15 December 2022

Committee Secretary
Joint Standing Committee on Electoral Matters
PO Box 6021
Parliament House
Canberra ACT 2600

Dear Secretary

Inquiry into the Referendum (Machinery Provisions) Amendment Bill 2022

Thank you for the opportunity to make a submission to the Committee's inquiry into the Referendum (Machinery Provisions) Amendment Bill 2022.

The Bill makes some welcome amendments to the *Referendum (Machinery Provisions) Act 1984* (Cth) ('*Referendum Act*'). It is more than 20 years since our last referendum in 1999, and that Act has not always been updated to reflect changes in voting and campaigning. This was recognised in December 2021 by the House of Representatives Standing Committee on Social Policy and Legal Affairs, which found that that 'certain provisions in the Referendum Act are outdated and not suitable for a referendum in contemporary Australia'. A 2009 review by the House Standing Committee on Legal and Constitutional Affairs similarly highlighted a variety of process matters that warranted attention.

The government's Bill responds to the 2021 inquiry by bringing certain provisions of the Referendum Act into line with general electoral laws. This is the case on a range of matters including postal voting, authorisation of advertisements and ballot scrutiny are positive and sensible.

Having said that, the proposed changes fall short of best practice in some areas, notably public education and campaign finance. The regulation of those matters is especially important as it will influence how the Voice debate and campaign unfolds. Getting the process right is essential if the Voice vote is to be fair and informed.

My submission focuses on the Bill as it affects public education, campaign finance, the wording of the referendum question and First Nations participation. In summary, I recommend the following actions:

- Improve the official pamphlet instead of suspending it;
- Establish an independent referendum panel to oversee public education to ensure it is trusted and effective;
- To counter misinformation, consider a 'truth in political advertising' law;

- Strengthen the proposed financial disclosure regime by reducing the disclosure threshold and introducing real-time disclosure;
- Consider imposing limits on private expenditure;
- Enable the referendum question to be put in clear and simple terms; and
- Enable voting day enrolment to foster First Nations participation.

Suspension of the official pamphlet

The Bill suspends the circulation of an official pamphlet for any referendum held in this parliamentary term. The government contends that the circulation of a hard-copy pamphlet is outdated in the digital age and that MPs can make their case in other ways, including via television and social media.

The pamphlet has never lived up to its promise as an educative tool. By focusing on arguments rather than explanation, it is designed to persuade, not inform. In addition, past pamphlets have often contained exaggerated or misleading claims that seem designed to confuse or frighten voters. In 1974, for example, the No campaign said "democracy could not survive" a change to how electorates were drawn. At its worst, the pamphlet can serve to spread misinformation rather than counter it.

All the same, many voters will want an accessible source of official information, both on the proposal and the arguments for and against change, to help them make up their own mind. A hard-copy pamphlet can serve that purpose, even in a digital age.

Rather than suspending the pamphlet, the Parliament should reform it. It should be revised to include a clear, factual explanation of the proposal, just like similar pamphlets in Ireland, California and New South Wales. In those jurisdictions, the content of the factual explanation is prepared by an independent body (such as a referendum panel) or by public servants.

The arguments for and against the proposed amendment could also be prepared by an independent body or by public servants (as occurs in NSW). If parliamentarians wish to retain control of the Yes and No cases, they need to do better at preparing fair and accurate arguments that actually help voters to make an informed choice. Those cases should also be shorter – say, 500 to 1,000 words (in line with QLD law). The current limit of 2,000 words is unnecessarily long, makes for dull reading and exceed voters' attention spans.

The distribution of the pamphlet should occur in a variety of ways, not just delivery by mail. The Referendum Act could be amended to allow more flexible distribution options. The Act could provide that the *content* of the pamphlet (not the pamphlet in its entirety), including the explanatory statement and the Yes and No cases, can be disseminated via broadcast media and the internet.

I have attached three referendum pamphlets from other jurisdictions (NSW, Ireland and California) to demonstrate alternative, and superior, design options.

Public education campaign

The government has said that it wants to focus its public education efforts on a civics campaign that will provide voters with information about "Australia's constitution, the referendum process, and factual information about the referendum proposal". This move is

promising and follows the precedent set in 1999, when the Howard government funded a neutral education program for the republic referendum.

The Bill temporarily suspends the operation of section 11(4), which constrains government spending on referendum advocacy, to facilitate the delivery of neutral education. This is presumably in response to concerns that the current wording of the provision puts well-intentioned educational spending at risk of legal challenge. This is understandable, but the decision to suspend sub-section (4) and insert nothing in its place creates a vulnerability. It leaves the government free to spend public money in support of the Yes or No positions, including in a one-sided manner. It would be preferable for the Act to protect against one-sided government advocacy spending while fostering public expenditure on genuine public education.

At this stage, details on the government's education plans remain scant. This is unfortunate, as the detail matters. Careful design will be crucial if the neutral education campaign is to be trusted and effective. A poorly designed campaign risks being accused of bias, ignored by voters, or both.

Here the Parliament should heed the recommendations of the 2021 and 2009 parliamentary inquiries. Both advocated the establishment of an independent referendum panel to advise on or oversee public education. To ensure public confidence in the body, its membership could be appointed by the Prime Minister in consultation with other parliamentary leaders. Ideally the members would come from diverse backgrounds. The 2021 inquiry recommended a panel comprising 'constitutional law and public communication experts, representatives from the AEC and/or other government agencies, and community representatives'.

The creation of a well-designed, independent body to oversee public education could make a huge difference to voters looking for accessible, balanced and reliable information on the Voice.

Countering misinformation

The government has said that its neutral educational initiatives will 'counter misinformation'. It is unclear how that will happen. The mere provision of information may do nothing to combat misinformation. If the Parliament wishes to actively counter misinformation at the upcoming Voice referendum, it should consider establishing a 'truth in political advertising' law of the kind that exists in South Australia.

Under section 113 of the *Electoral Act 1985* (SA), it is an offence to authorise, cause or permit the publication of an election advertisement by any means (including on radio or television) that 'contains a statement purporting to be a statement of fact that is inaccurate and misleading to a material extent'. The state's Electoral Commissioner may request that such an advertisement be withdrawn and/or that a retraction be issued, and can seek a court order to support that request. Where a prosecution is launched against an advertiser, the maximum penalties that apply are $5,000 for individuals and $25,000 for corporations.

Financial disclosure

The Bill makes long-overdue changes to the rules on referendum campaign finance. These changes bring referendum laws into line with ordinary election laws. The amendments will help to improve accountability and transparency. Overall, this is a welcome step.

Unfortunately, the proposed amendments replicate some of the failings of election laws and fall well short of best practice. The disclosure threshold (currently set at $15,200) is too high. This ensures that some large donations will remain anonymous. A lower threshold, say $1,000 (as applies in NSW), is preferable.

The timeliness of disclosure is also a concern. If the Bill is enacted, registered campaigners will not have to report their donations or expenditure until 15 weeks after voting day. This means that Australians will have to wait until after the referendum to find out who gave money to the Yes and No campaigns. That information is potentially relevant to the choice voters make at the ballot box and should be made available in advance of voting day. A better approach would be to require real-time disclosure, as occurs in some states.

Expenditure limits

Even with stronger disclosure requirements, our referendums remain vulnerable to the influence of big money. The Referendum Act currently imposes no limits on the amount of money that individuals, campaign groups and political parties can spend on referendum campaigns. There is a danger that a wealthy individual or group could take advantage of this regulatory gap to flood the airwaves of a referendum campaign and drown out opposing arguments. Clive Palmer's willingness to spend huge amounts of amount at the 2019 and 2022 federal elections has demonstrated the impact that such expenditure can have on public debate.

The Parliament should therefore consider amending the Referendum Act to impose limits on private expenditure. This would help to foster a level campaign playing field. It would be important for the spending cap to be set at an appropriate level: if set too low, it could prevent a group from getting their message across in today's media environment; if set too high, the risk of excessive and one-sided spending would remain.

Question wording

Looking ahead to the Voice referendum, many would like to see the referendum question asked in a clear and simple way. The Prime Minister is in this camp. At Garma in July, he proposed that the following question be printed on ballot papers: 'Do you support an alteration to the Constitution that establishes an Aboriginal and Torres Strait Islander Voice?'.

It is therefore noteworthy that the government's proposed changes to the Referendum Act do nothing to facilitate the asking of clear, simple questions. If anything, the Act's current provisions are a barrier to clarity. The Act requires that ballot papers present voters with the long title of the Bill that proposed the constitutional amendment, followed by the question: 'Do you approve this proposed alteration?' (see section 25 and Schedule 1). This awkward formula has been developed to comply with the overriding constitutional requirement that a 'proposed law' be 'submitted' to and 'approve[d]' by electors (*Constitution*, section 128).

The Parliament should take steps, within constitutional constraints, to ensure that Australians are presented with a clear and simple question on voting day. It could amend the Referendum Act to ask a question along the following lines: 'Do you support the establishment of a First Nations Voice, as provided in the [short title of Act]?' This approach would comply with the Constitution, while also being more friendly to voters.

First Nations electoral participation

The government's commitment to spend $16 million to support First Nations enrolment ahead of the Voice referendum is welcome. It is crucial that First Nations people are supported to participate in this referendum.

In addition, the Parliament should amend the Referendum Act to permit eligible persons to enrol (and vote) on voting day, as occurs in New South Wales and Victoria. Currently, the electoral rolls close 7 days after the issue of the referendum writ: section 9(1). The Act should be changed to allow eligible, unenrolled persons to enrol on voting day and cast their ballots by declaration vote. This would foster referendum participation generally but be of particular benefit to First Nations people given their disproportionately low enrolment rate.

The downside of last-minute rule changes

It has long been apparent that Australia's referendum laws need an overhaul. The Bill addresses some areas of need and is a step in the right direction.

The Bill nonetheless falls short in important areas. In its current form it does not provide the best possible legal framework for a fair and informed referendum on the Voice.

Australia has not held a referendum in 23 years, and in this sense it is understandable that the Parliament has not viewed improving the Referendum Act as a priority. At the same time, it is disappointing that the Parliament has waited until now to deal with longstanding shortcomings.

Unfortunately, conversations about the referendum process are much harder on the eve of a vote. Rule changes, even when well-intentioned, are more likely to be viewed as strategic or self-interested. There is now a short window for parliamentarians to work cooperatively towards a framework that will ensure a fair and informed vote on the proposal for a First Nations Voice.

Yours sincerely,

Dr Paul Kildea
Faculty of Law & Justice
University of New South Wales

Yes and No Cases.

Question 2

DO YOU APPROVE of the Bill entitled: A Bill to require the Parliament of New South Wales to serve full 4-year terms and to prevent politicians calling early general elections or changing these new constitutional rules without a further referendum?

What is the Referendum Question?

Voters will be asked to approve the Constitution (Fixed Term Parliaments) Amendment Bill 1993, which is a Bill for an Act to require the Parliament of New South Wales to serve full 4 year terms and to prevent politicians calling early general elections or changing these new constitutional rules without a further referendum.

What is the main effect of the Bill?

The main effect of the Bill is that the terms of the Legislative Assembly and consequently the term of Parliament and the dates of elections will be fixed except where exceptional circumstances arise. The Bill provides for the Legislative Assembly to expire every four years on the Friday before the first Saturday in March and for general elections of the Legislative Assembly to be held every four years on the fourth Saturday in March. It will also result in the term of members of the Legislative Council being fixed at 8 years as those members hold office for two terms of the Legislative Assembly.

If the Bill is approved the provisions will be "entrenched" so that they can only be changed if the changes are approved by voters at another referendum.

What are the circumstances in which a Parliament would not have a 4 year term?

The Bill specifies circumstances in which the Governor may decide to dissolve the Legislative Assembly before the end of its 4 year term. This could happen when:

- a motion of no confidence in the Government is passed and no Government with the confidence of the Assembly is formed within 8 clear days; or
- the Assembly has rejected or failed to pass an Appropriation Bill; or
- the fourth Saturday in March clashes with a holiday period or a Commonwealth election (in that case the Assembly can be dissolved up to 2 months early).

The Bill preserves what are known as the Governor's "reserve powers" to act in accordance with established constitutional conventions if a crisis arises in government.

How does the proposal change the current situation?

The term of the current Parliament and the date of the election were fixed by special legislation in 1991. However those provisions only apply to the current Parliament. If approved the current proposal will result in all future Parliaments and elections having fixed terms.

What happens if the referendum is not approved?

If the referendum is not approved members of the Legislative Assembly of New South Wales will continue to be elected for a maximum term of 4 years. However, the term of the Legislative Assembly may in fact be less than 4 years, as it is possible for the Government before the expiration of that four year period to request the Governor to dissolve the Legislative Assembly and call a general election.

Why is a referendum being held?

The Constitution Act provides that the Bill must be approved by the people of New South Wales at a referendum before it becomes law. The referendum will be held in conjunction with the next general election.

Voting is compulsory.

Copies of the Bill may be inspected at any Local Court or the office of any District Returning Officer.

Case for the "YES" vote

- In 1981, the people of NSW voted in favour of extending the Legislative Assembly's term from a maximum of 3 years to a maximum of 4 years. However, the amendment made did not actually compel a full four year term to be served before the next election is held. A fixed term of the Assembly will provide this assurance.
- Electors vote an Assembly in for a term, with the expectation that the Assembly will serve out that full term. The ability for governments to call elections virtually at will contradicts that principle, and submits the electorate to more elections at a greater cost to the public.
- Fixed four year terms will allow governments sufficient time to implement their policies. Some policies, especially in the economic and social arena require time to be implemented and may be unpopular at first. The electorate will have time to judge a government's worth by the results of its policy initiatives in practice.
- The proposal will not prevent a government which loses support in the Legislative Assembly from being removed from office and an alternative party or group with support forming a government.
- Governments in this State will no longer be able to call elections at a time which is convenient to them. A system providing certainty of election dates is fairer to parties in opposition, by removing the electoral advantages available to the government of the day.
- Experience in other countries with fixed election programs demonstrates that "election mode" prevails for the last year of the term, this still leaves three years for implementing policies without speculation about the outcome of an election.
- The average cost of a general election is $20mil. Fixed terms will ensure that tax payers will only have the expense of an election every four years.

Case for the "NO" vote

- Governments will be unwilling to take difficult decisions for the latter part of the four year cycle, or, conversely, will be more likely to take "popular" decisions only in that period. The Government will effectively move into "caretaker mode" at far too early a time.
- Where the government suffers a loss of support within the Assembly the fixed four year term legislation is more likely to allow the Opposition to form a government without a general election being held. This undermines the democratic system by allowing a government to be changed without the approval of the electorate.
- New South Wales already has four year term Parliaments. It only requires courage for governments to serve the full term and any government calling an early election risks being criticised and losing votes.
- Where the composition of the Parliament changes resulting in a minority government, a fixed term for the Assembly will more likely entrench an unstable situation. The government will be unable to call an election to determine the issue, but will equally be prevented from governing effectively with a clear mandate. The government will not be able to carry out those policies on which it was elected.
- Experience in other countries with fixed election programs is that campaigning commences as early as a year in advance. With fixed terms, the campaign period will inevitably be greatly extended which will mean increased election costs and increased periods of electioneering.
- The costs of holding elections should not be an issue. More and frequent elections are a good thing because they keep governments accountable by giving voters an opportunity to vote them out of office.
- Independent members of Parliament, where there is a minority government, will be able to exert a disproportionate degree of power relative to the constituency they represent. The government, under the fixed terms legislation, would ordinarily be powerless to rectify this situation by calling an early election.

State Electoral Office.
March 25 NSW Election.

Authorised by E.I.Dickson,
Electoral Commissioner for New South Wales.

APPENDIX F

25TH MAY 2018

YOUR VOTE MEANS EVERYTHING

THE INDEPENDENT GUIDE TO THE REFERENDUM
ON THE REGULATION OF TERMINATION OF PREGNANCY

An Coimisiún Reifrinn
Referendum Commission

The Referendum Commission

The Referendum Commission is an independent body set up under the Referendum Act 1998. Its role is to provide accurate and neutral information to the public in advance of a referendum on a proposal to amend the Constitution.

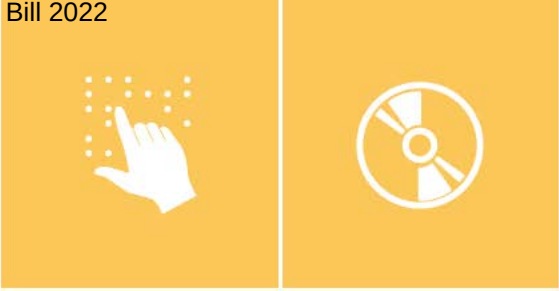
The Commission members are:

- Ms Justice Isobel Kennedy (*Chairperson*)
- Mr Seamus McCarthy (*the Comptroller and Auditor General*)
- Mr Peter Tyndall (*the Ombudsman*)
- Mr Peter Finnegan (*the Clerk of Dáil Éireann*)
- Mr Martin Groves (*the Clerk of Seanad Éireann*)

The Referendum Commission
18 Lower Leeson Street, Dublin 2, Ireland.
Telephone: 01 639 5695

LoCall: 1890 270 970
Email: refcom@refcom.ie
Website: www.refcom2018.ie

@RefCom_ie facebook.com/referendumcommission



This publication can be downloaded from our website www.refcom2018.ie. It is available in Braille, on CD and in large text format through NCBI. It is also available in Irish Sign Language on the websites of the Irish Deaf Society (www.irishdeafsociety.ie) and DeafHear (www.deafhear.ie).

Introduction

On Friday 25th May 2018, you will be asked to vote on a proposal to change the Constitution of Ireland. The proposed change to the Constitution concerns the regulation of termination of pregnancy.

Article 40.3.3 of the Constitution, as interpreted by the Supreme Court, means that it is lawful for a pregnancy to be terminated only where the pregnancy poses a real and substantial risk to the life of the mother. This includes a risk of suicide.

The proposal on 25th May is to delete Article 40.3.3 of the Constitution and to insert in its place that

> *"Provision may be made by law for the regulation of termination of pregnancy."*

Laws are made by the Oireachtas. You are not being asked in this referendum to vote on any particular law relating to the termination of pregnancy.

The Constitution is important. It is the fundamental law of our State. It is your Constitution and only you have the power to change it. How you vote is for you to decide. The Referendum Commission urges you to inform yourself about the proposed change to the Constitution and to use your vote. If you do not vote, other people will make the decision.

In this guide, we explain the current law, we describe the proposed change, and we explain the legal effect of a Yes vote and the legal effect of a No vote. More detailed information is available on our website **www.refcom2018.ie.**

This guide does not argue for a Yes vote or a No vote, but we do strongly encourage you to vote.

Isobel Kennedy
Chairperson
Referendum Commission

The present legal position in Ireland in relation to termination of pregnancy

Laws are made by the Oireachtas. The Oireachtas consists of the Dáil, the Seanad and the President.

Laws made by the Oireachtas must comply with the Constitution. The Constitution sets out the basic law of the State. Laws, if challenged, may be reviewed by the courts. The courts may declare a law invalid if it conflicts with the Constitution. The Constitution can be altered only by the people in a referendum.

The present legal position in Ireland in relation to the termination of pregnancy results from provisions in the Constitution, court decisions interpreting those provisions, and laws passed by the Oireachtas.

ARTICLE 40.3.3 was inserted into the Constitution as a result of a referendum in 1983. The Article says that the unborn has a right to life and that the mother has an equal right to life. The Supreme Court has recently held that this is the only constitutional right of the unborn.

› IN 1992, the Article was interpreted by the Supreme Court in a case known as "the X case". The Court found that the Article means that termination of pregnancy is permitted only when there is a real and substantial risk to the life of the mother, including a risk of suicide.

› IN 1992, two additions to Article 40.3.3 were made by referendums. These made clear that the Article does not limit freedom to travel and does not limit the freedom to obtain or make available information about services that are lawfully available in other States, subject to conditions as may be laid down by law.

› IN 1995, the Oireachtas passed a law which regulates the provision of information about termination of pregnancy outside the State.

› IN 2013, the Oireachtas passed the *Protection of Life During Pregnancy Act*. It regulates termination of pregnancy where there is a real and substantial risk to the life of the woman.

The present legal position is therefore that it is lawful for a pregnancy to be terminated only where it poses a real and substantial risk to the life of the mother, including a risk of suicide. This is determined in accordance with the 2013 Act. Otherwise, it is a criminal offence to intentionally destroy unborn human life.

The proposed change:

On 25th May 2018 you are being asked whether or not to delete the present Article 40.3.3 of the Constitution and replace it with a new Article.

The PRESENT Article 40.3.3

The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right.

This subsection shall not limit freedom to travel between the State and another state.

This subsection shall not limit freedom to obtain or make available, in the State, subject to such conditions as may be laid down by law, information relating to services lawfully available in another state.

The PROPOSED new Article 40.3.3

Provision may be made by law for the regulation of termination of pregnancy.

The legal effect of a YES vote

If a majority votes Yes, this will allow the Oireachtas to pass laws regulating the termination of pregnancy. These laws need not limit the availability of termination to circumstances where there is a real and substantial risk to the life of the mother. Any law may be changed by the Oireachtas. If challenged, any law may be declared invalid by the courts if it conflicts with the Constitution.

If a majority votes Yes, the current law, including the law on travel and information, will remain in place unless and until it is changed by new law or is declared invalid by the courts.

The legal effect of a NO vote

If a majority votes No, then the present Article 40.3.3 will remain in place unchanged. Laws may be passed to provide for the termination of pregnancy only where there is a real and substantial risk to the life of the mother including the risk of suicide. Any law may be changed by the Oireachtas. If challenged, any law may be declared invalid by the courts if it conflicts with the Constitution.

The constitutional provisions on freedom to travel and information will remain as they are now.

How to vote

Polling stations will open **from 7am to 10pm on 25th May**

Before polling day, **you should receive a polling card in the post** telling you at which polling station you should cast your vote. If you don't receive a polling card, you are still entitled to vote so long as you are on the electoral register. You can check this at **checktheregister.ie**.

You don't need to have your polling card with you when you go to vote. However **you should bring some valid form of personal identification** such as a passport, a driving licence, a public services card, an employee identity card with a photograph, a student identity card with a photograph, a travel document with your name and photograph, or a bank, savings or credit union book containing your address in the constituency. It is also acceptable to show a cheque book, a cheque card, a credit card, a birth certificate or a marriage certificate, as long as you also have another document which confirms your address in the constituency. You may not be asked for proof of identity, but if asked for it you need to show it.

You can see a sample ballot paper on the next page.

You will be voting on whether or not to approve the Thirty-sixth Amendment to the Constitution Bill.

You vote by marking an 'X' in the 'Yes' box or 'No' box, depending on how you want to vote. Mark only one box, or your vote will not count. Do not mark any other part of the ballot paper.

SAMPLE BALLOT PAPER

An bhfuil tú ag toiliú leis an togra chun an Bunreacht a leasú atá sa Bhille thíosluaite?

Do you approve of the proposal to amend the Constitution contained in the undermentioned Bill?

An Bille um an Séú Leasú is Tríocha ar an mBunreacht, 2018

Th ty sixth Amendm nt of the Constitution Bill 2018

Ná cuir marc **ach san aon chearnóg amháin**
Place a mark in **one square only**

Má thoilíonn tú, cuir X sa chearnóg seo ..... If you **approve**, mark X in this square	**Tá Yes**
Mura dtoilíonn tú, cuir X sa chearnóg seo ..... If you do **not approve**, mark X in this square.....	**Níl No**

Polling stations will open **from 7am to 10pm on 25th May**

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

California General Election

Tuesday, November 3, 2020

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

VOTE SAFE CALIFORNIA

Every registered voter in California will receive a vote-by-mail ballot in the General Election. Learn more about changes to the election inside.

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 3, 2020, 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 10th day of August, 2020.

Alex Padilla, Secretary of State

★ You may request additional copies of the Official Voter Information Guide by contacting your county elections official or by calling (800) 345-VOTE (8683) ★

PROPOSITION 17 — RESTORES RIGHT TO VOTE AFTER COMPLETION OF PRISON TERM. LEGISLATIVE CONSTITUTIONAL AMENDMENT.

OFFICIAL TITLE AND SUMMARY — PREPARED BY THE ATTORNEY GENERAL

The text of this measure can be found on the Secretary of State's website at *voterguide.sos.ca.gov.*

- Amends state constitution to restore voting rights to persons who have been disqualified from voting while serving a prison term as soon as they complete their prison term.

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

- Increased annual county costs, likely in the hundreds of thousands of dollars statewide, for voter registration and ballot materials.
- Increased one-time state costs, likely in the hundreds of thousands of dollars, to update voter registration cards and systems.

FINAL VOTES CAST BY THE LEGISLATURE ON ACA 6 (PROPOSITION 17)
(RESOLUTION CHAPTER 24, STATUTES OF 2020)

Senate:	Ayes 28	Noes 9
Assembly:	Ayes 54	Noes 19

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

People in Prison or on Parole Are Not Allowed to Vote. The State Constitution allows most U.S. citizens who are residents of California and at least 18 years of age to vote, if they register to vote. (Under current state law, people who are registered to vote are also allowed to run for elective offices they are qualified for.) People eligible to register to vote include those who are in county jail or supervised by county probation in the community. However, the State Constitution prevents some people from registering to vote, including those in state prison or on state parole. (People are generally supervised in the community on state parole for a period of time after they serve a state prison term for a serious or violent crime. Currently, there are roughly 50,000 people on state parole.)

County and State Agencies Have Voting-Related Workload. County election officials manage most elections in California. As part of this work, these officials keep lists of registered voters and cancel the registration of anyone

ANALYSIS BY THE LEGISLATIVE ANALYST CONTINUED

not allowed to vote—including anyone in state prison or on state parole. In addition, these officials provide ballot materials to registered voters. Some state agencies also have voting-related workload. For example, the Secretary of State provides voter registration cards and operates an electronic voter registration system.

PROPOSAL

Allows People on State Parole to Register to Vote. Proposition 17 changes the State Constitution to allow people on state parole to register to vote, thereby allowing them to vote. (Because current state law allows registered voters to run for elective offices, this measure would result in people on state parole being able to do so as well, if they meet existing qualifications such as not having been convicted of perjury or bribery.)

FISCAL EFFECTS

Increased Ongoing County Costs. Proposition 17 would increase the number of people who can register to vote and vote in elections. This would increase ongoing workload for county election officials in two main ways. First, election officials would have to process the voter registrations of people on state parole who register to vote. Second, election officials would have to send ballot materials to people on state parole who register to vote. We estimate that the **annual county costs for this workload would likely be in the hundreds of thousands of dollars statewide**. The actual cost would depend on the number of people on state parole who choose to register to vote and the specific costs of providing them ballot materials during an election.

Increased One-Time State Costs. Proposition 17 would create one-time workload for the state to update voter registration cards and systems to reflect that people on state parole could register to vote. We estimate that this workload would result in **one-time state costs likely in the hundreds of thousands of dollars**. This amount is less than 1 percent of the state's current General Fund budget.

Visit *http://cal-access.sos.ca.gov/campaign/measures/* for a list of committees primarily formed to support or oppose this measure.

Visit *http://www.fppc.ca.gov/transparency/top-contributors.html* to access the committee's top 10 contributors.

If you desire a copy of the full text of this state measure, please call the Secretary of State at (800) 345-VOTE (8683) or you can email *vigfeedback@sos.ca.gov* and a copy will be mailed at no cost to you.

PROPOSITION **17** RESTORES RIGHT TO VOTE AFTER COMPLETION OF PRISON TERM. LEGISLATIVE CONSTITUTIONAL AMENDMENT.

★ ARGUMENT IN FAVOR OF PROPOSITION 17 ★

VOTE YES ON PROPOSITION 17

Proposition 17 is simple—it restores a person's right to vote upon completion of their prison term.

• When a person completes their prison sentence, they should be encouraged to reenter society and have a stake in their community. Restoring their voting rights does that. Civic engagement is connected to lower rates of recidivism. When people feel that they are valued members of their community, they are less likely to return to prison.

• 19 other states allow people to vote once they have successfully completed their prison sentence. It's time for California to do the same.

• A Florida study found that people who have completed their prison sentences and had their voting rights restored were less likely to commit crimes in the future.

• Nearly 50,000 Californians who have completed their prison sentences pay taxes at the local, state, and federal levels. However, they are not able to vote at any level of government.

PROP. 17 WILL HAVE REAL LIFE IMPACTS—STORIES FROM CALIFORNIANS WHO HAVE COMPLETED THEIR SENTENCES

After a parole board granted Richard his freedom, he was shocked to learn that he still could not cast a vote in California. Over the last 20 years, Richard has become what he describes as "a man built for others"—helping develop a drug and alcohol counseling program while still in prison and advocating for better criminal justice policies. "I work hard, serve my community, pay taxes, give back, and I am still a citizen of this country," Richard said. "I believe that qualifies me to have the right to vote again."

Andrew is a Navy veteran who served his country but developed a drinking problem and made big mistakes that led to prison. He earned parole by working toward his rehabilitation, and now that his prison sentence is completed, he's building a new life as a veteran learning to contribute to his community. Andrew says, "I believe in working hard for what you get in life, and I believe that I've earned the right to vote so I can be a full member of my community."

YES ON PROPOSITION 17

Parole is intended to be a period of reintegration into the community. People on parole who have completed their prison sentences raise families, hold jobs, pay taxes, and contribute to society in every other way. Restoring a person's voting eligibility removes stigma and helps strengthen their connection to the community.

Yeson17.vote #FreetheVote

CAROL MOON GOLDBERG, President
League of Women Voters of California

JAY JORDAN, Executive Director
Californians for Safety and Justice

KEVIN MCCARTY, Assemblymember
Prop. 17 Author

★ REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 17 ★

Proponents claim that Proposition 17 will restore a convicted felon's voting rights "upon completion of their prison sentence." THIS IS FALSE.

THE TRUTH: In California, parole is a legally part of the prison sentence, and a convicted felon must successfully complete parole upon release from incarceration in order to have served their sentence and have their voting rights restored. *Proposition 17 will eliminate this critical requirement.*

Proponents do not tell you that 30 states require more than the completion of prison incarceration, *before a felon's voting rights are restored*. Most require the completion of parole while some require the addition of executive action.

While proponents highlight two stories about released criminals, "Richard" and "Andrew," they don't share with you their criminal histories—as if burglars, armed robbers, murderers and child molesters are all the same. *Nothing could be further from the truth.*

THE TRUTH: For every "Richard" or "Andrew" there is a "Robert" or "Scott" who commits a violent felony while on parole. Proposition 17 restores voting rights before felons complete this critical parole sentence.

Parole is the adjustment period when violent felons prove they are no longer a violent threat to innocent citizens living in a civil society. Their every move is monitored and supervised by a trained state officer.

BOTTOM LINE: PROPOSITION 17 WILL ALLOW CRIMINALS CONVICTED OF MURDER, RAPE, CHILD MOLESTATION, AND OTHER SERIOUS AND VIOLENT CRIMES TO VOTE BEFORE COMPLETING THEIR SENTENCE INCLUDING PAROLE.

Proposition 17 is not justice. VOTE NO ON PROPOSITION 17

HARRIET SALARNO, Founder
Crime Victims United of California

JIM NIELSEN, California State Senator

RUTH WEISS, Vice President
Election Integrity Project California

★ ARGUMENT AGAINST PROPOSITION 17 ★

PROPOSITION 17 WILL ALLOW CRIMINALS CONVICTED OF MURDER, RAPE, SEXUAL ABUSE AGAINST CHILDREN, KIDNAPPING, ASSAULT, GANG GUN CRIMES AND HUMAN TRAFFICKING TO VOTE BEFORE COMPLETING THEIR SENTENCE INCLUDING PAROLE.

In 1974, California voters approved restoring the right to vote to convicted felons once they have completed their sentences (including parole). More recently, California's prison reform measures have moved all but the most vicious criminals out of prisons and into local jails. People convicted of nonviolent felonies like car theft or drug dealing are incarcerated in county jails *and have the right to vote while serving their sentence*. For them there is no parole.

PAROLE IN CALIFORNIA IS FOR SERIOUS AND VIOLENT CRIMINALS.

Criminals in prison have been convicted of murder or manslaughter, robbery, rape, child molestation or other serious and violent crimes and sex offenses. They have victimized innocent, law-abiding citizens who are condemned for life to revisit those crimes in every nightmare. Certain sounds, smells and everyday experiences will always return them mentally and emotionally to the scene of the crime, and for them there is no end to their sentence. Knowing that their victimizers would have social equality with them before they have been fully rehabilitated simply adds to their lifelong pain and misery.

PAROLE IS TO PROVE REHABILITATION BEFORE FULL LIBERTY, INCLUDING VOTING RIGHTS, IS RESTORED.

Offenders released from PRISON after serving a term for a serious or violent felony are required to complete parole (usually three years) as part of their sentences. Parole is an adjustment period when violent felons prove their desire to adjust to behaving properly in a free society. Their every move is monitored and supervised by a trained state officer. *If the state does not trust them to choose where to live or travel, with whom to associate and what jobs to do, it MUST NOT trust them with decisions that will impact the lives and finances of all other members of society.*

MOST PAROLEES STUMBLE AND 50% ARE CONVICTED OF NEW CRIMES.

Unfortunately, about half of parolees commit new crimes within three years of release. Clearly, they are not ready to join the society of law-abiding citizens. Rewards and privileges in life must be earned and deserved. Giving violent criminals the right to vote before they have successfully completed their full sentence, which INCLUDES A PERIOD OF PAROLE, is like giving students a high school diploma at the end of tenth grade. It makes no sense, and hurts their future and all of society.

JUSTICE DEMANDS A NO VOTE ON PROPOSITION 17.

Crime victims deserve justice. Granting violent criminals the right to vote before the completion of their sentence is not justice. Offenders deserve justice as well. Their self-respect depends upon knowing that they have made full restitution for their crimes and have earned a second chance. Californians deserve a justice system where offenders pay for their crimes, prove their rehabilitation, and only then are welcomed back into civil society. Proposition 17 is NOT justice.

VOTE NO ON PROPOSITION 17

HARRIET SALARNO, Founder
Crime Victims United of California

JIM NIELSEN, Chairman
California Board of Prison Terms (Ret.)

RUTH WEISS, Vice President
Election Integrity Project California

★ REBUTTAL TO ARGUMENT AGAINST PROPOSITION 17 ★

VOTE YES ON PROP. 17

PROP. 17 opponents are using scare tactics to try and stop you from fixing a nearly 50-year-old, out-of-date voting policy.

THE FACTS:

- Prop. 17 will simply restore a citizen's right to vote upon completion of their prison term aligning California with 19 other states that already do the same.
- After a similar law was changed in Florida, a parole commission study found that citizens who have completed their prison sentences and had their voting rights restored *were less likely to commit crimes in the future*.
- Parole is intended to be a period of reintegration into the community. Citizens on parole who have completed their prison sentences raise families, hold jobs, pay taxes, and contribute to society in every other way.
- Nearly 50,000 Californians who have completed their prison sentences pay taxes at the local, state and federal levels and yet, are not able to vote at any level of government.

DON'T BELIEVE OPPONENTS AND THEIR SCARE TACTICS. DEMOCRATS AND REPUBLICANS SUPPORT PROP. 17

- More than two thirds of the state legislature—Democrats and Republicans, supported asking California voters to consider Prop. 17.
- Prop. 17 does nothing to change anyone's prison term including those convicted of serious and violent crimes.

VOTE YES ON PROP. 17!

CAROL MOON GOLDBERG, President
League of Women Voters of California

JAY JORDAN, Executive Director
Californians for Safety and Justice

ABDI SOLTANI, Executive Director
American Civil Liberties Union (ACLU)—Northern California