

# Death penalty and three-strikes law on California ballot

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Ballot initiatives to abolish the death penalty and to modify the three-strikes law will appear on the California ballot this November. Proposition 34 would abolish the death penalty and replace it with a sentence of life without the possibility of parole. Proposition 36 would revise California's three-strike law so that a 25-to-life sentence would apply to a third felony conviction only if it was a "serious" or "violent" felony.

In 1972, capital punishment was suspended in the United States, primarily as a result of the United States Supreme Court decision in *Furman v. Georgia*. In *Furman* the Supreme Court did not rule that the death penalty was unconstitutional per se. Instead a divided Court ruled that it was being applied and imposed in an unconstitutional manner. Subsequently, various states passed new death penalty laws that addressed and met the Court's concerns.

Today 33 states impose the death penalty, and since 1976 there have been 1,307 executions in the United States.

California, whose present death penalty law was enacted in 1978, has had 13 executions since then, the last occurring in 2006. During this 33-year period, 54 death row inmates have died of natural causes, 18 have died as a result of suicide and six by violence or undetermined causes. Of this total of 78 prisoners who have died awaiting execution, 32 prisoners died while their petitions for *habeas corpus* relief were still pending in federal court. Of the more than 3,200 inmates nationwide who are now on death row, 721 of them are in California.

Internationally over two-thirds of the world's countries have abolished the death penalty, with the

United States being virtually the only developed country to maintain it. According to Amnesty International in 2010, China was the world's top executioner with unofficial estimates of well over a thousand, followed by Iran (with at least 252 executions), North Korea (with at least 60), Yemen (with at least 53) and the United States (with 46).

In California, as elsewhere throughout the country, the death penalty has faced significant opposition. Many people are opposed because of the ever-present risk of wrongful conviction, the widespread recognition of the existence of bias against low-income and minority defendants who are disproportionately charged with capital offenses, the geographic disproportionality in its administration, the widespread acceptance of life without parole as a preferable alternative, and the fact that most other civilized societies around the world have long ago dispensed with this barbaric practice.

The supporters of Proposition 34, however, have chosen to ignore or to minimize any of these reasons for opposing the death penalty and instead have emphasized the cost savings that would result in repealing the death penalty.

The drafters of Proposition 34 have relied heavily upon a comprehensive study of death penalty costs conducted by U.S. Circuit Judge Arthur L. Alarcon and Loyola Law School Professor Paula M. Mitchell published in the February 2011 edition of the *Loyola of Los Angeles Law Review* entitled, "Executing the Will of the Voters?: A Roadmap to Mend or End the California Legislature's Multi-Billion-Dollar Death Penalty Debacle."

According to this study of death penalty costs, the expense to California taxpayers for executing one person condemned to death is \$308 million, and the total taxpayers have spent on capital punishment since

it was reinstated in 1978 now exceeds \$4 billion.

It is upon this basis that the official title to Proposition 34 is the “Savings, Accountability, and Full Enforcement for California Act.” Supporters claim annual “savings” of \$130 million will be achieved as a result of the reduced costs for otherwise lengthy and complex trials and appeals, as well as the maintenance of death row. “Accountability” is achieved by a sentence of life without the possibility of parole, and by requiring all persons convicted of murder to work and pay restitution into a victim’s compensation fund. The “full enforcement” aspect of the Proposition refers to allocating \$30 million a year in savings to law enforcement agencies to fund investigations for unsolved murder and rape cases for three years.

Among the prominent supporters of Proposition 34 is former Los Angeles District Attorney Gil Garcetti, who during his tenure (1992-2000) was responsible for the prosecution of dozens of death penalty cases and was a zealous supporter and defender of the death penalty. Garcetti now contends that, “California’s death penalty does not and cannot function the way its supporters want it to. It is also an incredibly costly penalty, and the money would be far better spent keeping kids in school, keeping teachers and counselors in their schools and giving the juvenile justice system the resources it needs.”

Proposition 36 attempts to modify California’s draconian Three-Strikes Law. This law was initially passed by overwhelming voter approval in 1994 as a consequence of the highly publicized kidnapping, rape, and murder of 12-year-old Polly Klass by a parolee who had previously been convicted of a series of violent crimes. The law targets offenders who had previous convictions for at least two serious or violent crimes, such as rape or robbery. Any new felony conviction would then trigger a prison sentence of at least 25 years to life.

Many who voted for this law did so upon the mistaken belief that it would only apply to a third felony which was also a serious or violent felony. The Three-Strikes Law, however, applies to any third felony, irrespective as to what type of felony. Consequently defendants with two strikes who were later convicted of minor theft charges or drug possession charges were routinely being sentenced to 25-to-life sentences.

Although judges and prosecutors have the power to dismiss strikes to avoid a 25-to-life sentence, of California’s 8,900 third-strikers, about a third have been convicted of drug or theft type crimes.

To provide uniformity to sentencing and to ameliorate the most onerous aspects of the Three-Strikes Law, Proposition 36 would impose a 25-to-life sentence only when the new conviction is for a violent or serious felony. Inmates already serving 25 years to life for non-serious and non-violent offenses could get a reduction in their sentences if a judge decides they do not pose an unreasonable risk to the public. The proposition’s changes would not apply to offenders with previous convictions for murder, rape or child molestation, or to those whose latest offense involved a sex crime, major drug dealing or use of a firearm.

As with the death penalty proposition, Proposition 36 is also being promoted as a cost saving measure which will reduce prison overcrowding and save the state \$70 to \$90 million per year.

In both cases, the propositions proponents have deliberately avoided raising the overarching questions of democratic rights bound up with capital punishment and draconian mandates for incarceration in order to appeal to a more well-heeled section of the electorate on the basis of deficit and tax reduction. Support for Proposition 34 has been well-funded, with some \$7.4 million raised, much of it from wealthy donors, compared to less than \$400,000 for those opposing the measure.



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