11th class, the board of supervisors by ordinance may consolidate the duties of certain of the county offices, in one or both of these combinations:
(a) County clerk, assessor, and recorder.
(b) Sheriff ~~, coroner,~~ and public administrator.

§ 27459

(a) Notwithstanding any other law, under no circumstance shall a sheriff or district attorney be appointed as or serve as the coroner of a county. The office of a county coroner or medical examiner shall be separate and independent from the sheriff and the district attorney.
(b) In any county in which the sheriff also serves as the coroner, the county shall, within one year of the effective date of this statute, separate the coroner's office from the sheriff and appoint a coroner or examiner who is not the sheriff or the district attorney.

~~§ 27469~~
~~In any action or proceeding in which the sheriff is a party, the coroner shall discharge the duties of sheriff.~~

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: Allowing a sheriff or district attorney to serve as the county's coroner is an invitation to corruption. The coroner's office must be independent. As has been widely reported, the sheriff of San Joaquin County, who was also the coroner, was accused by the nationally-known chief medical examiner Dr. Bennet Omalu and forensic pathologist Dr. Susan Parson of interfering in autopsies to change the cause of death to benefit law enforcement officers. The San Joaquin District Attorney has called for a separate coroner's office. www.recordnet.com/news/20171211/da-calls-for-medical-examiners-office-to-be-separate-from-sheriffs-office. In 2016 the Santa Clara County coroner was separated from the Sheriff, who was accused of maintaining an "interfering and potentially destructive partnership for years." The independent coroner's office is consistent with national norms. www.mercurynews.com/2016/06/14/amid-criticism-santa-clara-county-considering-splitting-coroner-from-sheriffs-oversight/

The Solution: The solution is to require that the coroner and his/her office be separate and independent from the Sheriff. Although the problem is really with the sheriff being the coroner, the law also allows the district attorney to be the coroner. This should not be allowed and this resolution fixes that potential problem.

IMPACT STATEMENT
This resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

AUTHOR AND/OR PERMANENT CONTACT: Mark Harvis, Los Angeles County Public Defender, 320 W. Temple Street, Suite 590, Los Angeles, CA 90012, phone: 213-974-3066, e-mail: mharvis@pubdef.lacounty.gov

RESPONSIBLE FLOOR DELEGATE: Mark Harvis

COUNTERARGUMENTS AND STATE BAR SECTION COMMENTS

SAN DIEGO COUNTY BAR ASSOCIATION

The SDCBA Delegation would support Resolution 12-05-2018 if amended. The delegation agrees that an independent medical examiner or coroner, separate from law enforcement agencies, aids in transparency and avoiding appearances of potential cover-ups in relation to officer involved deaths. However, the delegation is concerned that small counties may not be able to afford the costs associated with forming an independent medical examiner or coroner's office. Accordingly, the Delegation would support this Resolution if amended to allow counties the option of forming a regional medical examiner's office with jurisdiction across multiple

counties or the option of contracting with adjacent counties that have an independent medical examiner or coroner’s office.

RESOLUTION 12-06-2018

DIGEST
Inmates: Streamlining Administrative Requirements
Adds Government Code sections 908, 945.5, and 952 to provide that inmates and parolees who file a grievance do not have to submit a separate form with the Government Claims Board.

RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE

History:
No similar resolutions found.

Reasons:
This resolution adds Government Code sections 908, 945.5, and 952 to provide that inmates and parolees who file a grievance do not have to submit a separate form with the Government Claims Board. This resolution should be disapproved because it conflates two processes designed to accomplish different objectives and the issues raised may be accomplished through less burdensome means.

Current law provides that prisoners must file a Form 602 as a prerequisite to filing a federal lawsuit against prison officials. A separate form must be filed with the Government Claims Board in order to bring a claim under state law. The resolution posits that prisoners who file complaints against prison personnel are often unaware that they need to submit a separate form with the Government Claims Board in order to pursue civil litigation at the state level. However, those two processes are designed to accomplish different objectives. The former tolls a prisoner's rights with respect to federal claims, whereas the latter is designed to alert the appropriate parties in the state bureaucracy that a state law claim is pending.

It might very well be that prisoners often overlook the existing law. However, people who are not prisoners might also be unaware of the need to submit a form to the Government Claims Board. Furthermore, the objective of the resolution can be achieved through less burdensome means even if prisoners should be afforded special rights. From a policy perspective, the onus should be on the individual seeking to assert the claim rather than being shifted to two separate bureaucracies (i.e. a prison and the Government Claims Board) that are already overburdened.

California law already provides limited tolling statutes in instances where it is appropriate. (See e.g. Code Civ. Proc., § 352.1, subd. (a) [two year tolling generally applies when the plaintiff is imprisoned].) And there are a number of exceptions to that general rule (see e.g. time limits on presentation of tort or contract claims against governmental entities and suit thereon following rejection. [Code Civ. Proc., § 352.1, subd. (b); *Moore v. Twomey* (2004) 120 Cal.App.4th 910, 914].) The Legislature already made the policy decision that imprisonment does not toll the time to sue on claims for relief other than damages (e.g., suits for injunctive relief) based on conditions of plaintiff's confinement, including federal civil rights claims under 42 U.S.C. § 1983. (Code Civ. Proc., § 352.1, subd. (c).)

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to add Government Code section 908, 945.5, and 952, to read as follows:

§ 908

Notwithstanding any other provision, any claim filed by an inmate or parolee under federal or state law against a prison, jail, or employees according to the process of California Code of Regulations Title 15, sections 3084, et seq. shall, unless the inmate or parolee explicitly requests otherwise (1) also be received by the Board as defined in § 900.2(b) for its consideration and (2) satisfy the requirements of § 905.2(b).

§ 945.5

Notwithstanding any other provision, any claim filed by an inmate or parolee under federal or state law against a prison, jail, or employees according to the process of California Code of Regulations Title 15, sections 3084, et seq. shall, unless the inmate or parolee explicitly requests otherwise (1) also be received by the Board as defined in § 940.2(b) for its consideration and (2) satisfy the requirements of § 945.4.

§ 952

Notwithstanding any other provision, any claim filed by an inmate or parolee under federal or state law against a prison, jail, or employees according to the process of California Code of Regulations Title 15, sections 3084, et seq. shall, unless the inmate or parolee explicitly requests otherwise (1) also be received by the Board as defined in § 940.2(b) for its consideration and (2) satisfy the requirements of § 945.4.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: Many inmates run out the clock on their state law claims for damages without realizing it. When subject to excessive force by a guard, or a failure to protect, they file a complaint with the Department of Corrections known as a 602. Although that is a prerequisite for filing a Federal civil rights claim and tolls that statute of limitations, it does not affect their claims under state law. Under the California Tort Claims Act, claims for damages against public entities and employees need to be filed with the Government Claims Board within six months after the incident, or the claim is forfeited. Inmates are often unaware that they need to submit a separate form for their state claims, resulting in their loss of opportunity to file.

The Solution: This resolution ensures that the complaint filed with the Department of Corrections satisfies the state's requirements to preserve state law claims and forwards a copy of the complaint to the Government Claims Board for consideration unless the inmate requests otherwise.

IMPACT STATEMENT
This resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

AUTHOR AND/OR PERMANENT CONTACT: Ben Rudin, 3830 Valley Centre Dr., Ste. 705 #231, San Diego, CA 92130, (858) 256-4429, ben_rudin@hotmail.com.

RESPONSIBLE FLOOR DELEGATE: Ben Rudin

RESOLUTION 12-07-2018

DIGEST
Elections: Mandatory Voting
Adds Elections Code section 2350 to impose sanctions for failure of a registered voter to vote.

RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE

History:
No similar resolutions found.

Reasons:
This resolution adds Elections Code section 2350 to impose sanctions for failure of a registered voter to vote. This resolution should be disapproved because, although promoting greater participation in elections is an important goal, the resolution's requirement of voting arguably violates free speech protections, and the monetary penalties are most likely to impact low-income populations.

Countries that have implemented compulsory voting frequently focus on requiring registered voters to appear at the polls, not on requiring them to vote once they get there. By requiring actual voting, this resolution would require political speech in violation of the First Amendment. Moreover, forcing the exercise of a consitutional right diminishes that right. Finally, the consequence of conditioning the ability to renew a driver's license on either voting or paying a $100 fine will have a disproportionate impact on low-income voters, one of the disenfranchised groups this resolution is meant to support.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to add Elections Code section 2350 to read as follows:

§ 2350

(1) It shall be the duty of every registered voter to vote at each state-wide election.

(2) Within 30 days after each state-wide election, each County Elections Officer must prepare a list of the names and addresses of the voters registered in that county who appear to have failed to vote at the election.

(3) Subject to subsection (4), below, within 90 days after any state-wide election, each County Elections Officer must send a penalty notice by first class mail to the last known address of each registered voter whose name appears on the list prepared under subsection (2).

(4) The County Elections Officer is not required to send a penalty notice if she or he is satisfied that the voter is dead, was ineligible to vote at the election; or had a good cause for failing to vote.

(5) A penalty notice is a notice in a form to be provided by the Secretary of State notifying the registered voter that:

(a) the registered voter appears to have failed to vote at the election; and

(b) it is an offense to fail to vote at an election without a valid and sufficient reason for the failure; and

(c) to avoid possible loss of privileges with the Department of Motor Vehicles, the voter must respond to the County Elections Officer within 30 days of the date of the notice in one of the following ways:

(i) give the County Elections Officer a statement, under penalty of perjury, specifically identifying the location or manner in which the voter's ballot was submitted; or

(ii) give the County Elections Officer a statement, under penalty of perjury, showing good cause for any failure to vote; or

(iii) pay the County Elections Officer a penalty of $50.00.

(d) If a voter is unable, by reason of absence from his or her place of living or physical incapacity, to respond to a penalty notice within the prescribed time, any other person who has a personal knowledge of the facts may respond to the notice within that time, and such response is to be treated as compliance with the notice.

(6) For any registered voter who responds to a penalty notice in any manner permitted in subparagraph (5)(c)(i), (ii) or (iii), the County Elections Officer shall take no further action.

(7) Within 180 days after each state-wide election, each County Elections Officer must submit to the Secretary of State and the Department of Motor Vehicles a list of the names and addresses of the voters registered in that county who did not respond to a penalty notice in the manner indicated in subparagraph (5)(c)(i), (ii) or (iii).

(8) Any person who did not respond to a penalty notice in the manner indicated in subparagraph (5)(c)(i), (ii) or (iii) shall be required to pay a penalty of $100.00 before being permitted to obtain or renew a driver's license or to register a vehicle with the Department of Motor Vehicles. The court with authority to hear and rule upon traffic violations in the county where the voter is registered shall have discretion to waive the penalty upon a showing of good cause, which may include the registered voter's financial circumstances.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Chelsea Dunton, Oliver Greenwood, Margaret Grover, Mary Grace Guzman, Ariel Lee, Frank Leidman, Lilys McCoy, Lisa Mendes, Stephen Steinberg, Christina Weed

STATEMENT OF REASONS

The Problem: The California Secretary of State's most recent report of Voter Registration, dated February 10, 2017, reported that more than 20% of the persons eligible to vote in California were not registered. With the exception of the November 2016 elections, which included a presidential election, voter turnout has declined steadily, with primaries and general elections in years without a presidential election hitting record lows. In the June 2014 primary, turnout was only 25% and the November 2016 general election turnout of 42% was a record low for a general election. Between the 2008 presidential election and the 2014 elections, primary turnout declined 33 points and general election turnout declined 37 points. Younger voters cite a lack of interest in politics, elections, or candidates.

The Solution: This resolution makes voting in state-wide elections mandatory. Voters who do not vote are given notice and the opportunity to show good cause for any failure to vote or pay a

modest fine, less than the cost of an expired meter ticket in Los Angeles. Voters who fail to respond to the notice will be required to pay a larger fine in order to obtain or renew a driver's license or vehicle registration. Many countries, including Australia and Belgium, have compulsory voting and enjoy a substantially higher voter turnout, in excess of 90%.

IMPACT STATEMENT
The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

AUTHOR AND/OR PERMANENT CONTACT: Margaret J. Grover, Wendel Rosen Black & Dean, LLP, 1111 Broadway, 24th Floor, Oakland, California 94607, (510) 834-6000, mgrover@wendel.com.

RESPONSIBLE FLOOR DELEGATE: Margaret J. Grover

COUNTERARGUMENTS AND STATE BAR SECTION COMMENTS

BAR ASSOCIATION OF SAN FRANCISCO

Note: Should the proponent of this resolution withdraw it from consideration, the BASF delegation will withdraw this counterargument.

Resolution 12-07-2018 proposes that voting be mandatory in California subject to a fine, and potential loss of driving privileges.

While the theory behind the resolution is well-meaning, that is, to increase voter participation, the actual proposal contains serious flaws. In addition, the argument in support of the resolution fails to address the three most common arguments against mandatory voting: whether it is constitutional, what are the negative consequences of mandatory voting and the likelihood that the penalties for not voting will fall mostly on those who can least afford it.

The most obvious internal flaws of the resolution are 1) the absence of a definition of good cause for not voting and 2) the use of denial of driving privileges as an enforcement mechanism for an offense unrelated to motor vehicle use or safety.

As the Supreme Court has said, "Our Constitution is designed to maximize individual freedoms within a framework of ordered liberty. Statutory limitations on those freedoms are examined for substantive authority and content, as well as for definiteness or certainty of expression." *Kolender* v. *Lawson*, 461 U. S. 352, 357 (1983). Therefore, "a penal statute [must] define the criminal offense [1] with sufficient definiteness that ordinary people can understand what conduct is prohibited and [2] in a manner that does not encourage arbitrary and discriminatory enforcement." *Id.*

There is no question that the proposed statute would be a limitation on freedom; *i.e.*, the freedom not to vote. Questions accordingly arise whether the proposal violates substantive constitutional protections, such as freedom of speech. However, it is not necessary to address those questions, because the proposal clearly fails for due process reasons. Namely, the resolution fails to define what is good cause for not voting. Therefore, a citizen cannot know whether he, she or they may be excused for not voting and instead be subject to criminal penaltes.

Proponents attempt to answer this by initially making good cause whatever the citizen says it is; provided the non-voter offers an excuse within a limited time period. However, once the time period expires, good cause becomes whatever a judge decides it is. This strange approach clearly reveals that the proponents did not seriously address the due process problem of their resolution.

BASF has consistently opposed the use of driver license suspension as an enforcement mechanism for offenses unrelated to use of a vehicle or highway safety. It does so for the valid reason that such laws negatively impact those least financially able to pay the fines involved. The same rationale applies here, despite the proponents' suggestion the fines are inconsequential, which may be true for the affluent.

Proponents also did not address the unintended consequences of mandatory voting, such as increasing the number of low information voters and how persons who do not want to vote will use the vote when required to do so. These questions have been addressed in the literature about mandatory voting but were ignored by proponents. Delegates deserve more regarding such a significant proposed change in the long history of voluntary voting in the United States.

SAN DIEGO COUNTY BAR ASSOCIATION

The SDCBA Delegation urges disapproval of Resolution 12-07-2018 for the following reasons:

(1) Voting is, fundamentally, a right. For something to be a right, it must include a right to not partake in that right. The right to speak includes a right not to speak. By contrast, paying taxes is not a right; it is a requirement. Since we have the right to vote, we have the right not to vote. This resolution would infringe on that right.

(2) Although some people regard their vote as a currency that expires after election day that they must use, others see their vote very differently: their vote for a candidate is a *statement* of some degree of moral approval. In other words, voting is a form of speech. Forcing them to vote amounts to forcing them to make a statement against their wills, which violates their freedom of speech.

(3) An abstained vote is better than a poorly thought-out vote. The author cites, "Many younger voters cite a lack of interest in politics, candidates, and elections." Apathy, however, goes beyond younger voters; many people are uninformed and uninterested. People who do not know or care about a decision will likely make an unwise decision, and voting is a decision that affects far more than just the person deciding. The last thing

we should do is force such apathy into the voting booth. If they do not know or care about what they are voting on, they should not be voting.

We would support more education on why voting is important and why people should be informed. If people know and care about what they are voting on, they should vote and doing so should be easy. Those who still do not care enough to vote should not vote.

(4) California law prohibits coercing people into voting (Penal Code 18540[a]), not just coercing people into voting a particular way, but into voting at all, and for a good reason: it is wrong to force people to vote. This resolution would force everyone to vote, which is wrong on a grand scale.

(5) To make things even worse, this resolution puts the government in charge of determining what is and is not a "good cause" for not voting. Why should the very people whom voting is supposed to keep in check get to decide whether a reason for not voting is sufficient enough? Many people in 2016 abstained from voting because they were unwilling to state approval to either candidate. Is that a "good cause?" If Calexit were to qualify for a vote, it requires not just majority approval by those who turn out, but a turnout of over 50% to even be eligible to pass; if 100 voters existed, a 49-0 vote would mean it fails while 49-1 would mean it passes, which means those who oppose it could more likely succeed by not showing up. Would that be "good cause"? Giving such unbridled discretion to the government is anathema to liberty.

RESOLUTION 12-08-2018

DIGEST
Voting Rights: Redefine Definition of Felony
Amends Elections Code section 2101, 2106 and 2212 to narrow the exclusion of those who are prohibited from voting due to a felony conviction by defining felony as a "violent" felony.

RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:
No similar resolutions found.

Reasons:
This resolution amends Elections Code sections 2101, 2106 and 2212 to narrow the exclusion of those who are prohibited from voting due to a felony conviction by defining felony as a "violent" felony. This resolution should be approved in principle because disenfranchisement of non-violent felons serves no deterrent purpose and exists solely as an additional punishment not logically connected to the crime committed.

Under current law, persons convicted of any felony are not allowed to vote while imprisoned or on parole. The resolution adds the definition of a felony to Elections Code section 2101, defining it only as a violent felony per subdivision (c) of section 667.5 of the Penal Code. Further, the resolution amends Elections Code section 2106 to prohibit only those in a state or federal prison or on state parole for the conviction of a violent felony from registering to vote, as compared to all persons convicted of any felony. Finally, the resolution amends Elections Code section 2212 to prohibit the clerk of the superior court of each county from furnishing to the Secretary of State and the county elections official the information of all persons who have been committed to state prison as the result of a violent felony conviction since the clerk's last report, as opposed to all persons convicted of any felony.

The resolution provides an important step in allowing non-violent felons to participate in the voting process while not imprisoned or on parole. Once a non-violent felon is out of prison, and has completed parole, participating in voting promotes civic activism and integration into the community.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Elections Code section 2101, 2106 and 2212, to read as follows:

§ 2101.

(a) A person entitled to register to vote shall be a United States citizen, a resident of California, not imprisoned or on parole for the conviction of a felony, and at least 18 years of age at the time of the next election.

(b) A person entitled to preregister to vote in an election shall be a United States citizen, a

resident of California, not imprisoned or on parole for the conviction of a felony, and at least 16 years of age.

(c) For purposes of this section, the following definitions apply:

(1) "Imprisoned" means currently serving a state or federal prison sentence.

(2) "Parole" means a term of supervision by the Department of Corrections and Rehabilitation.

(3) "Conviction" does not include a juvenile adjudication made pursuant to Section 203 of the Welfare and Institutions Code.

(4) "Felony" means a violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code.

§ 2106

A program adopted by a county pursuant to Section 2103 or 2105, that is designed to encourage the registration of electors, shall contain the following statement in printed literature or media announcements made in connection with the program: "A person entitled to register to vote must be a United States citizen, a resident of California, not currently imprisoned in a state or federal prison or on state parole for the conviction of a violent felony, and at least 18 years of age at the time of the election. A person may preregister to vote if he or she is a United States citizen, a resident of California, not currently imprisoned in a state or federal prison or on state parole for the conviction of a violent felony, and at least 16 years of age." A county elections official may continue to use existing materials before printing new or revised materials required by any changes to this section.

§ 2212

The clerk of the superior court of each county, on the basis of the records of the court, shall furnish to the Secretary of State and the county elections official in the format prescribed by the Secretary of State, not less frequently than the first day of every month, a statement showing the names, addresses, and dates of birth of all persons who have been committed to state prison as the result of a violent felony conviction since the clerk's last report. The Secretary of State or county elections official shall cancel the affidavits of registration of those persons who are currently imprisoned or on parole for the conviction of a violent felony. The clerk shall certify the statement under the seal of the court.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

The Problem: The right to vote is one of the basic fundamental rights guaranteed to citizens of the U.S. Under current law, individuals who are convicted of non-violent felonies are disenfranchised while imprisoned or on parole. This has resulted in several problems. First, disenfranchisement of felons has helped create a racial divide within voting privileges. Second, depriving non-violent felons of the right to vote discourages civic activism and creates a further barrier to reintegration. Third, disenfranchisement severs no deterrent purpose and exists solely as an additional punishment, which is not logically connected to the crime committed.

The Solution: Those who are convicted of non-violent felonies should not be denied the right to vote while imprisoned or on parole. This resolution addresses the problem of non-violent felony disenfranchisement by defining felony to mean a violent felony.

IMPACT STATEMENT
This resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION
AB 2466 (2016), effective January 1, 2017, expanded voting rights to define "imprisoned" as currently serving a state or federal prison sentence, and to define "parole" as a term of supervision by the Department of Corrections and Rehabilitation. However, AB 2466 did not define the term "felony."

AUTHOR AND/OR PERMANENT CONTACT: Cathleen S. Yonahara, Freeland Cooper & Foreman LLP, 150 Spear St., Ste. 1800, San Francisco, California 94105, telephone: (415) 541-0200, facsimile (415) 495-4332, e-mail: yonahara@freelandlaw.com.

RESPONSIBLE FLOOR DELEGATE: Cathleen S. Yonahara

COUNTERARGUMENTS AND STATE BAR SECTION COMMENTS

SAN DIEGO COUNTY BAR ASSOCIATION

The SDCBA Delegation urges disapproval of Resolution 12-08-2018.

Assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)); domestic violence (Pen. Code, § 273.5); elder or dependent adult abuse (Pen. Code 368[b]); Use of force or threats against a witness or victim (PC 140); Rape of an unconscious person (PC 261[a][4]); Rape of an intoxicated person (PC 261[a][3]); Rape of someone with a mental disorder or physical disability (PC 261[a][1]); Sexual battery (PC 243.4[a], [b], [c]); Child abduction (PC 267); Child abuse or endangerment (PC 273a[a]); Battery against a custodial officer (PC 243.1); Shooting at an occupied building or car (PC 246). What do they have in common? They are violent, and they are felonies, but they are not violent felonies as defined in subdivision (c) of Section 667.5 of the Penal Code.

The San Diego County Bar Association agrees that those who have served their time and completed their parole should get their voting rights back, and that is already the law in California. They do not even need to petition a court to get their voting rights back; their rights are automatically restored when they complete parole. By contrast, this resolution seeks to categorically limit to Section 667.5(c), the felonies in which voting rights may be taken away in the first place, allowing them to vote while in prison and on parole. Even if one believes that some felons should be allowed to vote while in prison, no logical basis exists to automatically enable felons in the above categories to vote.

RESOLUTION 12-09-2018

DIGEST
Initiatives: Changes to Signature Gathering Requirements
Amends the California Constitution Article II, Section 8, Elections Code sections 9014 and 9035, and adds Elections Code section 9019 to modify the requirements for gathering signatures.

RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE

History:
No similar resolutions found.

Reasons:
This resolution amends the California Constitution Article II, Section 8, Elections Code sections 9014 and 9035, and adds Elections Code section 9019 to modify the requirements for gathering signatures. This resolution should be disapproved because it is possible that a gubernatorial election, such as will occur in California in 2018, may result in greater voter turnout than a presidential election, and there is no evidence that an extended period to gather signatures would benefit individuals without resources to hire signature gatherers.

The resolution is premised on the notion that initiative proponents who can pay signature gatherers to collect sufficient signatures to qualify an initiative for the ballot have an advantage in the initiative process because the 180 days within which to gather signatures is too short for those who cannot pay signature gatherers. The resolution seeks to increase the signature collection period to one year. As a balancing measure, the proposal also seeks to increase the number of signatures required to be based on the number of voters who cast ballots in the most recent presidential election, as opposed to the number of voters who cast a ballot in the most recent gubernatorial election. While the resolution's presumption that voter turnout will be greater for presidential elections because California has a top-two primary system in which two members of the same party could depress voter turn-out, it could be fairly argued that such is not always the case; that voter turnout for a presidential election could be diminished because California is on the west coast where the outcome of a national election may be calculable prior to California's vote. It could be further argued credibly that California, which has recently been deemed to have the fifth largest economy in the world, could engender a very exciting and competitive gubernatorial race, inspiring significant voter turnout in a statewide election. Furthermore, initiatives are limited in impact to California, so it is not unreasonable to utilize the number of active voters for the previous gubernatorial election as the baseline. Finally, there is no evidence that the top-two primary system suppresses voter turn-out for the general election because the top-two primary process has not been in place long enough for there to be results that demonstrate a need or a trend.

The resolution also fails to provide evidence or supporting information that initiative proponents without the ability to hire signature gatherers have been thwarted in their efforts to qualify initiatives for the ballot because of the limited amount of time of 180 days. Given the fact that, after increasing the initiative filing fee to $2000 from $200 as of January 1, 2016, there have

been greater numbers of initiatives on state ballots in the past two election cycles than in the several preceding cycles combined. Since there have been competing initiatives qualified by a diverse cast of local efforts from death penalty proponents to single use plastic bag reformers, there is little to suggest that initiatives are not qualifying for the ballot. It also might be argued that lengthening the period of time that registered voters are approached by signature gatherers for ballot initiatives could result in voter fatigue. This could have the unintended effects of both reducing the number of voters willing to sign petitions to help them qualify for the ballot, and suppressing voter turnout if there is a perception that initiatives will overwhelm the ballot. To address this concern, the resolution's proposal to permit initiative petitions to be accessed, downloaded and signed online has merit because it would allow individuals to exercise their choice about which ballot initiative petitions to sign.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend California Constitution article II, section 8, Elections Code sections 9014 and 9035, and add Elections Code section 9019, to read as follows:

Art. II, § 8

(a) The initiative is the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them.

(b) An initiative measure may be proposed by presenting to the Secretary of State a petition that sets forth the text of the proposed statute or amendment to the Constitution and is certified to have been signed by electors equal in number to 5 percent in the case of a statute, and 8 percent in the case of an amendment to the Constitution, of the votes for all candidates for President ~~Governor~~ at the last presidential ~~gubernatorial~~ election.

(c) The Secretary of State shall then submit the measure at the next general election held at least 131 days after it qualifies or at any special statewide election held prior to that general election. The Governor may call a special statewide election for the measure.

(d) An initiative measure embracing more than one subject may not be submitted to the electors or have any effect.

(e) An initiative measure may not include or exclude any political subdivision of the State from the application or effect of its provisions based upon approval or disapproval of the initiative measure, or based upon the casting of a specified percentage of votes in favor of the measure, by the electors of that political subdivision.

(f) An initiative measure may not contain alternative or cumulative provisions wherein one or more of those provisions would become law depending upon the casting of a specified percentage of votes for or against the measure.

§ 9014

(a) A petition for a proposed initiative or referendum measure shall not be circulated for signatures prior to the official summary date.

(b) Subject to subdivision (d), a petition with signatures for a proposed initiative measure shall be filed with the county elections official not later than 365 ~~180~~ days from the official summary date, and a county elections official shall not accept a petition for the proposed initiative measure after that period.

(c) Subject to subdivision (d), a petition for a proposed referendum measure shall be filed with the county elections official not later than 90 days from the date the legislative bill was chaptered by the Secretary of State, and a county elections official shall not accept a petition for the proposed referendum measure after that period.

(d) If the last day to file a petition pursuant to subdivision (b) or (c) is a holiday, as defined in Chapter 7 (commencing with Section 6700) of Division 7 of Title 1 of the Government Code, the petition may be filed with the county elections official on the next business day.

§ 9035

An initiative measure may be proposed by presenting to the Secretary of State a petition that sets forth the text of the proposed statute or amendment to the Constitution and is certified to have been signed by registered voters equal in number to 5 percent in the case of a statute, and 8 percent in the case of an amendment to the Constitution, of the voters for all candidates for President ~~Governor~~ at the last presidential ~~gubernatorial~~ election preceding the issuance of the circulating title and summary for the initiative measure by the Attorney General.

§ 9019

The Secretary of State shall implement procedures that permit initiative petitions to be downloaded from its website so voters can sign such petitions and submit them by mail.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: The initiative process is known as the fourth branch of California government for its prominence in our lawmaking. Existing law requires initiatives receive signatures totaling only 5% of the total votes for Governor in the most recent gubernatorial election (8% for constitutional amendments) to qualify for submission to voters for an up-or-down vote. That no longer makes sense with the gubernatorial general election now having only two candidates who could be from the same party, which can greatly depress turnout. In turn, that reduces the minimum signature requirement for petitions to a threshold far below a sufficient swath of the electorate. Although California currently has around 17.9 million registered voters, an initiative needs only 365,880 qualifying signatures and an amendment only needs 585,407 qualifying signatures based on the 2014 turnout. In other words, signatures from only about 2% of registered voters for initiatives, and 3.2% for amendments. That is down from just 504,760 (2.8%) and 806,615 (4.5%), respectively, in 2010. Especially with changing the California constitution, the process should be more stringent.

Existing law also has rules that unfairly favor those with money. Those with money can hire paid signature gatherers and get the 5 or 8% within the limit of 180 days with little trouble. By contrast, grassroots and other movements that rely on volunteers have trouble getting enough signatures within 180 days. Additionally, signing an initiative petition is not as easy as one would think; currently, it all goes through the proponents. The proponents need to find people to

sign or those who wish to sign need to find the proponents. No central database exists where anyone can download any initiative petition, sign it, and mail it in.

The Solution: This resolution strikes a much better balance regarding the signature minimums and the time and ability to acquire signatures. Instead of basing the requirement on the turnout of the last gubernatorial election, it will be based on the participation in the previous presidential election. If that were in effect right now, the minimum signature requirement for initiatives would be 507,716 (3.3% of registered voters) and 956,436 (5.3%) for amendments. That would ensure that initiatives and amendments have signatures from a more significant swath of the California electorate before qualifying for an up-or-down vote that, if approved, cannot be altered by the Legislature unless the text explicitly authorizes it.

To ensure that those without resources are not disproportionately affected by the increased signature requirements, this would extend the deadline from 180 days to 365 days, and enable petitions to be downloaded by anyone and mailed in. Those with money will not be affected much by these changes, but those grassroots movements relying on volunteers will have a better chance to qualify their proposals.

IMPACT STATEMENT
This resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

AUTHOR AND/OR PERMANENT CONTACT: Ben Rudin, 3830 Valley Centre Dr., Ste. 705 #231, San Diego, CA 92130, (858) 256-4429, ben_rudin@hotmail.com.

RESPONSIBLE FLOOR DELEGATE: Ben Rudin