

SUPREME COURT
FILED

JAN 15 2020

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

Jorge Navarrete Clerk

IN RE JACK WAYNE
FRIEND,

On Habeas Corpus.

No. S256914

Deputy

Related to:

First Appellate District,
Division Three, No. A155955

Alameda County Super. Ct.,
No. 81254 (Hon. Don Clay)

DEATH-PENALTY CASE

**MOTION TO TAKE JUDICIAL NOTICE
AND PROPOSED ORDER**

JON M. SANDS
Federal Public Defender
District of Arizona

Lindsey Layer (VA Bar No. 79151)
*Stanley Molever (CA Bar No. 298218)
Assistant Federal Public Defenders
850 West Adams Street, Suite 201
Phoenix, Arizona 85007
lindsey_layer@fd.org
stan_molever@fd.org
602.382.2816 Telephone
602.889.3960 Facsimile

*Counsel for Petitioner-Appellant
Jack Wayne Friend*

RECEIVED

JAN 10 2020

CLERK SUPREME COURT

Pursuant to California Rules of Court, rule 8.520, subdivision (g), rule 8.54, and rule 8.252, subdivision (a), and Evidence Code sections 451, 452, and 453, Petitioner-Appellant Jack Wayne Friend moves the Court to take judicial notice of the following matters, submitted as Exhibits 1 through 5, which are relevant to his concurrently filed Opening Brief on the Merits.

1. Order Denying Habeas Petition for Writ of Habeas Corpus, *In re Jack Wayne Friend* (Alameda Cty. Super Ct. Oct. 24, 2019, No. 81254A)
2. Order, *In re Phillip L. Lucero* (Cal. Ct. App. Dec. 30, 2019, No. E074350)
3. Excerpts from the Official Voter Information Guide, General Election Nov. 8, 2016, available in full at <<https://vig.cdn.sos.ca.gov/2016/general/en/pdf/complet-e-vig.pdf>> (last accessed Jan. 7, 2020)
4. Excerpts from Black's Law Dictionary (11th ed. 2019)
5. Excerpts from The American Heritage Dictionary of the English Language (5th ed. 2016)

MEMORANDUM OF POINTS AND AUTHORITIES

This Court may take judicial notice of Exhibit 1, the Alameda County Superior Court order denying Friend's June 2018 petition for writ of habeas corpus, under Evidence Code section 452, subdivision (d), which provides that judicial notice may be taken of "[r]ecords of (1) any court of this state or (2) any court of record of the United States or of any state of the United States." Exhibit 2, an order from the Fourth District Court of

Appeal, is also appropriate for judicial notice under Evidence Code section 452, subdivision (d).

Exhibit 3, excerpts from the Voter Information Guide from the November 2016 general election, may be judicially noticed pursuant to Evidence Code section 452, subdivision (c), which provides that judicial notice may be taken of “[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.” Courts of this state routinely take judicial notice of materials published by state agencies, and this Court took judicial notice of the material attached as Exhibit 3 in *Briggs v. Brown* (2017) 3 Cal.5th 808. Exhibit 3 may also be judicially noticed under Evidence Code section 452, subdivisions (g) and (h), which provide that judicial notice may be taken of matters that are not reasonably subject to dispute that are either of “common knowledge” or “are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.”

Finally, Exhibits 4 and 5, excerpts from two dictionaries, are appropriate for judicial notice under Evidence Code section 451, subdivision (e) (“the true signification of all English words and phrases of all legal expressions”). (*Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, 171 [taking judicial notice of the American Heritage Dictionary].)

The submitted exhibits are relevant to adjudicating the instant case because they relate to the issues the Court is reviewing. Specifically, the Alameda Superior Court’s order denying Friend’s June 2018 petition is the subject of review in

this matter. Because the copy that was included in the Clerk's Transcript omits the even pages, Friend attaches the entire order as Exhibit 1. Friend relies on Exhibit 2, the order from the Fourth District Court of Appeal, to demonstrate how at least one court of appeal has applied the appellate scheme enacted by Proposition 66 and to support his arguments regarding the proper interpretation of that statute. He relies on the material in Exhibit 3 from the Voter Information Guide to support his arguments regarding the voters' intent in enacting Proposition 66. Finally, he relies on the dictionary definitions in Exhibits 4 and 5 to support textual arguments regarding the new statutes.

Apart from Exhibit 1, the superior court's order, these exhibits were not presented or made part of the record in the proceedings below. Exhibit 2 was filed in the Fourth District Court of Appeal on December 30, 2019. The other matters to be noticed do not relate to proceedings occurring after the order that is the subject of review.

Dated this 9th day of January, 2020.

Respectfully submitted,

Jon M. Sands
Federal Public Defender
District of Arizona
Lindsey Layer
Assistant Federal Public Defender

Stanley Molever
Assistant Federal Public Defender
Counsel for Petitioner-Appellant

Jon M. Sands
Federal Public Defender
District of Arizona
Lindsey Layer (VA Bar No. 79151)
*Stanley Siders Molever (CA Bar No. 298218)
Assistant Federal Public Defenders
850 West Adams Street, Suite 201
Phoenix, Arizona 85007
lindsey_layer@fd.org
stan_molever@fd.org
602.382.2816 Telephone
602.889.3960 Facsimile
Counsel for Petitioner-Appellant

IN THE CALIFORNIA SUPREME COURT

IN RE JACK WAYNE FRIEND,

On Habeas Corpus.

S256914

(First Appellate District
Division Three
No. A155955)

DEATH-PENALTY CASE

**PROPOSED ORDER GRANTING PETITIONER-
APPELLANT'S MOTION TO TAKE JUDICIAL NOTICE**

NO. S256914

**IN THE SUPREME COURT OF THE STATE OF
CALIFORNIA**

In re JACK WAYNE FRIEND on Habeas Corpus.

Appellant's "Motion to Take Judicial Notice," filed on
January __, 2020, is hereby granted.

Chief Justice

EXHIBIT 1

ENDORSED
FILED
ALAMEDA COUNTY

OCT 24 2018

CLERK OF THE SUPERIOR COURT
By KRISTI HERETH
DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA**

IN RE
JACK WAYNE FRIEND,
on Habeas Corpus.

No. 81254A
ORDER DENYING PETITION
FOR WRIT OF HABEAS CORPUS

The court having reviewed the petition for writ of habeas corpus (Petition) filed by JACK WAYNE FRIEND (Petitioner) on June 29, 2018; the informal response to the Petition, filed by the Alameda County District Attorney (Respondent) on September 5, 2018; and the informal reply, filed by Petitioner on October 16, 2018, NOW HEREBY ORDERS:

The Petition is DENIED for the reasons stated below.

PROCEDURAL BACKGROUND

In 1989, a jury convicted Petitioner of first degree murder and robbery. (Pen. Code, §§ 187, 189, 211.)¹ The jury also found true that Petitioner had inflicted great bodily injury in connection with the robbery and that he had personally used a knife in the commission of both crimes. (Pen. Code, §§ 12022.7, subd. (a), 12022, subd. (b).) The jury was unable to reach a verdict on the robbery-murder special-circumstance allegations. (Pen. Code, § 190.2, sub.d (a)(17)(i).) In 1992, after a retrial on the robbery-murder special-circumstance allegation, a new jury found it true, and after the penalty phase, the jury returned a verdict of death.

¹ The court takes judicial notice of the court file. (See Evid. Code, §452, subd. (d).)

The trial court denied Petitioner's motion for a new trial and modification of the death penalty, and sentenced him to death.

On automatic appeal, Petitioner's judgment was affirmed in full. (*People v. Friend* (2009) 47 Cal.4th 1.) In 2007, Petitioner filed a petition to the California Supreme Court for relief on habeas corpus, which was denied in 2015. (*Jack Wayne Friend, on Habeas Corpus*, Cal. Sup. Ct. No. S150208.)

In 2016, the Office of the Federal Public Defender for the District of Arizona was appointed to represent Petitioner for the duration of his federal habeas corpus proceedings, and filed an initial petition for writ of habeas corpus. (*Friend v. Davis* (N.D. Cal., No. 4:15-CV-03514-HSG).) In 2017, the District Court granted Petitioner's motion to stay federal proceedings to allow Petitioner to return to state court to exhaust claims that had not yet been raised in California state courts. In accordance with that order, the instant Petition was filed in this court on June 29, 2018. On July 10, 2018, this court granted Petitioner's motion for leave to file an overlength petition for habeas corpus and motion to file exhibits 17 and 18 under seal, which accompanied the Petition. On August 3, 2018, this court ordered informal briefing on the Petition.

DISCUSSION

Petitioner claims the following grounds for relief: (1) the prosecution's discriminatory exercise of peremptory challenges to strike prospective jurors on the basis of their race, gender, ethnicity or religion violated Petitioner's rights under the Fifth, Sixth, Eighth and Fourteenth Amendments; (2) Petitioner was denied his right to the effective assistance of counsel in violation of his rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments; (3) the imposition of the death penalty on a person suffering organic brain damage violates the Eighth and Fourteenth Amendments to the United States Constitution; (4) Petitioner was denied due process when two California Supreme Court Justices failed to recuse themselves from his case; (5) the state's use at the guilt trial of Petitioner's statements to police violated his rights under the Fifth, Sixth, and Fourteenth

Amendments; and (6) Petitioner's Sixth Amendment right to the effective assistance of counsel was violated by his appellate counsel's failure to raise a meritorious claim on direct appeal.

In 2016, California voters approved Proposition 66, the Death Penalty Reform and Savings Act of 2016. (Gen. Elec. (Nov. 8, 2016) § 1.) The measure enacted a series of statutory reforms to California's death penalty system, including provisions to expedite review in capital appeals and habeas corpus proceedings. Section 1509 was added to the Penal Code, which provides, in part:

This section applies to any petition for writ of habeas corpus filed by a person in custody pursuant to a judgment of death. A writ of habeas corpus pursuant to this section is the exclusive procedure for collateral attack on a judgment of death. A petition filed in any court other than the court which imposed the sentence should be promptly transferred to that court unless good cause is shown for the petition to be heard by another court.

(Pen. Code, § 1509, subd. (a).)

Concerning successive petitions, this section provides, in pertinent part, "a successive petition [for writ of habeas corpus filed by a person in custody pursuant to a judgment of death] whenever filed shall be dismissed unless the court finds, by the preponderance of all available evidence, whether or not admissible at trial, that the defendant is actually innocent of the crime of which he or she was convicted or is ineligible for the sentence." (Pen. Code, § 1509, subd. (d).) This statute further provides, "'Ineligible for the sentence of death' means that circumstances exist placing that sentence outside the range of the sentencer's discretion. Claims of ineligibility include a claim that none of the special circumstances in subdivision (a) of Section 190.2 is true, a claim that the defendant was under the age of 18 at the time of the crime, or a claim that the defendant has an intellectual disability, as defined in Section 1376." (*Ibid.*)

In *Briggs v. Brown* (2017) 3 Cal.5th 808, the California Supreme Court upheld the validity of Proposition 66. Relevant to this Petition, the court found that the provision restricting successive petitions in subdivision (d) of Penal Code

section 1509 did not violate equal protection. (*Id.* at pp. 841-845.) The court in *Briggs* also found that restriction on successive petitions in subdivision (d) of Penal Code section 1509 did not violate the separation of powers doctrine. (*Id.* at pp. 845-848.)

Here, the instant Petition is a “successive petition” within the meaning of Penal Code section 1509, subdivision (d), as Petitioner has already been denied relief on habeas corpus by the California Supreme Court. In his informal reply, Petitioner argues that the term “successive petition” is not defined in the statute and is ambiguous, citing to *Briggs*’ observation that the use of the term in Penal Code section 1509.1, subdivision (a), another statute enacted by Proposition 66, is inconsistent with the court’s terminology. (*Id.* at p. 836, fn. 14.) Petitioner argues that the court did not directly address the use of the term in subdivision (d) of Penal Code section 1509, and that this statement by the court renders the term ambiguous. However, in that same footnote, the *Briggs* court states, “We have used ‘successive petition’ to refer to one raising claims that could have been presented in a previous petition.” (*Ibid.*, citing *In re Robbins* (1998) 18 Cal.4th 770, 788, fn. 9; *Clark, supra*, 5 Cal.4th at pp. 769-770.) Accordingly, this court does not find that the term “successive petition” as used in subdivision (d) of Penal Code section 1509 ambiguous, adopts the meaning of the term as provided in *Briggs*, and finds that the instant Petition is successive within the meaning of Penal Code section 1509, subdivision (d).

Contrary to Petitioner’s argument, it does appear that Penal Code section 1509, subdivision (d) eliminated the fundamental miscarriage of justice exemptions established in *In re Clark* (1993) 5 Cal.4th 750, which provided that successive petitions are permitted even “absent justification for the failure to present all known claims in a single, timely petition,” if the prisoner can establish that a “fundamental miscarriage of justice occurred.” (*Briggs, supra*, 3 Cal.5th at p. 842, quoting *Clark, supra*, 5 Cal.4th at p. 797.). As the court in *Briggs* noted, Penal Code section 1509, subdivision (d)’s requirement that successive petitions

be dismissed unless the court finds the prisoner actually innocent or ineligible for the death penalty, “is a substantial revision of the policy established in [*Clark*].” (*Briggs, supra*, 3 Cal.5th at p. 842.)

Therefore, given the decision in *Briggs* and the language of Penal Code section 1509, subdivision (d), this court finds that the instant Petition is a successive petition within the meaning of the statute, thus this court is required to dismiss the Petition unless this court finds, by the preponderance of all available evidence, whether or not admissible at trial, that Petitioner is actually innocent of the crime of which he or she was convicted or is ineligible for the sentence. Here, Claims One, Two, Four, Five, and Six contain no allegations that, if true, would demonstrate that Petitioner is actually innocent of the crime or is ineligible for the death sentence. Accordingly, this court dismisses those claims pursuant to Penal Code section 1509, subdivision (d).

As to Claim Three, it does initially appear that this claim alleges that Petitioner is ineligible for the death penalty due to an intellectual disability. Citing to *Atkins v. Virginia* (2002) 536 U.S. 304, Petitioner argues that the Eighth Amendment’s ban on excessive and cruel and unusual punishment prohibits the execution of intellectually disabled persons. However, it does not appear that Petitioner argues that he has an intellectual disability, as the Petition provides, “Rather, *as with intellectual disability*, this Court must recognize that the Eighth Amendment contains a categorical exemption for those who have organic brain impairment at the time of their offense. Because Mr. Friend has organic brain impairment, he lacks culpability *similar to those who are intellectually disabled*.” In *People v. Boyce* (2014) 59 Cal.4th 672, the California Supreme Court noted that it had previously rejected claims that a defendant’s low IQ, brain damage, and/or mental illness render his capital sentence grossly disproportionate to his crime. (*Id.* at p. 719; see *People v. Young* (2005) 34 Cal.4th 1149, 1231-1232 [death sentence upheld despite evidence that the defendant had an IQ of 75, lifelong learning disabilities, and a probable mental disorder]; *People v. Poggi* (1998) 45 Cal.3d

306, 348 [death sentence upheld despite evidence that defendant suffered organic brain damage, had a history of mental illness, was schizophrenic, and mentally ill on the day of the murder].) Examining *Atkins*, the court in *Boyce* stated, “there is no objective evidence that a national consensus has developed against executing persons with intellectual impairments *short of* intellectual disability or insanity. (*Boyce, supra*, 59 Cal.4th a p. 722, emphasis in original.)

Therefore, it does not appear that Petitioner claims that he is ineligible for the death penalty due to an intellectual disability, but rather, as the defendant in *Boyce* argued, “asks us to establish a new, ill-defined category of murderers who would receive a blanket exemption from capital punishment without regard to the individualized balance between aggravation and mitigation in a specific case.’ [citation omitted.] We decline the invitation.” (*Ibid.*) Additionally, Petitioner does not argue that he has an intellectual disability as defined in Penal Code section 1376. (Pen. Code, §§ 1509, subd. (d); 1376.) Accordingly, Claim Three is also dismissed pursuant to Penal Code section 1509, subdivision (d).

Finally, as the court in *Briggs* noted, a petitioner previously had no right to appeal from a superior court denial of habeas corpus relief, and instead obtained review by filing a habeas corpus petition in a higher court. (*Briggs, supra*, 3 Cal.5th at p. 836.) However, Penal Code section 1509.1 now provides that either party may appeal the decision of a superior court on an initial petition under Penal Code section 1509 to the court of appeal. (Pen. Code, § 1509.1, subd. (a).) Concerning successive petitions such as the instant Petition:

The petitioner may appeal the decision of the superior court denying relief on a successive petition only if the superior court or the court of appeal grants a certificate of appealability. A certificate of appealability may issue under this subdivision only if the petitioner has shown both a substantial claim for relief, which shall be indicated in the certificate, and a substantial claim that the requirements of subdivision (d) of Section 1509 have been met. An appeal under this subdivision shall be taken by filing a notice of appeal in the superior court within 30 days of the court's decision.

The superior court shall grant or deny a certificate of appealability concurrently with a decision denying relief on the petition.

(Pen. Code, § 1509.1, subd. (c).)

Accordingly, because Petitioner has failed to show a substantial claim that the requirements of Penal Code section 1509, subdivision (d) have been met, this court denies a certificate of appealability.

CONCLUSION

For the foregoing reasons, the Petition is DENIED. (Pen. Code, § 1509, subd. (d).) Furthermore, a certificate of appealability is also DENIED. (Pen. Code, § 1509.1, subd. (c).)

DATED: 10-24-2018

C. Don Clay

HON. C. DON CLAY
JUDGE OF THE SUPERIOR COURT

EXHIBIT 2

COURT OF APPEAL -- STATE OF CALIFORNIA
FOURTH DISTRICT
DIVISION TWO

ORDER

In re PHILLIP L. LUCERO
on Habeas Corpus

E074350

(San Bernardino County
Super.Ct.No. CHCJS1900003)

The Court of San Bernardino

THE COURT

Petitioner Phillip L. Lucero's request for a certificate of appealability, filed December 20, 2019, is GRANTED.

On November 22, 2019, the superior court denied Lucero's petition for writ of habeas corpus on the grounds it is successive and fails to make a substantial claim for relief. (Pen. Code, § 1509, subd. (d).) The trial court also denied Lucero a certificate of appealability. (Pen. Code, § 1509.1, subd. (c).) Lucero seeks to appeal the order denying him relief, and he requests a certificate of appealability from this court.

Petitioner has satisfied the twin requirements for a certificate of appealability under Penal Code section 1509.1, subdivision (c). First, he has shown a non-frivolous, "substantial claim" for relief under Penal Code section 1473, subdivisions (b)(1) and (e)(1), that the People admitted at his penalty retrial flawed or false evidence about post-traumatic stress disorder (PTSD) that has since been discredited and undermined. (Pen.

Code, § 1509.1, subd. (c); see *Welch v. United States* (2016) 136 S.Ct. 1257, 1263-1264 [federal standard for certificate of appealability]; cf. *People v. Mendez* (1999) 19 Cal.4th 1084, 1095 [certificate of probable cause under Pen. Code, § 1237.5, subd. (a) designed to screen out “wholly frivolous” appeals].) And last, this court has made a **preliminary** determination that Lucero’s current petition is not successive because he could not have raised his claim about flawed or false evidence in his 2002 petition. (Pen. Code, § 1509.1, subd. (c); see *In re Richards* (2016) 63 Cal.4th 291, 294, fn. 2 [claim of false evidence made after 2014 amendments to Pen. Code, § 1473 was “not subject to the procedural bar of successiveness”].) Therefore, he is not required to meet the additional requirements of Penal Code section 1509, subdivision (d), that apply to successive petitions, and he may appeal the denial of his petition under Penal Code section 1509.1, subdivision (a).

However, because we are only making a **preliminary** determination that the petition is not successive, and the question of how to define a successive petition for purposes of Penal Code section 1509, subdivision (d), is pending before the Supreme Court (*In re Friend* (Sept. 11, 2019, S256914) 2019 Cal. Lexis 6804), we will issue a certificate of appealability to preserve our jurisdiction to determine that issue.

This order is hereby DEEMED to be the CERTIFICATE OF APPEALABILITY. The certificate is limited to the following issues:

- (1) Is Lucero’s petition filed on May 29, 2019, successive for purposes of Penal Code section 1509, subdivision (d)?

- (2) Did the People admit flawed or false expert testimony about the validity of PTSD at Lucero's 1989 penalty retrial (Pen. Code, § 1473, subds. (b)(1), (e)(1))?

McKINSTER
Acting P. J.

CODRINGTON
J.

RAPHAEL
J.

MAILING LIST FOR CASE: E074350
The People v. Phillip Lucero

Superior Court Clerk
San Bernardino County
8303 N. Haven Ave
Rancho Cucamonga, CA 91730

Office Of The State Attorney General
P. O. Box 85266
San Diego, CA 92186-5266

Ronald Alan Jakob
Office of the Attorney General
P.O. Box 85266
San Diego, CA 92186-5266

Susel B. Carrillo-Orellana
Office of the Federal Public Defender
321 East Second Street
Los Angeles, CA 90012

Joseph Anthony Trigilio
Office of the Federal Public Defender
321 East 2nd Street
Los Angeles, CA 90012

EXHIBIT 3

California General Election Tuesday November 8, 2016

Polls Are Open From 7:00 a.m. to 8:00 p.m. on Election Day!

★ ★ ★ ★ ★ OFFICIAL VOTER INFORMATION GUIDE ★ ★ ★ ★ ★



Certificate of Correctness

I, Alex Padilla, Secretary of State of the State of California, do hereby certify that the measures included herein will be submitted to the electors of the State of California at the General Election to be held throughout the State on November 8, 2016, and that this guide has been correctly prepared in accordance with the law. Witness my hand and the Great Seal of the State in Sacramento, California, this 15th day of August, 2016.

Alex Padilla

Alex Padilla, Secretary of State

VOTER BILL OF RIGHTS

YOU HAVE THE FOLLOWING RIGHTS:

1 **The right to vote if you are a registered voter.** You are eligible to vote if you are:

- a U.S. citizen living in California
- at least 18 years old
- registered where you currently live
- not in prison or on parole for a felony

2 **The right to vote if you are a registered voter even if your name is not on the list.** You will vote using a provisional ballot. Your vote will be counted if elections officials determine that you are eligible to vote.

3 **The right to vote if you are still in line when the polls close.**

4 **The right to cast a secret ballot** without anyone bothering you or telling you how to vote.

5 **The right to get a new ballot if you have made a mistake,** if you have not already cast your ballot. You can:

Ask an elections official at a polling place for a new ballot; or

Exchange your vote-by-mail ballot for a new one at an elections office, or at your polling place; or

Vote using a provisional ballot, if you do not have your original vote-by-mail ballot.

6 **The right to get help casting your ballot** from anyone you choose, except from your employer or union representative.

7 **The right to drop off your completed vote-by-mail ballot at any polling place** in the county where you are registered to vote.

8 **The right to get election materials in a language other than English** if enough people in your voting precinct speak that language.

9 **The right to ask questions to elections officials about election procedures** and watch the election process. If the person you ask cannot answer your questions, they must send you to the right person for an answer. If you are disruptive, they can stop answering you.

10 **The right to report any illegal or fraudulent election activity** to an elections official or the Secretary of State's office.

🖥️ On the web at www.sos.ca.gov

☎️ By phone at **(800) 345-VOTE (8683)**

✉️ By email at elections@sos.ca.gov

**IF YOU BELIEVE YOU HAVE BEEN DENIED ANY OF THESE RIGHTS, CALL THE SECRETARY OF STATE'S
CONFIDENTIAL TOLL-FREE VOTER HOTLINE AT (800) 345-VOTE (8683).**

TABLE OF CONTENTS

PAGE

QUICK-REFERENCE GUIDE	7
------------------------------	----------

PROPOSITIONS

51 School Bonds. Funding for K–12 School and Community College Facilities. Initiative Statute.	18
52 Medi-Cal Hospital Fee Program. Initiative Constitutional Amendment and Statute.	24
53 Revenue Bonds. Statewide Voter Approval. Initiative Constitutional Amendment.	30
54 Legislature. Legislation and Proceedings. Initiative Constitutional Amendment and Statute.	36
55 Tax Extension to Fund Education and Healthcare. Initiative Constitutional Amendment.	40
56 Cigarette Tax to Fund Healthcare, Tobacco Use Prevention, Research, and Law Enforcement. Initiative Constitutional Amendment and Statute.	46
57 Criminal Sentences. Parole. Juvenile Criminal Proceedings and Sentencing. Initiative Constitutional Amendment and Statute.	54
58 English Proficiency. Multilingual Education. Initiative Statute.	60
59 Corporations. Political Spending. Federal Constitutional Protections. Legislative Advisory Question.	64
60 Adult Films. Condoms. Health Requirements. Initiative Statute.	68
61 State Prescription Drug Purchases. Pricing Standards. Initiative Statute.	72
62 Death Penalty. Initiative Statute.	78
63 Firearms. Ammunition Sales. Initiative Statute.	84
64 Marijuana Legalization. Initiative Statute.	90
65 Carryout Bags. Charges. Initiative Statute.	100
66 Death Penalty. Procedures. Initiative Statute.	104
67 Ban on Single-Use Plastic Bags. Referendum.	110

OVERVIEW OF STATE BOND DEBT	114
------------------------------------	------------

UNITED STATES SENATE CANDIDATE STATEMENTS	117
--	------------

TEXT OF PROPOSED LAWS	118
------------------------------	------------

INFORMATION PAGES

Voter Bill of Rights.....	2	Audio & Large Print Voter Information Guides.....	16
Assistance for Voters with Disabilities.....	4	Find Your Polling Place.....	16
Voter Registration.....	4	Elections in California.....	17
Voter Registration Privacy Information.....	4	Top Contributors to Statewide Candidates and Ballot Measures.....	17
Ways to Vote.....	5	Information About Candidate Statements.....	116
Provisional Voting.....	5	U.S. Presidential Candidates.....	116
Letter from the Secretary of State.....	6	Dates to Remember.....	223
Online Resources.....	16		

Assistance for Voters with Disabilities

State and federal laws require polling places to be physically accessible to voters with disabilities. County elections officials inspect each site and often make temporary modifications for Election Day. Every person who works in a polling place is trained in election laws and voter rights, including the need to make reasonable modifications of policies and procedures to ensure equal access.

State and federal laws require that all voters be able to cast their ballots privately and independently. Each polling place must have at least one voting machine that allows all voters, including those who are blind or visually impaired, to cast a ballot without assistance. The voting machine permits voters to verify their vote choices and, if there is an error, allows voters to correct those choices before submitting their ballot.

Check your sample ballot



Your county sample ballot booklet will:

- Describe how persons with disabilities can vote privately and independently
- Display a wheelchair symbol if your polling place is accessible to voters with disabilities

At the polling place

If you need help marking your ballot, you may choose up to two people to help you. This person cannot be:

- Your employer or anyone who works for your employer
- Your labor union leader or anyone who works for your labor union

Curbside voting allows you to park as close as possible to the voting area. Elections officials will bring you a roster to sign, a ballot, and any other voting materials you may need, whether you are actually at a curb or in a car.

Contact your county elections office to see if curbside voting is available at your polling place.

Voter Registration

If you have already registered to vote, you do not need to reregister **unless** you change your name, home address, mailing address or if you want to change or select a political party.

You can register to vote online at RegisterToVote.ca.gov. Or call the Secretary of State's free Voter Hotline at (800) 345-VOTE (8683) to get a form mailed to you.

Voter registration forms can be found at most post offices, libraries, city and county government offices, county elections offices, and the California Secretary of State's Office.

Voter Registration Privacy Information

Safe at Home Confidential Voter Registration Program: Certain voters facing life-threatening (i.e. domestic violence, stalking victims) situations may qualify for confidential voter status. For more information, contact the Secretary of State's Safe at Home program toll-free at (877) 322-5227 or visit <http://www.sos.ca.gov/registries/safe-home/>.

Voter Information Privacy: Information on your voter registration affidavit will be used by elections officials to send you official information on the voting process, such as the location of your polling place and the issues and candidates that will appear on the ballot. Commercial use of voter registration information is prohibited by law and is a misdemeanor. Voter information may be provided to a candidate for office, a ballot measure committee, or other person for election, scholarly, journalistic, political, or governmental purposes, as determined by the Secretary of State. Driver license and social security numbers, or your signature as shown on your voter registration card, cannot be released for these purposes. If you have any questions about the use of voter information or wish to report suspected misuse of such information, please call the Secretary of State's Voter Hotline at (800) 345-VOTE (8683).

Ways to Vote



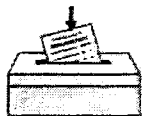
Vote by Mail

- Request a vote-by-mail ballot by **November 1**.
- Return by mail—must be postmarked on or before **November 8** and received by your county elections office no later than **November 14**.
- Return in person—to your county elections office or any polling place in your county before 8:00 p.m. on **November 8**.



Vote Early in Person

Some counties offer early voting at a few locations before Election Day. Contact your county elections office to see if they offer early voting. County contact information can be found at: <http://www.sos.ca.gov/elections/voting-resources/county-elections-offices/>.



Vote at the Polls on Election Day

- Polls are open on Election Day: **November 8 from 7:00 a.m. to 8:00 p.m.**
- The location of your polling place is printed on the back page of the sample ballot booklet your county elections official mailed to you. You can also find your polling place:
 - ☎ By calling (800) 345-VOTE (8683)
 - 💻 Online at www.sos.ca.gov/elections/polling-place
 - 📱 By texting *Vote* to GOVOTE (468683)

Provisional Voting

If your name is not on the voter list at your polling place, you have the right to vote a provisional ballot.

What Is a Provisional Ballot?

A provisional ballot is a regular ballot that is placed in a special envelope prior to being put in the ballot box.

Who Casts a Provisional Ballot?

Provisional ballots are ballots cast by voters who:

- Believe they are registered to vote even though their names are not on the official voter registration list at the polling place.
- Vote by mail but did not receive their ballot or do not have their ballot with them, and instead want to vote at a polling place.

Will My Provisional Ballot Be Counted?

Your provisional ballot will be counted after elections officials have confirmed that you are registered to vote in that county and you did not already vote in that election.

You may vote a provisional ballot at any polling place in the county in which you are registered to vote, however, only the elections contests you are eligible to vote for will be counted.

How Can You Check the Status of Your Provisional Ballot?

Every voter who casts a provisional ballot has the right to find out from their county elections official if the ballot was counted and, if not, the reason why it was not counted.



Visit <http://www.sos.ca.gov/elections/ballot-status/> for a list of county contacts and information on how to check the status of your provisional ballot.



Secretary of State

Dear Fellow Californians,

There is no greater right than the right to vote. Through voting, you help select your local, state, and national leaders, and ensure that your voice is heard. The Presidential General Election is fast approaching. I encourage you to participate in your most fundamental right as a citizen of the United States of America.

This Voter Guide can help you make informed decisions. It includes impartial analysis, arguments in favor and against the many ballot measures, declarations of the candidates, the Voter Bill of Rights, and other important information.

All of the information is presented here as a reference for you. This guide is also available online on the California Secretary of State website: www.voterguide.sos.ca.gov.

Please take the time to read the information in this guide carefully as we approach Election Day. If you would like to know who is financing each of the campaigns, you can search campaign finance information at: <http://powersearch.sos.ca.gov/>.

If you have any questions about how to vote, or how to register to vote, you can contact the office of the Secretary of State by calling toll-free 1-800-345-VOTE (8683). To obtain the contact information of your local county elections officials, you can visit the Secretary of State website at: www.sos.ca.gov/county-elections-offices.

Thank you for your commitment to the future of both our state and nation. The Presidential General Election is Tuesday, November 8. Your vote is important. Remember that your vote is your voice. Be heard. VOTE!

California General Election Tuesday November 8, 2016

Polls Are Open From 7:00 a.m. to 8:00 p.m. on Election Day!



★ ★ ★ ★ ★ OFFICIAL VOTER INFORMATION GUIDE ★ ★ ★ ★ ★

This quick reference guide contains summary and contact information for each state proposition appearing on the November 8, 2016, ballot.



- Polls are open from 7:00 a.m. to 8:00 p.m. on Election Day.
- Instructions on how to vote can be obtained from a poll worker or by reading your sample ballot booklet.
- New voters may be asked to provide identification or other documentation according to federal law. You have the right to cast a provisional ballot, even if you do not provide the documentation.
- Only eligible voters can vote.
- It is against the law to tamper with voting equipment.

QUICK-REFERENCE GUIDE

PROP 65 CARRYOUT BAGS. CHARGES. INITIATIVE STATUTE.

SUMMARY

Redirects money collected by grocery and certain other retail stores through mandated sale of carryout bags. Requires stores to deposit bag sale proceeds into a special fund to support specified environmental projects. Fiscal Impact: Potential state revenue of several tens of millions of dollars annually under certain circumstances, with the monies used to support certain environmental programs.

WHAT YOUR VOTE MEANS

YES A YES vote on this measure means: If state law (1) prohibits giving customers certain carryout bags for free and (2) requires a charge for other types of carryout bags, the resulting revenue would be deposited in a new state fund to support certain environmental programs.

NO A NO vote on this measure means: If charges on carryout bags are required by a state law, that law could direct the use of the resulting revenue toward any purpose.

ARGUMENTS

PRO YES ON 65—**PROTECT THE ENVIRONMENT.** In a deal brokered by special interest lobbyists, the Legislature REQUIRED grocery stores to CHARGE and KEEP fees on certain bags at checkout. Grocers get \$300 million richer, while shoppers lose \$300 million. Prop. 65 redirects those fees to environmental projects, not grocer profits.

CON Prop. 65 is sponsored by out-of-state plastic companies from South Carolina and Texas. They don't care about California's environment, they just want to confuse voters and distract from the real issue: the need to phase out plastic grocery bags. 65 is deceptive and doesn't deserve your vote.

FOR ADDITIONAL INFORMATION

FOR

Yes on 65
2350 Kerner Blvd., Suite 250
San Rafael, CA 94901
info@SayYesOn65.com
www.SayYesOn65.com

AGAINST

Mark Murray
Californians Against Waste
921 11th Street, Ste. 420
Sacramento, CA 95814
(916) 443-5422
murray@cawrecycles.org
cawrecycles.org

PROP 66 DEATH PENALTY. PROCEDURES. INITIATIVE STATUTE.

SUMMARY

Changes procedures governing state court challenges to death sentences. Designates superior court for initial petitions and limits successive petitions. Requires appointed attorneys who take noncapital appeals to accept death penalty appeals. Exempts prison officials from existing regulation process for developing execution methods. Fiscal Impact: Unknown ongoing impact on state court costs for processing legal challenges to death sentences. Potential prison savings in the tens of millions of dollars annually.

WHAT YOUR VOTE MEANS

YES A YES vote on this measure means: Court procedures for legal challenges to death sentences would be subject to various changes, such as time limits on those challenges and revised rules to increase the number of available attorneys for those challenges. Condemned inmates could be housed at any state prison.

NO A NO vote on this measure means: There would be no changes to the state's current court procedures for legal challenges to death sentences. The state would still be limited to housing condemned inmates only at certain state prisons.

ARGUMENTS

PRO Our death penalty system is bogged down by decades of appeals. We need to reform it, not repeal it, by passing Proposition 66. Prop. 66 saves millions, brings closure to victims' families and justice to brutal murderers. Innocent persons won't be executed under Prop. 66. Victims' families, DAs and law enforcement support Proposition 66.

CON Prop. 66 is not real reform. We don't know all of its consequences, but we do know this: it adds more layers of government bureaucracy causing more delays, costs taxpayers money, and increases California's risk of executing an innocent person. Prop. 66 is a costly experiment that makes matters worse.

FOR ADDITIONAL INFORMATION

FOR

Kermit Alexander
Californians for Death Penalty Reform and Savings
520 Capitol Mall, Ste. 630
Sacramento, CA 95814
(800) 372-6417
info@noprop62yesprop66.com
www.noprop62yesprop66.com

AGAINST

No on 66—Californians for Fair Justice
39 Drumm St.
San Francisco, CA 94111
campaign@cafairjustice.org
www.NoonCAProp66.org

PROPOSITION **DEATH PENALTY. PROCEDURES.**
66 **INITIATIVE STATUTE.**

OFFICIAL TITLE AND SUMMARY

PREPARED BY THE ATTORNEY GENERAL

- Changes procedures governing state court appeals and petitions challenging death penalty convictions and sentences.
- Designates superior court for initial petitions and limits successive petitions.
- Establishes time frame for state court death penalty review.
- Requires appointed attorneys who take noncapital appeals to accept death penalty appeals.
- Exempts prison officials from existing regulation process for developing execution methods.
- Authorizes death row inmate transfers among California prisons.
- Increases portion of condemned inmates' wages that may be applied to victim restitution.
- States other voter approved measures related to death penalty are void if this measure receives more affirmative votes.

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

- Unknown ongoing fiscal impact on state court costs for processing legal challenges to death sentences.
- Near-term increases in state court costs—potentially in the tens of millions of dollars annually—due to an acceleration of spending to address new time lines on legal challenges to death sentences. Savings of similar amounts in future years.
- Potential state prison savings that could be in the tens of millions of dollars annually.

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

Death Sentences

First degree murder is generally defined as the unlawful killing of a human being that (1) is deliberate and premeditated or (2) takes place while certain other crimes are committed, such as kidnapping. It is punishable by a life sentence in state prison with the possibility of being released by the state parole board after a minimum of 25 years. However, current state law makes first degree murder punishable by death or life imprisonment without the possibility of parole when "special circumstances" of the crime have been charged and proven in court. Existing state law identifies a number of special circumstances that can be charged, such as in cases when the murder was carried out for financial gain or when more than one murder was committed. In addition to first degree murder, state law also specifies a few other crimes, such as treason against the state of California, that can also be punished by death. Since the current death penalty law was enacted in California in 1978, 930 individuals have received a death sentence. In recent years, an average of about 20 individuals annually have received death sentences.

Legal Challenges to Death Sentences

Two Ways to Challenge Death Sentences. Following a death sentence, defendants can challenge the sentence in two ways:

- **Direct Appeals.** Under current state law, death penalty verdicts are automatically appealed to the California Supreme Court. In these "direct appeals," the defendants' attorneys argue that violations of state law or federal constitutional law took place during the trial, such as evidence improperly being included or excluded from the trial. These direct appeals focus on the records of the court proceedings that resulted in the defendant receiving a death sentence. If the California Supreme Court confirms the conviction and death sentence, the defendant can ask the U.S. Supreme Court to review the decision.
- **Habeas Corpus Petitions.** In addition to direct appeals, death penalty cases ordinarily involve extensive legal challenges—first in the California Supreme Court and then in federal courts. These challenges, which are commonly referred to as "habeas corpus" petitions, involve factors of the case that are different from those considered in direct appeals. Examples of such factors include claims that (1) the defendant's attorney was ineffective or (2) if the jury had been aware of additional information (such as biological, psychological, or social factors faced by the defendant), it would not have sentenced the defendant to death.

Attorneys Appointed to Represent Condemned Inmates in Legal Challenges. The California Supreme Court appoints attorneys to represent individuals who have been sentenced to death but cannot afford

ANALYSIS BY THE LEGISLATIVE ANALYST

CONTINUED

legal representation. These attorneys must meet qualifications established by the Judicial Council (the governing and policymaking body of the judicial branch). Some of these attorneys are employed by state agencies—specifically, the Office of the State Public Defender or the Habeas Corpus Resource Center. The remainder are private attorneys who are paid by the California Supreme Court. Different attorneys generally are appointed to represent individuals in direct appeals and habeas corpus petitions.

State Incurs Legal Challenge Costs. The state pays for the California Supreme Court to hear these legal challenges and for attorneys to represent condemned inmates. The state also pays for the attorneys employed by the state Department of Justice who seek to uphold death sentences while cases are being challenged in the courts. In total, the state currently spends about \$55 million annually on the legal challenges to death sentences.

Legal Challenges Can Take a Couple of Decades. Of the 930 individuals who have received a death sentence since 1978, 15 have been executed, 103 have died prior to being executed, 64 have had their sentences reduced by the courts, and 748 are in state prison with death sentences. The vast majority of the 748 condemned inmates are at various stages of the direct appeal or habeas corpus petition process. These legal challenges—measured from when the individual receives a death sentence to when the individual has completed all state and federal legal challenge proceedings—can take a couple of decades to complete in California due to various factors. For example, condemned inmates can spend significant amounts of time waiting for the California Supreme Court to appoint attorneys to represent them. As of April 2016, 49 individuals were waiting for attorneys to be appointed for their direct appeals and 360 individuals were waiting for attorneys to be appointed for their habeas corpus petitions. In addition, condemned inmates can spend a significant amount of time waiting for their cases to be heard by the courts. As of April 2016, an estimated 337 direct appeals and 263 state habeas corpus petitions were pending in the California Supreme Court.

Implementation of the Death Penalty

Housing of Condemned Inmates. Condemned male inmates generally are required to be housed at San Quentin State Prison (on death row), while condemned female inmates are housed at the Central California Women's Facility in Chowchilla. The state currently has various security regulations and

procedures that result in increased security costs for these inmates. For example, inmates under a death sentence generally are handcuffed and escorted at all times by one or two officers while outside their cells. In addition, unlike most inmates, condemned inmates are currently required to be placed in separate cells.

Executions Currently Halted by Courts. The state uses lethal injection to execute condemned inmates. However, because of different legal issues surrounding the state's lethal injection procedures, executions have not taken place since 2006. For example, the courts ruled that the state did not follow the administrative procedures specified in the Administrative Procedures Act when it revised its execution regulations in 2010. These procedures require state agencies to engage in certain activities to provide the public with a meaningful opportunity to participate in the process of writing state regulations. Draft lethal injection regulations have been developed and are currently undergoing public review.

PROPOSAL

This measure seeks to shorten the time that the legal challenges to death sentences take. Specifically, it (1) requires that habeas corpus petitions first be heard in the trial courts, (2) places time limits on legal challenges to death sentences, (3) changes the process for appointing attorneys to represent condemned inmates, and (4) makes various other changes. (There is another measure on this ballot—Proposition 62—that also relates to the death penalty. Proposition 62 would eliminate the death penalty for first degree murder.)

Requires Habeas Corpus Petitions First Be Heard in Trial Courts

The measure requires that habeas corpus petitions first be heard in trial courts instead of the California Supreme Court. (Direct appeals would continue to be heard in the California Supreme Court.) Specifically, these habeas corpus petitions would be heard by the judge who handled the original murder trial unless good cause is shown for another judge or court to hear the petition. The measure requires trial courts to explain in writing their decision on each petition, which could be appealed to the Courts of Appeal. The decisions made by the Courts of Appeal could then be appealed to the California Supreme Court. The measure allows the California Supreme Court to transfer any habeas corpus petitions currently pending before it to the trial courts.

ANALYSIS BY THE LEGISLATIVE ANALYST

CONTINUED

**Places Time Limits on
Legal Challenges to Death Sentences**

Requires Completion of Direct Appeal and Habeas Corpus Petition Process Within Five Years. The measure requires that the direct appeal and the habeas corpus petition process be completed within five years of the death sentence. The measure also requires the Judicial Council to revise its rules to help ensure that direct appeals and habeas corpus petitions are completed within this time frame. The five-year requirement would apply to new legal challenges, as well as those currently pending in court. For challenges currently pending, the measure requires that they be completed within five years from when Judicial Council adopts revised rules. If the process takes more than five years, victims or their attorneys could request a court order to address the delay.

Requires Filing of Habeas Corpus Petitions Within One Year of Attorney Appointment. The measure requires that attorneys appointed to represent condemned inmates in habeas corpus petitions file the petition with the trial courts within one year of their appointment. The trial court generally would then have one year to make a decision on the petition. If a petition is not filed within this time period, the trial court must dismiss the petition unless it determines that the defendant is likely either innocent or not eligible for the death sentence.

Places Other Limitations. In order to help meet the above time frames, the measure places other limits on legal challenges to death sentences. For example, the measure does not allow additional habeas corpus petitions to be filed after the first petition is filed, except in those cases where the court finds that the defendant is likely either innocent or not eligible for the death sentence.

Changes Process for Appointing Attorneys

The measure requires the Judicial Council and the California Supreme Court to consider changing the qualifications that attorneys representing condemned inmates must meet. According to the measure, these qualifications should (1) ensure competent representation and (2) expand the number of attorneys that can represent condemned inmates so that legal challenges to death sentences are heard in a timely manner. The measure also requires trial courts—rather than the California Supreme Court—to appoint attorneys for habeas corpus petitions.

In addition, the measure changes how attorneys are appointed for direct appeals under certain circumstances. Currently, the California Supreme

Court appoints attorneys from a list of qualified attorneys it maintains. Under the measure, certain attorneys could also be appointed from the lists of attorneys maintained by the Courts of Appeal for non-death penalty cases. Specifically, those attorneys who (1) are qualified for appointment to the most serious non-death penalty appeals and (2) meet the qualifications adopted by the Judicial Council for appointment to death penalty cases would be required to accept appointment to direct appeals if they want to remain on the Courts of Appeal's appointment lists.

Makes Other Changes

Habeas Corpus Resources Center Operations. The measure eliminates the Habeas Corpus Resources Center's five-member board of directors and requires the California Supreme Court to oversee the center. The measure also requires that the center's attorneys be paid at the same level as attorneys at the Office of the State Public Defender, as well as limits its legal activities.

Inmate Work and Payments to Victims of Crime Requirements. Current state law generally requires that inmates work while they are in prison. State prison regulations allow for some exceptions to these requirements, such as for inmates who pose too great a security risk to participate in work programs. In addition, inmates may be required by the courts to make payments to victims of crime. Up to 50 percent of any money inmates receive is used to pay these debts. This measure specifies that every person under a sentence of death must work while in state prison, subject to state regulations. Because the measure does not change state regulations, existing prison practices related to inmate work requirements would not necessarily be changed. In addition, the measure requires that 70 percent of any money condemned inmates receive be used to pay any debts owed to victims.

Enforcement of Death Sentence. The measure allows the state to house condemned inmates in any prison. The measure also exempts the state's execution procedures from the Administrative Procedures Act. In addition, the measure makes various changes regarding the method of execution used by the state. For example, legal challenges to the method could only be heard in the court that imposed the death sentence. In addition, if such challenges were successful, the measure requires the trial court to order a valid method of execution. In cases where federal court orders prevent the state from using a given method of execution, the state prisons would be required to develop a method of execution that meets

ANALYSIS BY THE LEGISLATIVE ANALYST

CONTINUED

federal requirements within 90 days. Finally, the measure exempts various health care professionals that assist with executions from certain state laws and disciplinary actions by licensing agencies, if those actions are imposed as a result of assisting with executions.

FISCAL EFFECTS

State Court Costs

Impact on Cost Per Legal Challenge Uncertain. The fiscal impact of the measure on state court-related costs of each legal challenge to a death sentence is uncertain. This is because the actual cost could vary significantly depending on four key factors: (1) the complexity of the legal challenges filed, (2) how state courts address existing and new legal challenges, (3) the availability of attorneys to represent condemned inmates, and (4) whether additional attorneys will be needed to process each legal challenge.

On the one hand, the measure could reduce the cost of each legal challenge. For example, the requirement that each challenge generally be completed in five years, as well as the limits on the number of habeas corpus petitions that can be filed, could result in the filing of fewer, shorter legal documents. Such a change could result in each legal challenge taking less time and state resources to process.

On the other hand, some of the measure’s provisions could increase state costs for each legal challenge. For example, the additional layers of review required for a habeas corpus petition could result in additional time and resources for the courts to process each legal challenge. In addition, there could be additional attorney costs if the state determines that a new attorney must be appointed when a habeas corpus petition ruling by the trial courts is appealed to the Courts of Appeal.

In view of the above, the ongoing annual fiscal impact of the measure on state costs related to legal challenges to death sentences is unknown.

Near-Term Annual Cost Increases From Accelerated Spending on Existing Cases. Regardless of how the

measure affects the cost of each legal challenge, the measure would accelerate the amount the state spends on legal challenges to death sentences. This is because the state would incur annual cost increases in the near term to process hundreds of pending legal challenges within the time limits specified in the measure. The state would save similar amounts in future years as some or all of these costs would have otherwise occurred over a much longer term absent this measure. Given the significant number of pending cases that would need to be addressed, the actual amount and duration of these accelerated costs in the near term is unknown. It is possible, however, that such costs could be in the tens of millions of dollars annually for many years.

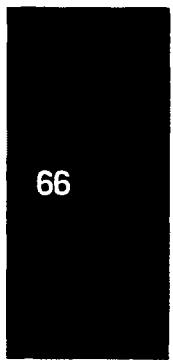
State Prisons

To the extent that the state changes the way it houses condemned inmates, the measure could result in state prison savings. For example, if male inmates were transferred to other prisons instead of being housed in single cells at San Quentin, it could reduce the cost of housing and supervising these inmates. In addition, to the extent the measure resulted in additional executions that reduced the number of condemned inmates, the state would also experience additional savings. In total, such savings could potentially reach the tens of millions of dollars annually.

Other Fiscal Effects

To the extent that the changes in this measure have an effect on the incidence of murder in California or how often prosecutors seek the death penalty in murder trials, the measure could affect state and local government expenditures. The resulting fiscal impact, if any, is unknown and cannot be estimated.

Visit <http://www.sos.ca.gov/measure-contributions> for a list of committees primarily formed to support or oppose this measure. Visit <http://www.fppc.ca.gov/transparency/top-contributors/nov-16-gen-v2.html> to access the committee’s top 10 contributors.



★ ARGUMENT IN FAVOR OF PROPOSITION 66 ★

California's elected law enforcement leaders, police officers, frontline prosecutors, and the families of murder victims ask you to REFORM the California death penalty system by voting YES ON PROPOSITION 66!

We agree California's current death penalty system is broken. The most heinous criminals sit on death row for 30 years, with endless appeals delaying justice and costing taxpayers hundreds of millions.

It does not need to be this way.

The solution is to MEND, NOT END, California's death penalty. The solution is YES on PROPOSITION 66.

Proposition 66 was written to speed up the death penalty appeals system while ensuring that no innocent person is ever executed.

Proposition 66 means the worst of the worst killers receive the strongest sentence.

Prop. 66 brings closure to the families of victims.

Proposition 66 protects public safety—these brutal killers have no chance of ever being in society again.

Prop. 66 saves taxpayers money, because heinous criminals will no longer be sitting on death row at taxpayer expense for 30+ years.

Proposition 66 was written by frontline death penalty prosecutors who know the system inside and out. They know how the system is broken, and they know how to fix it. It may sound complicated, but the reforms are actually quite simple.

HERE'S WHAT PROPOSITION 66 DOES:

1. All state appeals should be limited to 5 years.
2. Every murderer sentenced to death will have their special appeals lawyer assigned immediately. Currently, it can be five years or more before they are even assigned a lawyer.
3. The pool of available lawyers to handle these appeals will be expanded.
4. The trial courts who handled the death penalty trials and know them best will deal with the initial appeals.
5. The State Supreme Court will be empowered to oversee the system and ensure appeals are expedited while protecting the rights of the accused.

6. The State Corrections Department (Prisons) will reform death row housing; taking away special privileges from these brutal killers and saving millions.

Together, these reforms will save California taxpayers over \$30,000,000 annually, according to former California Finance Director Mike Genest, while making our death penalty system work again.

WE NEED A FUNCTIONING DEATH PENALTY SYSTEM IN CALIFORNIA

Death sentences are issued rarely and judiciously, and only against the very worst murderers.

To be eligible for the death penalty in California, you have to be guilty of first-degree murder with "special circumstances."

These special circumstances include, in part:

- Murderers who raped/tortured their victims.
- Child killers.
- Multiple murderers/serial killers.
- Murders committed by terrorists; as part of a hate-crime; or killing a police officer.

There are nearly 2,000 murders in California annually. Only about 15 death penalty sentences are imposed.

But when these horrible crimes occur, and a jury unanimously finds a criminal guilty and separately, unanimously recommends death, the appeals should be heard within five years, and the killer executed.

Help us protect California, provide closure to victims, and save taxpayers millions.

Visit www.NoProp62YesProp66.com for more information.

Then join law enforcement and families of victims and vote YES ON PROPOSITION 66!

JACKIE LACEY, District Attorney of Los Angeles County
KERMIT ALEXANDER, Family Member of Multiple Homicide Victims

SHAWN WELCH, President
Contra Costa County Deputy Sheriffs Association

★ REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 66 ★

Prop. 66 is a poorly-written and COSTLY EXPERIMENT that would INCREASE CALIFORNIA'S RISK OF EXECUTING AN INNOCENT PERSON, add new layers of government bureaucracy and create even more legal delays in death penalty cases.

**Read the measure for yourself: According to the state's nonpartisan Legislative Analyst's Office, this measure could cost taxpayers TENS of MILLIONS of DOLLARS.

Prop. 66 is not real reform. Here's what EXPERTS SAY Prop. 66 WOULD ACTUALLY DO:

- INCREASE the chance that California executes an innocent person
- INCREASE TAXPAYER FUNDED legal defense for death row inmates
- REQUIRE the state to hire and pay for hundreds of new lawyers
- LEAD TO CONSTRUCTION of new TAXPAYER FUNDED DEATH ROW facilities
- CLOG county courts, forcing death penalty cases on inexperienced judges
- Lead to EXPENSIVE LITIGATION by lawyers who will challenge a series of confusing provisions

Prop. 66 is a perfect example of SPECIAL INTEREST GROUPS abusing their power and pushing an agenda while claiming to seek reform. Look who's behind Prop. 66: the prison guards' union which has an interest in funneling more money into the prison system and opportunistic politicians using the initiative to advance their careers.

Experts agree: Prop. 66 is a POORLY WRITTEN, CONFUSING initiative that will only add MORE DELAY and MORE COSTS to California's death penalty.

Remember, MORE THAN 150 INNOCENT PEOPLE HAVE BEEN SENTENCED TO DEATH, and some have been executed because of poorly written laws like this.

Californians deserve real reform. Prop. 66 is not the answer. www.NOonCAProp66.org

GIL GARCETTI, District Attorney
Los Angeles County, 1992–2000
JUDGE LADORIS CORDELL, (Retired)
Santa Clara County Superior Court
HELEN HUTCHISON, President
League of Women Voters of California

★ ARGUMENT AGAINST PROPOSITION 66 ★

Prop. 66 WASTES TENS OF MILLIONS OF TAXPAYER DOLLARS.

Evidence shows MORE THAN 150 INNOCENT PEOPLE HAVE BEEN SENTENCED TO DEATH, and some have been executed because of poorly written laws like this one.

Prop. 66 is so confusing and poorly written that we don't know all of its consequences. We do know this: it will add more layers of government bureaucracy causing more delays, cost taxpayers money, and increase California's risk of executing an innocent person.

Experts agree: Prop. 66 is DEEPLY FLAWED.

** PROP. 66 COULD INCREASE TAXPAYER COSTS BY MILLIONS.

According to nonpartisan analysis, Prop. 66 could cost "tens of millions of dollars annually" with "unknown" costs beyond that. Read the LAO's report posted at www.NoOnCAProp66.org/cost.

Experts say Prop. 66 will:

- INCREASE PRISON SPENDING while schools, social services, and other priorities suffer.
- INCREASE TAXPAYER-FUNDED legal defense for death row inmates, requiring the state to hire as many as 400 new taxpayer-funded attorneys.
- LEAD TO CONSTRUCTION of new TAXPAYER-FUNDED DEATH ROW facilities. This initiative authorizes the state to house death row inmates in new prisons, anywhere in California.
- Lead to EXPENSIVE LITIGATION by lawyers who will challenge a series of poorly written provisions.

"Prop. 66 is so flawed that it's impossible to know for sure all the hidden costs it will inflict on California taxpayers."—*John Van de Kamp, former Attorney General of California.*

** PROP. 66 WOULD INCREASE CALIFORNIA'S RISK OF EXECUTING AN INNOCENT PERSON.

Instead of making sure everyone gets a fair trial with all the evidence presented, this measure REMOVES IMPORTANT LEGAL SAFEGUARDS and could easily lead to fatal mistakes.

This measure is modeled after laws from states like Texas, where authorities have executed innocent people.

People like Cameron Willingham and Carlos De Luna, both executed in Texas.

Experts now say they were innocent.

Prop. 66 will:

- LIMIT the ability to present new evidence of innocence in court.
- LEAVE people who can't afford a good attorney vulnerable to mistakes.
- CLOG local courts by moving death penalty cases there, adding new layers of bureaucracy and placing high profile cases in the hands of inexperienced judges and attorneys. This would lead to costly mistakes.

"If someone's executed and later found innocent, we can't go back."—*Judge LaDoris Cordell, Santa Clara (retired).*

** A CONFUSING AND POORLY WRITTEN INITIATIVE THAT WILL ONLY CAUSE MORE DELAY.

Prop. 66 is a misguided experiment that asks taxpayers to increase the costs of our justice and prison systems by MILLIONS to enact poorly-written reforms that would put California at risk.

SF Weekly stated, "Combing through the initiative's 16 pages is like looking through the first draft of an undergraduate paper. The wording is vague, unfocused and feels tossed off."

Instead of adding new layers of government bureaucracy and increasing costs, we deserve real reform of our justice system. Prop. 66 is not the answer.

"Instead of reckless, costly changes to our prison system, we need smart investments that are proven to reduce crime and serve victims."—*Dionne Wilson, widow of police officer killed in the line of duty.*

JEANNE WOODFORD, Warden
California's Death Row prison, 1999–2004

FRANCISCO CARRILLO JR., Innocent man wrongfully convicted in Los Angeles County

HON. ANTONIO R. VILLARAIGOSA, Mayor
City of Los Angeles, 2005–2013

★ REBUTTAL TO ARGUMENT AGAINST PROPOSITION 66 ★

Proposition 66 was carefully written by California's leading criminal prosecutors, the Criminal Justice Legal Foundation and other top legal experts—people who know from experience what's needed to MEND, NOT END our state's broken death penalty system.

The anti-death penalty extremists opposing Proposition 66 know it fixes the system, and will say anything to defeat it. Don't be fooled.

Proposition 66 reforms the death penalty so the system is fair to both defendants and the families of victims.

Defendants now wait five years just to be assigned a lawyer, delaying justice, hurting their appeals, and preventing closure for the victims' families. Proposition 66 fixes this by streamlining the process to ensure justice for all.

Under the current system, California's most brutal killers—serial killers, mass murderers, child killers, and murderers who rape and torture their victims—linger on death row until they die of old age, with taxpayers paying for their meals, healthcare, privileges and endless legal appeals.

By reforming the system, Proposition 66 will save taxpayers over \$30 million a year, according to former California Finance Director Mike Genest. Instead of dragging on for decades and costing millions, death row killers will have five to ten years to have their appeals heard, ample time to ensure justice is evenly applied while guaranteeing that no innocent person is wrongly executed.

Ensure justice by voting "YES" on Proposition 66—to MEND, NOT END the death penalty.

Learn more at www.NoProp62YesProp66.com.

ANNE MARIE SCHUBERT, District Attorney of Sacramento County

SANDY FRIEND, Mother of Murder Victim

CHUCK ALEXANDER, President
California Correctional Peace Officers Association

expenses. Grant recipients shall use no more than 5 percent of any moneys received for administrative expenses.

(e) Prior to disbursing any grants pursuant to this chapter, the Wildlife Conservation Board shall develop project solicitation and evaluation guidelines. The guidelines may include a limitation on the dollar amounts of grants to be awarded. Prior to finalizing the guidelines, the Wildlife Conservation Board shall post the draft guidelines on its Internet Web site and conduct three public hearings to consider public comments. One public hearing shall be held in Northern California, one hearing shall be held in the Central Valley, and one hearing shall be held in Southern California.

(f) (1) The nonpartisan California State Auditor shall conduct a biennial independent financial audit of the programs receiving funds pursuant to this chapter. The California State Auditor shall report its findings to the Governor and both houses of the Legislature, and shall make the findings available to the public on its Internet Web site.

(2) (A) The California State Auditor shall be reimbursed from moneys in the Environmental Protection and Enhancement Fund for actual costs incurred in conducting the biennial audits required by this subdivision, in an amount not to exceed four hundred thousand dollars (\$400,000) per audit.

(B) The four hundred thousand dollar (\$400,000) per audit maximum limit shall be adjusted biennially to reflect any increase or decrease in inflation as measured by the Consumer Price Index for All Urban Consumers (CPI-U). The Treasurer's office shall calculate and publish the adjustments required by this paragraph.

42273. (a) Notwithstanding any other law, local governments may require moneys generated or collected pursuant to any local law that bans free distribution of any type of carryout bag, and mandates the sale of any other type of carryout bag, to be deposited into the Environmental Protection and Enhancement Fund and used for the purposes set forth in Section 42272.

(b) For purposes of this section, "local law" means any ordinance, resolution, law, regulation, or other legal authority adopted, enacted, or implemented by any city, county, city and county, charter city, charter county, special district, school district, community college, or other local or regional governmental entity.

SEC. 5. Liberal Construction.

This act shall be liberally construed in order to effectuate its purposes.

SEC. 6. Conflicting Measures.

(a) In the event that this measure and another measure or measures relating to the use of moneys generated or collected by stores pursuant to laws that ban free distribution, and mandates the sale, of any or all types of carryout bags shall appear on the same statewide election ballot, the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measure or measures shall be null and void.

(b) If this measure is approved by the voters but superseded in whole or in part by any other conflicting initiative approved by the voters at the same election, and such

conflicting initiative is later held invalid, this measure shall be self-executing and given full force and effect.

SEC. 7. Severability.

The provisions of this act are severable. If any portion, section, subdivision, paragraph, clause, sentence, phrase, word, or application of this act is for any reason held to be invalid by a decision of any court of competent jurisdiction, that decision shall not affect the validity of the remaining portions of this act. The people of the State of California hereby declare that they would have adopted this act and each and every portion, section, subdivision, paragraph, clause, sentence, phrase, word, and application not declared invalid or unconstitutional without regard to whether any portion of this act or application thereof would be subsequently declared invalid.

SEC. 8. Legal Defense.

If this act is approved by the voters of the State of California and thereafter subjected to a legal challenge alleging a violation of federal law, and both the Governor and Attorney General refuse to defend this act, then the following actions shall be taken:

(a) Notwithstanding anything to the contrary contained in Chapter 6 (commencing with Section 12500) of Part 2 of Division 3 of Title 2 of the Government Code or any other law, the Attorney General shall appoint independent counsel to faithfully and vigorously defend this act on behalf of the State of California.

(b) Before appointing or thereafter substituting independent counsel, the Attorney General shall exercise due diligence in determining the qualifications of independent counsel and shall obtain written affirmation from independent counsel that independent counsel will faithfully and vigorously defend this act. The written affirmation shall be made publicly available upon request.

(c) A continuous appropriation is hereby made from the General Fund to the Controller, without regard to fiscal years, in an amount necessary to cover the costs of retaining independent counsel to faithfully and vigorously defend this act on behalf of the State of California.

PROPOSITION 66

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends and adds sections to the Government Code and the Penal Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout~~ type and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Short Title.

This Act shall be known and may be cited as the Death Penalty Reform and Savings Act of 2016.

SEC. 2. Findings and Declarations.

1. California's death penalty system is ineffective because of waste, delays, and inefficiencies. Fixing it will save California taxpayers millions of dollars every year. These wasted taxpayer dollars would be better used for crime prevention, education, and services for the elderly and disabled.

65

66

2. Murder victims and their families are entitled to justice and due process. Death row killers have murdered over 1,000 victims, including 229 children and 43 police officers; 235 victims were raped and 90 victims were tortured.

3. Families of murder victims should not have to wait decades for justice. These delays further victimize the families who are waiting for justice. For example, serial killer Robert Rhoades, who kidnapped, raped, tortured, and murdered 8-year-old Michael Lyons and also raped and murdered Bay Area high school student Julie Connell, has been sitting on death row for over 16 years. Hundreds of killers have sat on death row for over 20 years.

4. In 2012, the Legislative Analyst's Office found that eliminating special housing for death row killers will save tens of millions of dollars every year. These savings could be invested in our schools, law enforcement, and communities to keep us safer.

5. Death row killers should be required to work in prison and pay restitution to their victims' families consistent with the Victims' Bill of Rights (Marsy's Law). Refusal to work and pay restitution should result in loss of special privileges.

6. Reforming the existing inefficient appeals process for death penalty cases will ensure fairness for both defendants and victims. Right now, capital defendants wait five years or more for appointment of their appellate lawyer. By providing prompt appointment of attorneys, the defendants' claims will be heard sooner.

7. A defendant's claim of actual innocence should not be limited, but frivolous and unnecessary claims should be restricted. These tactics have wasted taxpayer dollars and delayed justice for decades.

8. The state agency that is supposed to expedite secondary review of death penalty cases is operating without any effective oversight, causing long-term delays and wasting taxpayer dollars. California Supreme Court oversight of this state agency will ensure accountability.

9. Bureaucratic regulations have needlessly delayed enforcement of death penalty verdicts. Eliminating wasteful spending on repetitive challenges to these regulations will result in the fair and effective implementation of justice.

10. The California Constitution gives crime victims the right to timely justice. A capital case can be fully and fairly reviewed by both the state and federal courts within ten years. By adopting state rules and procedures, victims will receive timely justice and taxpayers will save hundreds of millions of dollars.

11. California's Death Row includes serial killers, cop killers, child killers, mass murderers, and hate crime killers. The death penalty system is broken, but it can and should be fixed. This initiative will ensure justice for both victims and defendants, and will save hundreds of millions of taxpayer dollars.

SEC. 3. Section 190.6 of the Penal Code is amended to read:

190.6. (a) The Legislature finds that the sentence in all capital cases should be imposed expeditiously.

(b) Therefore, in all cases in which a sentence of death has been imposed on or after January 1, 1997, the opening appellate brief in the appeal to the State Supreme Court shall be filed no later than seven months after the

certification of the record for completeness under subdivision (d) of Section 190.8 or receipt by the appellant's counsel of the completed record, whichever is later, except for good cause. However, in those cases where the trial transcript exceeds 10,000 pages, the briefing shall be completed within the time limits and pursuant to the procedures set by the rules of court adopted by the Judicial Council.

(c) In all cases in which a sentence of death has been imposed on or after January 1, 1997, it is the Legislature's goal that the appeal be decided and an opinion reaching the merits be filed within 210 days of the completion of the briefing. However, where the appeal and a petition for writ of habeas corpus is heard at the same time, the petition should be decided and an opinion reaching the merits should be filed within 210 days of the completion of the briefing for the petition.

(d) *The right of victims of crime to a prompt and final conclusion, as provided in paragraph (9) of subdivision (b) of Section 28 of Article I of the California Constitution, includes the right to have judgments of death carried out within a reasonable time. Within 18 months of the effective date of this initiative, the Judicial Council shall adopt initial rules and standards of administration designed to expedite the processing of capital appeals and state habeas corpus review. Within five years of the adoption of the initial rules or the entry of judgment, whichever is later, the state courts shall complete the state appeal and the initial state habeas corpus review in capital cases. The Judicial Council shall continuously monitor the timeliness of review of capital cases and shall amend the rules and standards as necessary to complete the state appeal and initial state habeas corpus proceedings within the five-year period provided in this subdivision.*

~~(d) (e) The failure of the parties or the Supreme Court to meet or comply with the time limit provided by this section shall not be a ground for granting relief from a judgment of conviction or sentence of death of a court to comply with the time limit in subdivision (b) shall not affect the validity of the judgment or require dismissal of an appeal or habeas corpus petition. If a court fails to comply without extraordinary and compelling reasons justifying the delay, either party or any victim of the offense may seek relief by petition for writ of mandate. The court in which the petition is filed shall act on it within 60 days of filing. Paragraph (1) of subdivision (c) of Section 28 of Article I of the California Constitution, regarding standing to enforce victims' rights, applies to this subdivision and subdivision (d).~~

SEC. 4. Section 1227 of the Penal Code is amended to read:

1227. (a) If for any reason other than the pendency of an appeal pursuant to subdivision (b) of Section 1239 of this code a judgment of death has not been executed, and it remains in force, the court in which the conviction was had shall, on application of the district attorney, or may upon its own motion, make and cause to be entered an order ~~appointing a day upon specifying a period of 10 days during which the judgment shall be executed, which must not be less than 30 days nor more than 60 days from the time of making such order, and immediately thereafter.~~ *The 10-day period shall begin no less than 30 days after the order is entered and shall end no more than 60 days after the order is entered. Immediately after the order is entered, a certified copy of such the order, attested by the clerk, under the seal of the court, shall, for the purpose of execution, be transmitted by registered mail to the warden*

of the state prison having the custody of the defendant; provided, that if the defendant be at large, a warrant for his apprehension may be issued, and upon being apprehended, he shall be brought before the court, whereupon the court shall make an order directing the warden of the state prison to whom the sheriff is instructed to deliver the defendant to execute the judgment ~~at a specified time~~ *within a period of 10 days*, which shall not be *begin* less than 30 days nor *end* more than 60 days from the time of making such order.

(b) From an order fixing the time for and directing the execution of such judgment as herein provided, there shall be no appeal.

SEC. 5. Section 1239.1 is added to the Penal Code, to read:

1239.1. (a) *It is the duty of the Supreme Court in a capital case to expedite the review of the case. The court shall appoint counsel for an indigent appellant as soon as possible. The court shall only grant extensions of time for briefing for compelling or extraordinary reasons.*

(b) *When necessary to remove a substantial backlog in appointment of counsel for capital cases, the Supreme Court shall require attorneys who are qualified for appointment to the most serious non-capital appeals and who meet the qualifications for capital appeals to accept appointment in capital cases as a condition for remaining on the court's appointment list. A "substantial backlog" exists for this purpose when the time from entry of judgment in the trial court to appointment of counsel for appeal exceeds 6 months over a period of 12 consecutive months.*

SEC. 6. Section 1509 is added to the Penal Code, to read:

1509. (a) *This section applies to any petition for writ of habeas corpus filed by a person in custody pursuant to a judgment of death. A writ of habeas corpus pursuant to this section is the exclusive procedure for collateral attack on a judgment of death. A petition filed in any court other than the court which imposed the sentence should be promptly transferred to that court unless good cause is shown for the petition to be heard by another court. A petition filed in or transferred to the court which imposed the sentence shall be assigned to the original trial judge unless that judge is unavailable or there is other good cause to assign the case to a different judge.*

(b) *After the entry of a judgment of death in the trial court, that court shall offer counsel to the prisoner as provided in Section 68662 of the Government Code.*

(c) *Except as provided in subdivisions (d) and (g), the initial petition must be filed within one year of the order entered under Section 68662 of the Government Code.*

(d) *An initial petition which is untimely under subdivision (c) or a successive petition whenever filed shall be dismissed unless the court finds, by the preponderance of all available evidence, whether or not admissible at trial, that the defendant is actually innocent of the crime of which he or she was convicted or is ineligible for the sentence. A stay of execution shall not be granted for the purpose of considering a successive or untimely petition unless the court finds that the petitioner has a substantial claim of actual innocence or ineligibility. "Ineligible for the sentence of death" means that circumstances exist placing that sentence outside the range of the sentencer's discretion. Claims of ineligibility include a claim that none of the special circumstances in subdivision (a) of*

Section 190.2 is true, a claim that the defendant was under the age of 18 at the time of the crime, or a claim that the defendant has an intellectual disability, as defined in Section 1376. A claim relating to the sentencing decision under Section 190.3 is not a claim of actual innocence or ineligibility for the purpose of this section.

(e) *A petitioner claiming innocence or ineligibility under subdivision (d) shall disclose all material information relating to guilt or eligibility in the possession of the petitioner or present or former counsel for petitioner. If the petitioner willfully fails to make the disclosure required by this subdivision and authorize disclosure by counsel, the petition may be dismissed.*

(f) *Proceedings under this section shall be conducted as expeditiously as possible, consistent with a fair adjudication. The superior court shall resolve the initial petition within one year of filing unless the court finds that a delay is necessary to resolve a substantial claim of actual innocence, but in no instance shall the court take longer than two years to resolve the petition. On decision of an initial petition, the court shall issue a statement of decision explaining the factual and legal basis for its decision.*

(g) *If a habeas corpus petition is pending on the effective date of this section, the court may transfer the petition to the court which imposed the sentence. In a case where a judgment of death was imposed prior to the effective date of this section, but no habeas corpus petition has been filed prior to the effective date of this section, a petition that would otherwise be barred by subdivision (c) may be filed within one year of the effective date of this section or within the time allowed under prior law, whichever is earlier.*

SEC. 7. Section 1509.1 is added to the Penal Code, to read:

1509.1. (a) *Either party may appeal the decision of a superior court on an initial petition under Section 1509 to the court of appeal. An appeal shall be taken by filing a notice of appeal in the superior court within 30 days of the court's decision granting or denying the habeas petition. A successive petition shall not be used as a means of reviewing a denial of habeas relief.*

(b) *The issues considered on an appeal under subdivision (a) shall be limited to the claims raised in the superior court, except that the court of appeal may also consider a claim of ineffective assistance of trial counsel if the failure of habeas counsel to present that claim to the superior court constituted ineffective assistance. The court of appeal may, if additional findings of fact are required, make a limited remand to the superior court to consider the claim.*

(c) *The people may appeal the decision of the superior court granting relief on a successive petition. The petitioner may appeal the decision of the superior court denying relief on a successive petition only if the superior court or the court of appeal grants a certificate of appealability. A certificate of appealability may issue under this subdivision only if the petitioner has shown both a substantial claim for relief, which shall be indicated in the certificate, and a substantial claim that the requirements of subdivision (d) of Section 1509 have been met. An appeal under this subdivision shall be taken by filing a notice of appeal in the superior court within 30 days of the court's decision. The superior court shall grant or deny a certificate of appealability concurrently with a decision denying relief on the petition. The court of appeal shall grant or deny a*

request for a certificate of appealability within 10 days of an application for a certificate. The jurisdiction of the court of appeal is limited to the claims identified in the certificate and any additional claims added by the court of appeal within 60 days of the notice of appeal. An appeal under this subdivision shall have priority over all other matters and be decided as expeditiously as possible.

SEC. 8. Section 2700.1 is added to the Penal Code, to read:

2700.1. Section 2700 applies to inmates sentenced to death, except as otherwise provided in this section.

Every person found guilty of murder, sentenced to death, and held by the Department of Corrections and Rehabilitation pursuant to Sections 3600 to 3602 shall be required to work as many hours of faithful labor each day he or she is so held as shall be prescribed the rules and regulations of the department.

Physical education and physical fitness programs shall not qualify as work for purposes of this section. The Department of Corrections and Rehabilitation may revoke the privileges of any condemned inmate who refuses to work as required by this section.

In any case where the condemned inmate owes a restitution fine or restitution order, the Secretary of the Department of Corrections and Rehabilitation shall deduct 70 percent or the balance owing, whichever is less, from the condemned inmate's wages and trust account deposits, regardless of the source of the income, and shall transfer those funds to the California Victim Compensation and Government Claims Board according to the rules and regulations of the Department of Corrections and Rehabilitation, pursuant to Sections 2085.5 and 2717.8.

SEC. 9. Section 3600 of the Penal Code is amended to read:

3600. (a) Every male person, upon whom has been imposed the judgment of death, shall be delivered to the warden of the California state prison designated by the department for the execution of the death penalty, there to be kept until the execution of the judgment, except as provided in subdivision (b). The inmate shall be kept in a California prison until execution of the judgment. The department may transfer the inmate to another prison which it determines to provide a level of security sufficient for that inmate. The inmate shall be returned to the prison designated for execution of the death penalty after an execution date has been set.

(b) Notwithstanding any other provision of law:

(1) A condemned inmate who, while in prison, commits any of the following offenses, or who, as a member of a gang or disruptive group, orders others to commit any of these offenses, may, following disciplinary sanctions and classification actions at San Quentin State Prison, pursuant to regulations established by the Department of Corrections, be housed in secure condemned housing designated by the Director of Corrections, at the California State Prison, Sacramento:

(A) Homicide:

(B) Assault with a weapon or with physical force capable of causing serious or mortal injury.

(C) Escape with force or attempted escape with force.

(D) Repeated serious rules violations that substantially threaten safety or security.

(2) The condemned housing program at California State Prison, Sacramento, shall be fully operational prior to the transfer of any condemned inmate.

(3) Specialized training protocols for supervising condemned inmates shall be provided to those line staff and supervisors at the California State Prison, Sacramento, who supervise condemned inmates on a regular basis.

(4) An inmate whose medical or mental health needs are so critical as to endanger the inmate or others may, pursuant to regulations established by the Department of Corrections, be housed at the California Medical Facility or other appropriate institution for medical or mental health treatment. The inmate shall be returned to the institution from which the inmate was transferred when the condition has been adequately treated or is in remission.

(c) When housed pursuant to subdivision (b) the following shall apply:

(1) Those local procedures relating to privileges and classification procedures provided to Grade B condemned inmates at San Quentin State Prison shall be similarly instituted at California State Prison, Sacramento, for condemned inmates housed pursuant to paragraph (1) of subdivision (b) of Section 3600. Those classification procedures shall include the right to the review of a classification no less than every 90 days and the opportunity to petition for a return to San Quentin State Prison.

(2) Similar attorney-client access procedures that are afforded to condemned inmates housed at San Quentin State Prison shall be afforded to condemned inmates housed in secure condemned housing designated by the Director of Corrections, at the California State Prison, Sacramento. Attorney-client access for condemned inmates housed at an institution for medical or mental health treatment shall be commensurate with the institution's visiting procedures and appropriate treatment protocols.

(3) A condemned inmate housed in secure condemned housing pursuant to subdivision (b) shall be returned to San Quentin State Prison at least 60 days prior to his scheduled date of execution.

(4) No more than 15 condemned inmates may be rehoused pursuant to paragraph (1) of subdivision (b).

(d) Prior to any relocation of condemned row from San Quentin State Prison, whether proposed through legislation or any other means, all maximum security Level IV, 180-degree housing unit facilities with an electrified perimeter shall be evaluated by the Department of Corrections for suitability for the secure housing and execution of condemned inmates.

SEC. 10. Section 3604 of the Penal Code is amended to read:

3604. (a) The punishment of death shall be inflicted by the administration of a lethal gas or by an intravenous injection of a substance or substances in a lethal quantity sufficient to cause death, by standards established under the direction of the Department of Corrections and Rehabilitation.

(b) Persons sentenced to death prior to or after the operative date of this subdivision shall have the opportunity to elect to have the punishment imposed by lethal gas or lethal injection. This choice shall be made in writing and shall be submitted to the warden pursuant to regulations established by the Department of Corrections and Rehabilitation. If a person under sentence of death does

not choose either lethal gas or lethal injection within 10 days after the warden's service upon the inmate of an execution warrant issued following the operative date of this subdivision, the penalty of death shall be imposed by lethal injection.

(c) Where the person sentenced to death is not executed on the date set for execution and a new execution date is subsequently set, the inmate again shall have the opportunity to elect to have punishment imposed by lethal gas or lethal injection, according to the procedures set forth in subdivision (b).

(d) Notwithstanding subdivision (b), if either manner of execution described in subdivision (a) is held invalid, the punishment of death shall be imposed by the alternative means specified in subdivision (a).

(e) *The Department of Corrections and Rehabilitation, or any successor agency with the duty to execute judgments of death, shall maintain at all times the ability to execute such judgments.*

SEC. 11. Section 3604.1 is added to the Penal Code, to read:

3604.1. (a) *The Administrative Procedure Act shall not apply to standards, procedures, or regulations promulgated pursuant to Section 3604. The department shall make the standards adopted under subdivision (a) of that section available to the public and to inmates sentenced to death. The department shall promptly notify the Attorney General, the State Public Defender, and counsel for any inmate for whom an execution date has been set or for whom a motion to set an execution date is pending of any adoption or amendment of the standards. Noncompliance with this subdivision is not a ground for stay of an execution or an injunction against carrying out an execution unless the noncompliance has actually prejudiced the inmate's ability to challenge the standard, and in that event the stay shall be limited to a maximum of 10 days.*

(b) *Notwithstanding subdivision (a) of Section 3604, an execution by lethal injection may be carried out by means of an injection other than intravenous if the warden determines that the condition of the inmate makes intravenous injection impractical.*

(c) *The court which rendered the judgment of death has exclusive jurisdiction to hear any claim by the condemned inmate that the method of execution is unconstitutional or otherwise invalid. Such a claim shall be dismissed if the court finds its presentation was delayed without good cause. If the method is found invalid, the court shall order the use of a valid method of execution. If the use of a method of execution is enjoined by a federal court, the Department of Corrections and Rehabilitation shall adopt, within 90 days, a method that conforms to federal requirements as found by that court. If the department fails to perform any duty needed to enable it to execute the judgment, the court which rendered the judgment of death shall order it to perform that duty on its own motion, on motion of the District Attorney or Attorney General, or on motion of any victim of the crime as defined in subdivision (e) of Section 28 of Article I of the California Constitution.*

SEC. 12. Section 3604.3 is added to the Penal Code, to read:

3604.3. (a) *A physician may attend an execution for the purpose of pronouncing death and may provide advice to the department for the purpose of developing an execution protocol to minimize the risk of pain to the inmate.*

(b) *The purchase of drugs, medical supplies or medical equipment necessary to carry out an execution shall not be subject to the provisions of Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code, and any pharmacist, or supplier, compounder, or manufacturer of pharmaceuticals is authorized to dispense drugs and supplies to the secretary or the secretary's designee, without prescription, for carrying out the provisions of this chapter.*

(c) *No licensing board, department, commission, or accreditation agency that oversees or regulates the practice of health care or certifies or licenses health care professionals may deny or revoke a license or certification, censure, reprimand, suspend, or take any other disciplinary action against any licensed health care professional for any action authorized by this section.*

SEC. 13. Section 68660.5 is added to the Government Code, to read:

68660.5. *The purposes of this chapter are to qualify the State of California for the handling of federal habeas corpus petitions under Chapter 154 of Title 28 of the United States Code, to expedite the completion of state habeas corpus proceedings in capital cases, and to provide quality representation in state habeas corpus for inmates sentenced to death. This chapter shall be construed and administered consistently with those purposes.*

SEC. 14. Section 68661 of the Government Code is amended to read:

68661. There is hereby created in the judicial branch of state government the California Habeas Corpus Resource Center, which shall have all of the following general powers and duties:

(a) ~~To employ up to 34 attorneys who may be appointed by the Supreme Court pursuant to Section 68662 to represent any person convicted and sentenced to death in this state who is without counsel, and who is determined by a court of competent jurisdiction to be indigent, for the purpose of instituting and prosecuting postconviction actions~~ *habeas corpus petitions in the state and federal courts, challenging the legality of the judgment or sentence imposed against that person, subject to the limitations in Section 68661.1, and preparing petitions for executive clemency. Any such appointment may be concurrent with the appointment of the State Public Defender or other counsel for purposes of direct appeal under Section 11 of Article VI of the California Constitution.*

(b) *To seek reimbursement for representation and expenses pursuant to Section 3006A of Title 18 of the United States Code when providing representation to indigent persons in the federal courts and process those payments via the Federal Trust Fund.*

(c) ~~To work with the Supreme Court courts~~ *in recruiting members of the private bar to accept death penalty habeas corpus case appointments.*

(d) ~~To establish and periodically update~~ *recommend attorneys to the Supreme Court for inclusion in a roster of attorneys qualified as counsel in postconviction habeas corpus proceedings in capital cases, provided that the final determination of whether to include an attorney in the roster shall be made by the Supreme Court and not delegated to the center.*

(e) *To establish and periodically update a roster of experienced investigators and experts who are qualified to*

assist counsel in ~~postconviction~~ *habeas corpus* proceedings in capital cases.

(f) To employ investigators and experts as staff to provide services to appointed counsel upon request of counsel, provided that when the provision of those services is to private counsel ~~under appointment by the Supreme Court~~, those services shall be pursuant to contract between appointed counsel and the center.

(g) To provide legal or other advice ~~or, to the extent not otherwise available, any other assistance~~ to appointed counsel in ~~postconviction~~ *habeas corpus* proceedings as is appropriate when not prohibited by law.

(h) To develop a brief bank of pleadings and related materials on significant, recurring issues that arise in ~~postconviction~~ *habeas corpus* proceedings in capital cases and to make those briefs available to appointed counsel.

(i) To evaluate cases and recommend assignment by the court of appropriate attorneys.

(j) To provide assistance and case progress monitoring as needed.

(k) To timely review case billings and recommend compensation of members of the private bar to the court.

(l) The center shall report annually to *the people*, the Legislature, the Governor, and the Supreme Court on the status of the appointment of counsel for indigent persons in ~~postconviction~~ *habeas corpus* capital cases, and on the operations of the center. ~~On or before January 1, 2000, the Legislative Analyst's Office shall evaluate the available reports. The report shall list all cases in which the center is providing representation. For each case that has been pending more than one year in any court, the report shall state the reason for the delay and the actions the center is taking to bring the case to completion.~~

SEC. 15. Section 68661.1 is added to the Government Code, to read:

68661.1. (a) *The center may represent a person sentenced to death on a federal habeas corpus petition if and only if (1) the center was appointed to represent that person on state habeas corpus, (2) the center is appointed for that purpose by the federal court, and (3) the executive director determines that compensation from the federal court will fully cover the cost of representation. Neither the center nor any other person or entity receiving state funds shall spend state funds to attack in federal court any judgment of a California court in a capital case, other than review in the Supreme Court pursuant to Section 1257 of Title 28 of the United States Code.*

(b) *The center is not authorized to represent any person in any action other than habeas corpus which constitutes a collateral attack on the judgment or seeks to delay or prevent its execution. The center shall not engage in any other litigation or expend funds in any form of advocacy other than as expressly authorized by this section or Section 68661.*

SEC. 16. Section 68662 of the Government Code is amended to read:

68662. The ~~Supreme Court~~ superior court that imposed the sentence shall offer to appoint counsel to represent ~~at~~ a state prisoners prisoner subject to a capital sentence for purposes of state postconviction proceedings, and shall enter an order containing one of the following:

(a) The appointment of one or more counsel to represent the prisoner in ~~postconviction~~ state proceedings pursuant

to Section 1509 of the Penal Code upon a finding that the person is indigent and has accepted the offer to appoint counsel or is unable to competently decide whether to accept or reject that offer.

(b) A finding, after a hearing if necessary, that the prisoner rejected the offer to appoint counsel and made that decision with full understanding of the legal consequences of the decision.

(c) The denial to appoint counsel upon a finding that the person is not indigent.

SEC. 17. Section 68664 of the Government Code is amended to read:

68664. (a) The center shall be managed by an executive director who shall be responsible for the day-to-day operations of the center.

(b) The executive director shall be chosen by a ~~five-member board of directors and confirmed by the Senate. Each Appellate Project shall appoint one board member, all of whom shall be attorneys. However, no attorney who is employed as a judge, prosecutor, or in a law enforcement capacity shall be eligible to serve on the board~~ the Supreme Court. The executive director shall serve at the will of the ~~board~~ Supreme Court.

(c) Each member of the board shall be appointed to serve ~~a four-year term, and vacancies shall be filled in the same manner as the original appointment. Members of the board shall receive no compensation, but shall be reimbursed for all reasonable and necessary expenses incidental to their duties. The first members of the board shall be appointed no later than February 1, 1998. The executive director shall ensure that all matters in which the center provides representation are completed as expeditiously as possible consistent with effective representation.~~

(d) The executive director shall meet the appointment qualifications of the State Public Defender as specified in Section 15400.

(e) The executive director shall receive the salary that shall be specified for the ~~executive director~~ State Public Defender in Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2. All other attorneys employed by the center shall be compensated at the same level as comparable positions in the Office of the State Public Defender.

SEC. 18. Section 68665 of the Government Code is amended to read:

68665. (a) The Judicial Council and the Supreme Court shall adopt, by rule of court, binding and mandatory competency standards for the appointment of counsel in death penalty direct appeals and habeas corpus proceedings, and they shall reevaluate the standards as needed to ensure that they meet the criteria in subdivision (b).

(b) *In establishing and reevaluating the standards, the Judicial Council and the Supreme Court shall consider the qualifications needed to achieve competent representation, the need to avoid unduly restricting the available pool of attorneys so as to provide timely appointment, and the standards needed to qualify for Chapter 154 of Title 28 of the United States Code. Experience requirements shall not be limited to defense experience.*

SEC. 19. Effective Date. Except as more specifically provided in this act, all sections of this act take effect

immediately upon enactment and apply to all proceedings conducted on or after the effective date.

SEC. 20. Amendments. The statutory provisions of this act shall not be amended by the Legislature, except by a statute passed in each house by rollcall vote entered in the journal, three-fourths of the membership of each house concurring, or by a statute that becomes effective only when approved by the voters.

SEC. 21. Severability/Conflicting Measures/Standing.

If any provision of this act, or any part of any provision, or its application to any person or circumstance is for any reason held to be invalid or unconstitutional, the remaining provisions and applications which can be given effect without the invalid or unconstitutional provision or application shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable.

This measure is intended to be comprehensive. It is the intent of the people that in the event this measure or measures relating to the subject of capital punishment shall appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and all provisions of the other measure or measures shall be null and void.

The people of the State of California declare that the proponent of this act has a direct and personal stake in defending this act and grant formal authority to the proponent to defend this act in any legal proceeding, either by intervening in such legal proceeding, or by defending the act on behalf of the people and the state in the event that the state declines to defend the act or declines to appeal an adverse judgment against the act. In the event that the proponent is defending this act in a legal proceeding because the state has declined to defend it or to appeal an adverse judgment against it, the proponent shall: act as an agent of the people and the state; be subject to all ethical, legal, and fiduciary duties applicable to such parties in such legal proceedings; take and be subject to the oath of office prescribed by Section 3 of Article XX of the California Constitution for the limited purpose of acting on behalf of the people and the state in such legal proceeding; and be entitled to recover reasonable legal fees and related costs from the state.

PROPOSITION 67

This law proposed by Senate Bill 270 of the 2013–2014 Regular Session (Chapter 850, Statutes of 2014) is submitted to the people as a referendum in accordance with the provisions of Section 9 of Article II of the California Constitution.

This proposed law adds sections to the Public Resources Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Chapter 5.3 (commencing with Section 42280) is added to Part 3 of Division 30 of the Public Resources Code, to read:

CHAPTER 5.3. SINGLE-USE CARRYOUT BAGS

Article 1. Definitions

42280. (a) "Department" means the Department of Resources Recycling and Recovery.

(b) "Postconsumer recycled material" means a material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle. Postconsumer recycled material does not include materials and byproducts generated from, and commonly reused within, an original manufacturing and fabrication process.

(c) "Recycled paper bag" means a paper carryout bag provided by a store to a customer at the point of sale that meets all of the following requirements:

(1) (A) Except as provided in subparagraph (B), contains a minimum of 40 percent postconsumer recycled materials.

(B) An eight pound or smaller recycled paper bag shall contain a minimum of 20 percent postconsumer recycled material.

(2) Is accepted for recycling in curbside programs in a majority of households that have access to curbside recycling programs in the state.

(3) Has printed on the bag the name of the manufacturer, the country where the bag was manufactured, and the minimum percentage of postconsumer content.

(d) "Reusable grocery bag" means a bag that is provided by a store to a customer at the point of sale that meets the requirements of Section 42281.

(e) (1) "Reusable grocery bag producer" means a person or entity that does any of the following:

(A) Manufactures reusable grocery bags for sale or distribution to a store.

(B) Imports reusable grocery bags into this state, for sale or distribution to a store.

(C) Sells or distributes reusable bags to a store.

(2) "Reusable grocery bag producer" does not include a store, with regard to a reusable grocery bag for which there is a manufacturer or importer, as specified in subparagraph (A) or (B) of paragraph (1).

(f) (1) "Single-use carryout bag" means a bag made of plastic, paper, or other material that is provided by a store to a customer at the point of sale and that is not a recycled paper bag or a reusable grocery bag that meets the requirements of Section 42281.

(2) A single-use carryout bag does not include either of the following:

(A) A bag provided by a pharmacy pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code to a customer purchasing a prescription medication.

(B) A nonhandled bag used to protect a purchased item from damaging or contaminating other purchased items when placed in a recycled paper bag, a reusable grocery bag, or a compostable plastic bag.

(C) A bag provided to contain an unwrapped food item.

(D) A nonhandled bag that is designed to be placed over articles of clothing on a hanger.

(g) "Store" means a retail establishment that meets any of the following requirements:

67

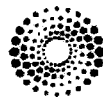
66

EXHIBIT 4

Black's Law Dictionary

Eleventh Edition

Bryan A. Garner
Editor in Chief



THOMSON REUTERS™

Mat # 42122759
Mat # 42124201 — deluxe

Disclaimer

Although this publication was created to provide you with accurate and authoritative information, it was not necessarily prepared by attorneys licensed to practice law in a particular jurisdiction. The publisher is not engaged in rendering legal or other professional advice, and this publication is not a substitute for an attorney's advice. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

Copyright Clearance Center

For authorization to photocopy, please contact the Copyright Clearance Center at 222 Rosewood Drive, Danvers, MA 01923, USA, (978) 750-8400, fax (978) 646-8600; or West's Copyright Services at 610 Opperman Drive, Eagan, MN 55123, fax (651) 687-7551. Please outline the specific material involved, the number of copies you wish to distribute, and the purpose or format of the use.

Copyright information

"BLACK'S LAW DICTIONARY" is a registered trademark of Thomson Reuters.

Registered in U.S. Patent and Trademark Office

COPYRIGHT © 1891, 1910, 1933, 1951, 1957, 1968, 1979, 1990 WEST PUBLISHING CO.

© West, a Thomson business, 1999, 2004

© 2009, 2014, 2019 Thomson Reuters

610 Opperman Drive

St. Paul, MN 55123

1-800-313-9378

Printed in the United States of America

ISBN: 978-1-539-22975-9

ISBN: 978-1-539-22976-6 (deluxe)

the charterer's failure to load or unload cargo by the agreed time.

► **contract demurrage.** (1975) Demurrage paid by a vessel's charterer if the time to load or unload the vessel at port takes longer than that agreed on in the charterer's contract with the shipowner. Cf. DISPATCH MONEY.

► **noncontract demurrage.** (1975) Demurrage not provided by contract, but ordered by a court. — Also termed *damages for detention*.

"After the . . . days on contract demurrage have expired, the charterer of course still remains liable for further delay, but the liability now is one for noncontract demurrage, which will be fixed by the court just as would any other unliquidated claim for damages. Non-contract demurrage may also be referred to as 'damages for detention.'" Grant Gilmore & Charles L. Black Jr., *The Law of Admiralty* 5 4-8, at 212 (2d ed. 1975).

2. A charge due for the late return of ocean containers or other equipment. 3. The time during which a freighter may detain the ship on certain terms, after the expiration of the lay days. See LAYDAY.

demurrage lien. See LIEN.

demurrant (di-mər-ənt). (1809) Someone who demurs; esp., a litigant who files a demurrer.

demurrer (di-mər-ər). [Law French *demorer* "to wait or stay"] (16c) A pleading stating that although the facts alleged in a complaint may be true, they are insufficient for the plaintiff to state a claim for relief and for the defendant to frame an answer. • In most jurisdictions, such a pleading is now termed a *motion to dismiss*, but *demurrer* is still used in a few states, including California, Nebraska, and Pennsylvania. See PLEADING (quot.). Cf. DENIAL (3).

"The word 'demurrer,' derived from the Latin *demorari*, or the French *demorer*, meaning to 'wait or stay,' imports that the party demurring waits or stays in his proceedings in the action until the judgment of the court is given whether he is bound to answer to so insufficient a pleading. Each party may demur to what he deems an insufficient pleading of the other. The demurrer was general when it was to matter of substance; it was special when it was made to matter of form, and must specifically point out the defect." Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 15 (2d ed. 1899).

► **demurrer ore tenus.** (1838) An oral demurrer. See ORE TENUS.

"The codes either expressly or by implication require all pleadings to be in writing. To this proposition there is the apparent exception that objections to the jurisdiction of the court, or to the sufficiency of a pleading, that it does not state a cause of action or defence, may be raised on the trial by what is sometimes called a demurrer *ore tenus* (that is, orally, — by word of mouth)." Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 179 (2d ed. 1899).

► **general demurrer.** See *general exception* (1) under EXCEPTION (1).

► **parol demurrer.** (18c) *Hist.* A suspension of proceedings during the minority of an infant.

► **speaking demurrer.** (18c) A demurrer that cannot be sustained because it introduces new facts not contained in the complaint.

► **special demurrer.** (17c) A demurrer that states grounds for an objection and specifically identifies the nature of the defect, such as that the pleading violates the rules of pleading or practice. • If a pleading is defective in form

but not substance, the defect must be pointed out by a special demurrer.

demurrer book. (18c) *Hist.* A record of the demurrer issue used by the court and counsel in argument.

demurrer to evidence. (17c) A party's objection or exception that the evidence is legally insufficient to make a case. • Its effect, upon joinder in the demurrer by the opposite party, is that the jury is discharged and the demurrer is entered on record and decided by the court. A demurrer to evidence admits the truth of all the evidence and the legal deductions from that evidence.

demurrer to interrogatories. (18c) The objection or reason given by a witness for failing to answer an interrogatory.

demutualization, n. (1970) The process of converting a mutual insurance company (which is owned by its policyholders) to a stock insurance company (which is owned by outside shareholders), usu. as a means of increasing the insurer's capital by allowing the insurer to issue shares. • About half the states have demutualization statutes authorizing such a conversion. — **demutualize, vb.**

demý-sangué. See DEMI-SANGUE.

den and strond (den an[d] strond). (18c) *Hist.* Permission for a ship to run aground or strand itself.

denarius (di-nair-ee-əs), *n.* [Law Latin "penny"] (16c) 1. *Roman law.* The principal silver coin used by the Romans. 2. *Hist.* An English penny; a pence. 3. (*pl.*) *Slang.* Money in general. — Also termed (in senses 1 & 3) *denier*. *Pl. denarii.*

denarius Dei (di-nair-ee-əs dee-i), *n.* [Law Latin "God's penny"] (16c) *Hist.* Earnest money exchanged by contracting parties, so called because the money was originally given either to the church or to the poor. • The *denarius Dei* was not part of the consideration. — Also termed *argentum dei*. See ARRA; GOD'S PENNY.

denationalization. (1921) 1. *Int'l law.* The unilateral act of a country in depriving a person of nationality, whether by administrative decision or by operation of law. • Strictly, the term does not cover a person's renunciation of citizenship. 2. The act of returning government ownership and control of an industry or function to private ownership and control. Cf. PRIVATIZATION. — **denationalize, vb.**

de nativo habendo (dee nā-ti-voh hā-ben-doh), *n.* [Law Latin "about a serf to be held"] (16c) *Hist.* A writ directing a sheriff to apprehend and return a runaway serf to the serf's lord. • A trial on the writ would determine the lord's ownership status. — Also termed *nativo habendo*.

de natura brevium (dee nā-tyoor-ə bree-vee-ə). [Latin] (16c) Concerning the nature of writs. • This was a common title of textbooks on English medieval law.

denaturalization. (1811) The process by which a government deprives a naturalized citizen of all rights, duties, and protections of citizenship. See 8 USCA § 1451. — **denaturalize, vb.**

denelage. See DANELAW.

denial, n. (16c) 1. A statement that something is not true, esp. after someone else has suggested that it is or might be true; a disaffirmation. 2. A refusal or rejection; esp., a court's refusal to grant a request presented in a motion or petition <denial of the motion for summary judgment>.

pointed out by a

demurrer issued.

objection or exception to make a case by the opposite of the demurrer is a court. A demurrer is evidence and the

objection or reason an interrogatory of converting a owned by its possessor (which is owned) of increasing the to issue shares. lization statutes. tualize, vb.

Hist. Permission f.

1 "penny" (16c) coin used by the. nce. 3. (pl.) Slang uses 1 & 3) *denier*.

aw Latin "God's changed by com- money was orig- the poor. • The leration. — Also 'ENNY.

: unilateral act of ality, whether by of law. • Strictly, iation of citizen t ownership and ivate ownership ationalize, vb

m-doh), n. [Law st. A writ direct runaway serf to d determine the *nativo habendo*

:-vec-ə). [Latin] i. • This was a iedieval law.

which a govern ll rights, duties 'SCA § 1451.

hing is not true at it is or might rejection; esp., d in a motion or ary judgment>

wrongful denial. (1845) The improper or erroneous refusal to recognize something that is valid.

3. A defendant's response controverting the facts that a plaintiff has alleged in a complaint; a repudiation <the worker filed a denial alleging that physical contact never occurred>. See PLEADING (quot.). Cf. DEMURRER.

4. conjunctive denial. (1860) A response that controverts all the material facts alleged in a complaint.

5. disjunctive denial. (1920) A response that controverts the truthfulness of two or more factual allegations of a complaint in the alternative.

6. general denial. (16c) A response that puts in issue all the material assertions of a complaint or petition. — Also termed *general plea*.

7. qualified general denial. (1844) A general denial of all the allegations except the allegations that the pleader expressly admits.

The qualified general denial most frequently is used when a limited number of allegations in the complaint are to be admitted. This form of denial also is employed when defendant cannot expressly deny an averment in his opponent's pleading and therefore cannot submit a general denial, although defendant wants to put plaintiff to his proof on that averment by interposing a denial of knowledge or information sufficient to form a belief or a denial on information and belief." 5 Charles Alan Wright & Arthur Miller, *Federal Practice and Procedure* § 1266, at 405 (2d ed. 1990).

8. specific denial. (1850) A separate response applicable to one or more particular allegations in a complaint.

9. A deprivation or withholding <denial of due process>. — *deny*, vb.

10. bad-faith denial. (1968) A denial made dishonestly, unreasonably, or without grounds.

11. denial of claim. The rejection of an application for benefits. — Also termed (in insurance) *denial of insurance claims*.

12. tortious denial of benefits. See *wrongful denial of benefits*.

13. wrongful denial of benefits. (1966) The improper, often baseless refusal to recognize a valid claim for financial assistance. — Also termed *tortious denial of benefits*.

14. denial of justice. *Int'l law*. A defect in a country's organization of courts or administration of justice, resulting in the country's violating its international legal duties to protect aliens. • A denial of justice is a wrongful act under international law. — Also termed *justitia denegata*; *déni de justice*; *refus de justice*.

15. denial of natural justice. (1928) An unjustified and unjustifiable act that violates rules, principles, or notions of fundamental law.

16. denial-of-service attack. (1993) A malicious strike against a computer, website, network, server, or database designed to render it inaccessible, usu. by overwhelming it with activity or by forcing it to malfunction. — Abbr. DoS attack. — Also termed *nuke*.

17. distributed denial-of-service attack. (1999) A denial-of-service attack carried out by distributing a virus that causes infected computers to try to access the target computer at the same time. — Abbr. DDoS attack.

18. *deni de justice*. See DENIAL OF JUSTICE.

denier, n. 1. (də-nyay) [French fr. Latin *denarius*] DENARIUS (1). 2. DENARIUS (3). 3. (di-ni-ər). [Law French] Hist. Denial; refusal, as in refusal to pay rent when demanded.

Denter à Dieu (də-nyay ah dyuu or dyoo). [French "God's money"] (1849) *French law*. Earnest money exchanged by contracting parties. See DENARIUS DEI.

denization (den-ə-zay-shən). (17c) The act of making a person a denizen. See DENIZEN. — Also termed *indeni-zation*.

denize (den-iz or di-niz), vb. (16c) To make (a person) a denizen. See DENIZEN.

denizen (den-ə-zən). (15c) 1. A person given certain rights in a foreign country or living habitually in a foreign country. 2. *English law*. A person whose status is midway between being an alien and a natural-born or naturalized subject. See ENDEZEN.

Denman's Act. (1843) *Hist.* 1. The (English) Evidence Act of 1843, providing that no person offered as a witness can be excluded because of incapacity due to a past crime or an interest in the proceedings. — Also termed *Lord Denman's Act*. 2. The (English) Criminal Procedure Act of 1865 that allowed defense counsel to sum up evidence as allowed in a civil trial, to prove contradictory statements made by an adverse witness, to prove a previous criminal conviction of an adverse witness, and to compare samples of disputed handwriting. — Also termed *Mr. Denman's Act*.

denominate, vb. (16c) 1. To formally give a name or epithet to. 2. To officially set the value of (something) according to an established system or a type of money. 3. To show, point out, or indicate.

denomination. (15c) 1. An act of naming. 2. A collective designation, esp. of a religious sect; specif., a religious group that has different beliefs from other groups within the same religion. 3. The value shown on a coin, stamp, or paper money.

de non alienando (dee non ay-lee-ə-nan-doh). [Law Latin] (17c) *Scots law*. For not alienating. • The phrase was used to restrict the transfer of property.

de non alienando sine consensu superiorum (dee non ay-lee-ə-nan-doh si-nee kən-sen-s[y]oo s[y]oo-peer-ee-or-əm). [Law Latin] (18c) *Scots law*. Concerning the nonalienation of the lands without the consent of the superior. • The phrase was frequently present in a charter to a vassal.

de non contrahendo debito (dee non kon-trə-hen-doh deb-i-toh). [Law Latin] *Scots law*. Against the contraction of debt. • The phrase was inserted in an entail to prevent the heir from incurring debt.

de non decimando (dee non des-ə-man-doh), n. [Law Latin "of not paying tithes"] (17c) *Eccles. law*. A claim for release from paying a tithe. — Also termed *modus de non decimando*. See TITHE; TITHING (2).

"A prescription *de non decimando* is a claim to be entirely discharged of tithes, and to pay no compensation in lieu of them. Thus the king by his prerogative is discharged from all tithes. So a vicar shall pay no tithes to the rector, nor the rector to the vicar . . . But these privileges are personal to both the king and the clergy; for their tenant or lessee shall pay tithes . . . And from this original have sprung all the lands, which, being in lay hands, do at present claim to be tithe-free: for, if a man can show his lands to have

ing shamed or
as disrepute.

rating. 2. The
lignity.

aving taken upon
erwards thereof
hereof if a clerk
clear himself of
jury, he shall be
the deprivation
in him, as priest
manner there is
the observation
s of disgradings,
ther solemn, by
ornaments and
degree." *Termes*

lone's identity
resent the true
ent or misrep

nder DIVIDEND.

INT SALE.

ANCE.

haic. Someone

rating a lack of
erefore tending
tc.) fraudulent;
nd straightforward
traightforward
ulent. 4. *Hist.*

lying, untruthful,
words or actions
edibility. *Dishon-*
e or the habit of
, but it may also
g or cheating <*dis-*
ggests a positive
senting the true
is being sold or
y defrauding, or
. *Lying*, the most
notes a habit of
instance <a lying
bsent when the
participial verb
y one instance,
ss inflammatory
atements don't
s most often not
truthful report-
acious, a literary
ilent of *lying* <*amer's Dictionary*

aracter trait;
untruthfulness.

HONOR. 2. The
; degradation;
pect; whatever
fusal or failure

to accept or pay a note, bill of exchange, or the like when
presented or due.

dishonor, *vb.* (14c) 1. To refuse to accept or pay (a negotiable
instrument) when presented. See NOTICE OF DISHONOR;
WRONGFUL DISHONOR. 2. To deface or defile (something,
such as a flag).

dishonorable discharge. See DISCHARGE (8).

disimprisonment. (17c) See DECARCERATION.

disincarcerate, *vb.* (17c) To release (a person) from jail; to
set free. — Also termed *disimprison*.

disincarceration. See DECARCERATION.

disincentive, *n.* (1946) A deterrent (to a particular type of
conduct), often created, intentionally or unintentionally,
through legislation <federal tax law creates a disincentive
to marriage> <sales taxes provide a disincentive to exces-
sive consumer spending>.

disinflation. (1948) A period or process of slowing down
the rate of inflation. Cf. DEFLATION.

disinherit (dis-in-her-ə-zən), *n.* (17c) See DISINHERI-
TANCE.

disinherit, *vb.* (15c) To take away from (someone, esp. one's
son or daughter) any claim to receive one's property after
death.

disinheritance, *n.* (16c) 1. The act by which an owner of
an estate deprives a would-be heir of the expectancy to
inherit the estate. • A testator may expressly exclude or
limit the right of a person or a class to inherit property
that the person or class would have inherited through
intestate succession, but only if the testator devises all the
property to another. 2. The quality, state, or condition of
being disinherited. — Also termed *disherison*; *disinheri-*
tion; *deherison*. See *forced heir* under HEIR.

negative disinheritance. (1939) The act by which a
testator attempts to exclude a person from inheritance
without disposing of the property to another. • Negative
disinheritance is ineffective at common law, although
today it may be permitted by statute.

disinter (dis-in-tər), *vb.* (17c) 1. To exhume (a corpse). 2. To
remove (something) from obscurity. — **disinterment**
(dis-in-tər-mənt), *n.*

disinterested, *adj.* (17c) 1. Free from bias, prejudice, or
partiality and therefore able to judge the situation fairly;
not having a pecuniary interest in the matter at hand <a
disinterested witness>. 2. Loosely, UNINTERESTED. Cf.
UNINTERESTED. — **disinterest**, **disinterestedness**, *n.*

disinterested witness. See WITNESS.

disintermediation. (1966) 1. The process of bank deposi-
tors' withdrawing their funds from accounts with low
interest rates to put them into investments that pay higher
returns. 2. The selling of products directly to consumers
through the Internet rather than selling first to a wholesaler
and then to a shop — so that manufacturers are
brought directly into contact with end users.

disinvestment, *n.* (1936) 1. The consumption of capital.
2. The taking of one's money out of a company by selling
one's shares in it; esp., the withdrawal of investments,
often on political grounds. — Also termed (in sense 2)
divestment. — **disinvest**, *vb.*

disjoinder (dis-joy-n-dər). (1936) The undoing of the
joinder of parties or claims. See JOINDER. Cf. MISJOIN-
DER (1); NONJOINDER (1).

disjuncta (dis-jəŋk-tə), *n. pl.* [Latin] (1803) *Roman & civil
law*. Things (usu. words or phrases) that are separated or
opposed. — Also spelled *disiuncta*. Cf. CONJUNCTA.

disjunctim (dis-jəŋk-təm), *adv.* [Latin] (17c) *Roman law*.
Separately; severally. • A condition imposed *disjunctim*,
for example, would bind the persons severally, rather than
jointly. — Also spelled *disiunctim*. Cf. CONJUNCTIM.

disjunctive allegation. See ALLEGATION.

disjunctive condition. See CONDITION (2).

disjunctive denial. See DENIAL (3).

disjunctive obligation. See *alternative obligation* under
OBLIGATION.

disme (dīm), *n.* [Law French] (17c) A tithe; a tenth part, as
in a tithe due the clergy equal to the tenth of all spiritual
livings as required by the statute 25 Edw. 3, st. 7. • This is
the Law French equivalent to the Latin *decimae*. *Disme*
was once the spelling of the American 10-cent piece, the
dime. See DECIMAE; TITHE; TITHING (2). Pl. *dismes*.

dismember, *vb.* (13c) 1. To cut a body into pieces and tear
it apart, esp. by detaching all limbs. 2. To divide a county,
area, or organization into smaller parts.

dismemberment. (18c) 1. The cutting off of a limb or body
part. 2. *Int'l law*. The disappearance of a country as a result
of a treaty or an annexation, whereby it becomes part of
one or more other countries. 3. *Int'l law*. The reduction
of a country's territory by annexation or cession, or the
secession of one part. 4. *Int'l law*. The extinguishment of
a country and the creation of two or more new countries
from the former country's territory.

dismemberments of ownership. (1882) *Civil law*. The three
elements composing the right of ownership, namely the
usus, the fructus, and the abusus. • The right of owner-
ship may be dismembered and its components conveyed
in the form of independent real rights, such as the right
of use, the right of usufruct, and the right of security. See
ABUSUS; FRUCTUS; USUS.

dismiss, *vb.* (15c) 1. To send (something) away; specif., to
terminate (an action or claim) without further hearing,
esp. before the trial of the issues involved. 2. To release or
discharge (a person) from employment. See DISMISSAL.

dismissal, *n.* (1885) 1. Termination of an action, claim, or
charge without further hearing, esp. before a trial; esp., a
judge's decision to stop a court case through the entry of
an order or judgment that imposes no civil or criminal
liability on the defendant with respect to that case.

► **constructive dismissal**. (1908) See *constructive dis-*
charge under DISCHARGE (7).

► **direct dismissal**. *Criminal procedure*. The dropping of a
local criminal charge, without prejudice, upon a prose-
cutor's motion grounded on the impending presentment
of charges to a grand jury for indictment.

► **dismissal agreed**. A court's dismissal of a lawsuit with
the acquiescence of all parties. • Among other possibili-
ties, the parties may have settled out of court or chosen
to have their dispute arbitrated or mediated. — Also
termed *agreed dismissal*.

EXHIBIT 5

The
AMERICAN
HERITAGE®

Dictionary

of the
English
Language

FIFTH
EDITION

Houghton Mifflin Harcourt
BOSTON NEW YORK

Words are included in this dictionary on the basis of their usage. Words that are known to have current trademark registrations are shown with an initial capital and are also identified as trademarks. No investigation has been made of common-law trademark rights in any word, because such investigation is impracticable. The inclusion of any word in this dictionary is not, however, an expression of the publisher's opinion as to whether or not it is subject to proprietary rights. Indeed, no definition in this dictionary is to be regarded as affecting the validity of any trademark.

American Heritage and the eagle logo are registered trademarks of American Heritage Inc. Their use is pursuant to a license agreement with American Heritage Inc.

Copyright © 2016, 2011 by Houghton Mifflin Harcourt Publishing Company.
All rights reserved.

No part of this work may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying and recording, or by any information storage or retrieval system without the prior written permission of Houghton Mifflin Harcourt unless such copying is expressly permitted by federal copyright law. Address inquiries to:

Reference Permissions, Houghton Mifflin Harcourt,
222 Berkeley Street, Boston, MA 02116.

Visit our websites: hmhco.com and ahdictionary.com

ISBN 978-0-544-45445-3

Library of Congress Cataloging-in-Publication Data

The American Heritage dictionary of the English language. -- 5th ed.
p. cm.

Previous ed.: 2000.

ISBN 978-0-547-04101-8

1. English language--Dictionaries.

PE1628.A623 2011

423--dc22

2011004777

Manufactured in the United States of America

1 2 3 4 5 6 7 8 9-QGV-21 20 19 18 17 16 15

republic of letters. [French *république* < Old French < Latin *rēspūblica*: *res*, thing; see *re-* in App. 1 + *publica*, feminine of *publicus*, of the people; see *PUBLIC*.]

re-pub-li-can (ri-pūb'li-kən) *adj.* 1. Of, relating to, or characteristic of a republic. 2. Favoring a republic as the best form of government. 3. **Republican** Of, relating to, characteristic of, or belonging to the Republican Party of the United States. **n.** 1. One who favors a republic as the best form of government. 2. **Republican** A member of the Republican Party of the United States. —*re-pub'li-can-ism* *n.*

re-pub-li-can-ize (ri-pūb'li-kə-nīz') *tr.v.* -ized, -iz-ing, -iz-es To make republican. —*re-pub'li-can-i-za'tion* (-kə-nī-zā'shən) *n.*

Republican Party *n.* 1. One of the two primary political parties of the United States, organized in 1854 to oppose the extension of slavery. 2. The Democratic-Republican Party.

Republican River A river, about 680 km (420 mi) long, rising in eastern Colorado and flowing northeast and east across southern Nebraska then southeast through northeast-central Kansas, where it joins the Smoky Hill River to form the Kansas River.

re-pub-li-ca-tion (rē-pūb'li-kā'shən) *n.* 1. The act or process of republishing. 2. Something republished.

re-pub-lish (rē-pūb'lish) *tr.v.* -lished, -lish-ing, -lish-es 1. To publish again. 2. *Law* a. To repeat (a slanderous or libelous statement) that one has heard or read. b. To reinstate (a revoked will). —*re-pub'lish-er* *n.*

re-pu-di-ate (ri-pyū'dē-āt') *tr.v.* -at-ed, -at-ing, -ates 1. To reject the validity or authority of: "Chaucer . . . not only came to doubt the worth of his extraordinary body of work, but repudiated it" (Joyce Carol Oates). 2. To reject emphatically as unfounded, untrue, or unjust: *repudiated the accusation*. 3. To refuse to recognize or pay: *repudiate a debt*. 4a. To disown (a child, for example). b. To refuse to have any dealings with. [Latin *repudiare*, *repudiāre* < *repudium*, divorce.] —*re-pu'di-a'tive* *adj.* —*re-pu'di-a'tor* *n.*

re-pu-di-a-tion (ri-pyū'dē-āt'shən) *n.* 1. The act of repudiating or the state of being repudiated. 2. The refusal, especially by public authorities, to acknowledge a contract or debt. —*re-pu'di-a'tion-ist* *n.*

re-pugn (ri-pyūgn') *v.* -pugned, -pugn-ing, -pugns *Archaic* —*tr.* 1. To cause to feel repugnance; repulse: "Resisters of the draft in the past decade, morally repugned by an unjust war, went to jail or into exile" (Terry M. Perlin). 2. To oppose or repudiate. —*intr.* To be in opposition or issue a repudiation. [Middle English *repugnēn* < Old French *repugner* < Latin *repugnāre*, to fight against: *re-*, *re-* + *pugnāre*, to fight with the fist; see *PEUK-* in App. 1.]

re-pug-nance (ri-pūgnəns) *n.* 1. Extreme dislike or aversion. 2. *Logic* The relationship of contradictory terms; inconsistency.

re-pug-nan-cy (ri-pūgnənsē) *n., pl.* -cies Repugnance.

re-pug-nant (ri-pūgnənt) *adj.* 1. Arousing disgust or aversion; offensive or repulsive: *morally repugnant behavior*. 2. *Logic* Contradictory; inconsistent. [Middle English, antagonistic < Old French < Latin *repugnāns*, *repugnāns*, present participle of *repugnāre*, to fight against; see *REPUGN-*.] —*re-pug'nant-ly* *adv.*

re-pulse (ri-pūls') *tr.v.* -pulsed, -puls-ing, -puls-es 1. To drive back; *repel*: *repulsed the attacking forces*. 2. To rebuff or reject with rudeness, coldness, or denial. 3. *Usage Problem* To cause repugnance or distaste in: *was repulsed by his drunken behavior*. **n.** 1. The act of repulsing or the state of being repulsed: *the repulse of an attack*. 2. Rejection; refusal: *a repulse of a would-be lover's advances*. [Middle English *repulsen* < Latin *repellere*, *repuls-*; see *REPUL-*.] —*re-puls'er* *n.*

➤ **USAGE NOTE** A number of language critics have maintained that *repulse* should only be used to mean "to drive away" (as in *The infantry repulsed the attack*) or "to spurn" (as in *She repulsed his rude advances with a frown*) and not "to cause repulsion in; disgust." Many reputable writers, however, use *repulse* as a synonym for *disgust*, just as the related words *repulsion* and *repulsive* are used to mean "disgust" and "disgusting." The verb *repel* is a synonym for this sense of *repulse* and is also standard when used in this way: "But some of the time she was repelled by even the thought of her classmates, greedy and self-absorbed" (Edith Pearlman).

re-pul-sion (ri-pūls'ən) *n.* 1. The act of repulsing or the condition of being repulsed: *the repulsion of an attack on the fort*. 2. Extreme aversion: *felt nothing but repulsion at the remark*. 3. *Physics* The force that causes particles or bodies to repel one another, as from having the same electric charge or magnetic polarity.

re-pul-sive (ri-pūls'iv) *adj.* 1. Causing repugnance or aversion; disgusting. See *Synonyms at offensive*. 2. Tending to repel or drive off: *a repulsive barrage*. 3. *Physics* Of or relating to repulsion: *a repulsive force*. —*re-pul'sive-ly* *adv.* —*re-pul'sive-ness* *n.*

re-pur-chase (rē-pūrchis) *tr.v.* -chased, -chas-ing, -chas-es To buy (something) again. **n.** The act of buying something that one previously sold or owned.

repurchase agreement *n.* A contract giving the seller of an asset the right or obligation to buy back the asset at a specified price on a given date.

re-pur-pose (rē-pūrpōs) *tr.v.* -posed, -pos-ing, -pos-es To use or convert for use in another format or product: *repurposed the book as a compact disc*. —*re-pur'pos-a-ble* *adj.*

rep-u-ta-ble (rēp'yə-tə-bəl) *adj.* Having a good reputation; honorable. —*rep'u-ta-bil'i-ty* *n.* —*rep'u-ta-bly* *adv.*

rep-u-ta-tion (rēp'yə-tā'shən) *n.* 1. The general opinion or judgment of the public about a person or thing: *a senator with a tarnished reputation*; *a restaurant with a good reputation*. 2. The state or situation of being held in high esteem: *faired damage to his reputation*. 3. A widespread ascription of a characteristic or trait to a person or thing: *a sales*

clerk who has a reputation for courtesy; *a columnist with the reputation of being acerbic*. [Middle English *reputacioun* < Latin *reputātiō*, *reputātiō*, a reckoning < *reputāns*, past participle of *reputāre*, to reckon, think over; see *REPUTE*.]

re-pute (ri-pyūt') *tr.v.* -put-ed, -put-ing, -put-es 1. To ascribe a particular fact or characteristic to: *a remarked that is reputed to Voltaire*. 2. To consider; suppose: *He is reputed to be the best chef in town*. **n.** 1. Reputation: *His reputed depends on his ability to forecast economic changes*. 2. A good reputation: *a brand name of reputed*. [Middle English *reputen* < Old French *reputer* < Latin *reputāre*, to think over: *re-*, *re-* + *putāre*, to think over; see *pau-* in App. 1.]

re-put-ed (ri-pyūt'əd) *adj.* Generally supposed to be such: *the reputed author of the article*. —*re-put'ed-ly* *adv.*

re-quest (ri-kwēst') *tr.v.* -quest-ed, -quest-ing, -quests 1. To express a desire for, especially politely; ask for. Often used with an infinitive or clause: *requested information about the experiment requested to see the evidence firsthand*; *requested that the bus driver stop at the next corner*. 2. To ask (a person) to do something: *The police requested her to accompany them*. **n.** 1. An act of asking for something. 2. Something asked for: *wasn't happy until he got his request*. —*idioms*: by request In response to an expressed desire: *We are offering these scarves for sale again by request*; in request In great demand: *a pianist in great request*; on (or upon) request When asked for: *References are available on request*. [< Middle English *requeste*, the act of requesting < Old French < Vulgar Latin *(< *rēs*) *requēsita*, (thing) requested < alteration of Latin *requisita*, feminine past participle of *requirere*, to ask for; see *REQUIRE*.] —*re-quest'er* *n.*

re-qui-em (rēk'wē-əm, rē'kwē-) *n.* 1. **Requiem Roman Catholic Church** a. A mass for a deceased person. b. A musical composition for such a mass. 2. A hymn, composition, or service for the dead. [Middle English < Latin, accusative of *requies*, rest, the first word of the mass for the dead: *re-*, *re-* + *quies*, quiet; see *kwē-* in App. 1.]

re-qui-es-cat (rēk'wē-ēs'kāt', -kāt') *n.* A prayer for the repose of the souls of the dead. [Latin *requiescat*, third person sing. present subjunctive of *requiescere*, to rest: *re-*, *re-* + *quiescere*, to rest; see *kwē-* in App. 1.]

re-quire (ri-kwīr') *tr.v.* -quired, -quir-ing, -quires 1. To have as a requisite or necessity; need or depend on: *Do you require assistance? Most plants require plenty of water*. 2a. To stipulate as obligatory by authority: *The law requires full disclosure of charitable donations*. b. To demand as obligatory or appropriate: *Skating requires practice*. 3. To impose an obligation on; compel: *The school requires all students to study mathematics*. [Middle English *requieren* < Old French *requerre* < Vulgar Latin **requerere*, alteration (influenced by *quaerere*, to seek) of Latin *requirere*: *re-*, *re-* + *quaerere*, to seek.] —*re-quir'a-ble* *adj.* —*re-quir'er* *n.*

re-quired (ri-kwīr'd) *adj.* 1. Needed; essential: *missing several required parts*. 2. Obligatory: *required reading*.

re-quire-ment (ri-kwīr'mənt) *n.* 1. Something that is required; a necessity. 2. Something obligatory; a prerequisite.

re-qui-si-site (rēk'wi-zīt) *adj.* Required; essential. See *Synonyms at indispensable*. **n.** Something that is indispensable; a requirement: *Algebra is a requisite for taking calculus*. [Middle English < Latin *requisitus*, past participle of *requirere*, to require; see *REQUIRE*.] —*re-qui-si-site-ness* *n.*

re-qui-si-tion (rēk'wi-zīsh'ən) *n.* 1. A formal written request for something needed. 2. A necessity; a requirement. 3. The state or condition of being needed or put into service. 4. *Law* A formal request of one government to another demanding the return of a criminal or fugitive. **v.** -tioned, -tion-ing, -tions 1. To demand, as for military needs. 2. To make demands of.

re-quit-al (ri-kwit'əl) *n.* 1. The act of requiting. 2. Return, as for an injury or friendly act.

re-quite (ri-kwit') *tr.v.* -quit-ed, -quit-ing, -quites 1a. To make return for (something done or felt) in a similar or appropriate fashion: "Pearl felt the sentiment, and requited it with the bitterest hatred that can be supposed to rankle in a childish bosom" (Nathaniel Hawthorne). b. To avenge (an insult or wrongdoing). 2a. To respond to (another) or do something to or for (another) in return for that person's action or emotion: "If he love me to madness, I shall never requite him" (Shakespeare). b. To get revenge on (another) for wrongdoing. [Middle English *requiten*: *re-*, *re-* + *quiten*, to pay; see *QUIT*.] —*re-quit'a-ble* *adj.* —*re-quit'er* *n.*

re-ra-di-ate (rē-rā-dē-āt') *tr.v.* -at-ed, -at-ing, -ates To radiate (absorbed radiation) after absorbing incident energy. —*re-ra'di-a'tion* (-ā'shən) *n.*

rere-dos (rēr'dōs', rēr't-, rēr't-) *n.* 1. A decorative screen or facing on the wall at the back of an altar. 2. The back of an open hearth of a fireplace. [Middle English < Anglo-Norman < *arenadas*: *arere*, behind (Latin *ad-*, *ad-* + Latin *retro*, backward; see *re-* in App. 1) + *dos*, back (< Latin *dorsum*).]

re-re-lease (rē'rī-lēs') *tr.v.* -leased, -leas-ing, -leas-es To release (a movie, for example) again. —*re're-lease'* *n.*

re-run (rē'rīn') *n.* The act or an instance of rebroadcasting a recorded movie or a recorded television performance. **v.** *tr.v.* (rē-rīn') -ran (-rān'), -run, -run-ning, -runs To present a rerun of.

RES *abbr.* reticuloendothelial system

res. *abbr.* 1. residence 2. resolution

Res. *abbr.* 1. reservation 2. reserve 3. reservoir

re-sale (rē'sāl', rē-sāl') *n.* The act of selling again. —*re-sal'a-ble* *adj.*

re-sched-ule (rē-skēj'ool) *tr.v.* -uled, -ul-ing, -ules To schedule again or anew: *rescheduled the meeting for the following week*; *rescheduled the debts of many developing nations*.

PROOF OF SERVICE

I, Daniel Juarez, declare as follows:

I am employed in the County of Maricopa, State of Arizona. I am over the age of eighteen years and am not a party to this action. My business address is Office of the Federal Public for the District of Arizona, 850 W. Adams Street, Suite 201, Phoenix, Arizona 85007.

I am familiar with the business practice at the Office of the Federal Public Defender for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Federal Public Defender is deposited with the United States Postal Service or a commercial carrier with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system.

On January 9, 2020, I served the attached motion by transmitting a true copy via United States Postal Service on the following parties:

First District Court of Appeal
Division Three
350 McAllister Street
San Francisco, CA 94102

Gregg Zywicke
Deputy Attorney General
Office of the Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102

Alice Lustre
Deputy Attorney General
Office of the Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102

Alameda County Superior Court
1225 Fallon Street
Oakland, CA 94612
(Attn: Hon. C. Don Clay)

Jack Wayne Friend, #H39500
San Quentin State Prison
CSP-San Quentin #3-EB-103L
San Quentin, CA 94974

Alameda County District Attorney's Office
Attn: Melissa Dooher
1225 Fallon St. 9FL
Oakland, CA 94612

I declare under penalty of perjury and under the laws of the State of California that the foregoing is true and correct, and that I signed this document on January 9, 2020, in Phoenix, Arizona.

A handwritten signature in black ink, appearing to read "D. Juarez", written over a horizontal line.

Daniel Juarez
Capital Habeas Unit