

# INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

## JUDGES. RESTRICTIONS ON JUDICIAL IMMUNITY. INITIATIVE CONSTITUTIONAL AMENDMENT.

**Supersedes existing judicial immunity and creates three 25-member "Special Grand Juries" empowered to: determine if a judge may invoke judicial immunity in a civil suit; indict and, through a special trial jury, convict and sentence a judge for criminal conduct; and permanently remove a judge who receives three adverse immunity decisions or three criminal convictions. Disallows immunity for deliberate violations of law, fraud, conspiracy, intentional due process violations, deliberate disregard of material facts, judicial acts outside the court's jurisdiction, unreasonable delay of a case, or any deliberate constitutional violation. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: If passed, the measure will result in costs to the state of about \$18 million annually for the operation of special grand juries. These costs could be partially to fully offset by a number of sources specified in the measure. To the extent that the measure results in additional civil cases being filed against judges in court, the measure could also result in unknown additional costs to the state for support of the courts.**

*To The Honorable Secretary of State:*

We, the undersigned, registered, qualified voters of California, residents of the aforesaid County (or City and County) specified on the reverse side, hereby propose amendments to the Constitution of California and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding general election or at any special statewide election held prior to the general election or otherwise provided by law. The proposed constitutional amendments read as follows:

## Judicial Accountability Initiative Law (J.A.I.L.)

**(a) Preamble.** We, the People of California, find that the doctrine of judicial immunity has been greatly abused; and when judges abuse their power, the people are obliged - it is their duty - to correct that injury, for the benefit of themselves and their posterity. In order to ensure judicial accountability and domestic tranquility, we hereby amend Article I of our Constitution with these provisions, which shall be known as "**The Judicial Accountability Amendment.**"

**(b) Definitions.** For purposes of this amendment:

1. The term "blocking" shall mean any act that impedes the lawful conclusion of a case, to include unreasonable delay and willful rendering of a void judgment or order.

2. The term "judge" shall mean justice, judge, magistrate, commissioner, judge pro tem, private judge, judicial mediator, arbitrator and referee, and every person shielded by judicial immunity.

3. The term "Juror" shall mean a Special Grand Juror.

4. The term "seat" shall mean a situs and facility that is suitable for usage by the Jury.

5. The term "strike" shall mean an adverse immunity decision.

Where appropriate, the singular shall include the plural.

**(c) Immunity.** Notwithstanding common law or any other provision to the contrary, no immunities shall be extended to any judge of this State except as is specifically set forth in this Amendment. Preserving the purpose of protecting judges from frivolous and harassing actions, no immunity shielding a judge shall be construed to extend to any deliberate violation of law, fraud or conspiracy, intentional violation of due process of law, deliberate disregard of material facts, judicial acts without jurisdiction, blocking of a lawful conclusion of a case, or any deliberate violation of the Constitutions of California or the United States.

**(d) Special Grand Juries.** There are hereby created within this State three twenty-five member Special Grand Juries with statewide jurisdiction having power to judge both law and fact. This body shall exist independent of statutes governing county grand juries. Their responsibility shall be limited to determining, on an objective standard, whether a civil suit against a judge would be frivolous and harassing, or fall within the exclusions of immunity as set forth herein, and whether there is probable cause of criminal conduct by the judge complained of.

**(e) Professional Counsel.** Each Special Grand Jury shall have exclusive power to retain non-governmental advisors, special prosecutors, and investigators, as needed, who shall serve no longer than one year, after which term said officers shall be ineligible. Notwithstanding the one year, a special prosecutor may be retained to prosecute current cases in which they are involved through all appeals and any complaints for judicial misconduct.

**(f) Establishment of Special Grand Jury Seats.** Within ninety days following the ratification of this Amendment, the Legislature shall provide a seat for each Special Grand Jury. No seat shall be located within a mile of any judicial body, and each seat shall be reasonably placed proportionately according to population throughout the State. Should the Legislature fail to do so act within ninety days, its members shall permanently forfeit their salaries and per diem pay, beginning on the ninety-first day, until such time that it abides by the terms of this (f) section.

**(g) Annual Funding.** The Legislature shall cause to be deducted two and nine-tenths percent from the gross judicial salaries of all judges, which amount shall be deposited regularly into the exclusive trust account created by this Amendment in paragraph (k) for its operational expenses, together with filing fees under paragraph (h), surcharges under paragraph (i), forfeited benefits of disciplined judges under paragraph (q), and fines imposed under paragraph (r).

**(h) Filing Fees.** Parties filing a civil complaint or answer before the Special Grand Jury, when represented by an attorney, shall at the time of filing pay a fee equal to the filing fee due in a civil appeal to the State Supreme Court. Individuals filing a civil complaint or answer before the Special Grand Jury in their own behalf as a matter of right, shall, at the time of filing, post a fee of fifty dollars, or file a declaration, which shall remain confidential, stating they are impoverished and unable to pay and/or object to such fee.

**(i) Surcharges.** Should this Amendment lack sufficient funding through its fines, fees, and forfeitures (including deductions in paragraph (g)), the Legislature shall impose appropriate surcharges

upon the civil court filing fees of corporate litigants as necessary to make this Amendment self-supporting.

**(j) Compensation of Jurors.** Each Juror shall receive a salary commensurate to a Superior Court judge prorated according to the number of days actually served.

**(k) Annual Budget.** The Special Grand Juries shall have an annual operational budget commensurate to double the combined salaries of the seventy-five Jurors serving full time, which sum shall be initially deposited by the Legislature into an exclusive trust account to be annually administered by the State Controller. Should the trust balance, within any budget year, drop to less than an amount equivalent to the annual gross salaries of fifty Superior Court judges, the State Controller shall so notify the Legislature which shall replenish the account, prorated based on the actual average expenditures during the budget year. Should the trust balance in any subsequent year exceed the annual operational budget at the beginning of a new budget year, the State Controller shall return such excess to the state treasury.

**(l) Jurisdiction.** Each Special Grand Jury shall have exclusive power to establish rules assuring their attendance, to provide internal discipline, and to remove any of its members on grounds of misconduct. The Special Grand Jury shall immediately assign a docket number to each complaint brought before it, unless such case is transferred to another Special Grand Jury to achieve caseload balance. A transfer shall not prejudice a docketing deadline. The Special Grand Jury first docketing a complaint shall have sole jurisdiction of the case. Except as provided in paragraphs (s) and (w), no complaint of misconduct shall be considered by any Special Grand Jury unless the complainant shall have first attempted to exhaust all judicial remedies available in this State within the immediately preceding six-month period. Such six-month period, however, shall not commence in complaints of prior fraud or blocking of a lawful conclusion until after the date the Special Grand Juries become functional. This provision applies remedially and retroactively. Should the complainant opt to proceed to the United States Supreme Court, such six-month period shall commence upon the disposition by that court.

**(m) Qualifications of Jurors.** A Juror shall be thirty years of age, and have been nine years a citizen of the United States, and have been an inhabitant of California for two years immediately prior to having his/her name drawn. Those not eligible for Special Grand Jury service shall include elected and appointed officials, members of the State Bar, judges (active or retired), judicial, prosecutorial and law enforcement personnel, without other exclusion except previous adjudication of mental incapacity, imprisonment, or parole from a conviction of a felonious crime against persons.

**(n) Selection of Jurors.** The Jurors shall serve without compulsion and shall be drawn by public lot by the Secretary of State from names on the voters rolls and any citizen submitting his/her name to the Secretary of State for such drawing.

**(o) Service of Jurors.** Excluding the establishment of the initial Special Grand Juries, each Juror shall serve one year. No Juror shall serve more than once. On the first day of each month, two persons shall be rotated off each Special Grand Jury and new Citizens seated, except in January it shall be three. Vacancies shall be filled on the first of the following month in addition to the Jurors regularly rotated, and the Juror chosen to fill a vacancy shall complete only the remainder of the term of the Juror replaced. A majority of thirteen shall determine any matter. Special Grand Jury files shall always remain public record following their final determination.

**(p) Procedures.** The Special Grand Jury shall serve a copy of the filed complaint upon the subject judge and notice to the complainant of such service. The judge shall have twenty days to serve and file an answer. The complainant shall have fifteen days to reply to the judge's answer. (Upon timely request, the Special Grand Jury may provide for extensions for good cause.) The Special Grand Jury shall have power to subpoena witnesses, documents, and other tangible evidence, and to examine witnesses under oath. Each Special Grand Jury shall determine the causes properly before it with their reasoned findings in writing within one hundred twenty (120) calendar days, serving on all parties their decision on whether immunity shall be barred as a defense to any civil action that may thereafter be pursued against the judge. A rehearing may be requested of the Special

Grand Jury within fifteen days with service upon the opposition. Fifteen days shall be allowed to reply thereto. Thereafter, the Special Grand Jury shall render final determination within thirty days. All allegations of the complaint shall be liberally construed in favor of the complainant. The Jurors shall keep in mind, in making their decisions, that they are entrusted by the People of this State with the duty of restoring a perception of justice and accountability of the judiciary, and are not to be swayed by artful presentation by the judge. They shall avoid all influence by judicial and government entities. The statute of limitations on any civil suit brought pursuant to this Amendment against a State judge shall not commence until the rendering of a final decision by the Special Grand Jury.

**(q) Removal.** Whenever any judge has received three strikes, the judge shall be permanently removed from office, and thereafter shall not serve in any State judicial office, including that of private judge. Judicial retirement for such removed judge shall not exceed one-half of the benefits to which such person would have otherwise been entitled. Retirement shall not avert third strike penalties.

**(r) Indictment.** Should the Special Grand Jury also find probable cause of criminal conduct on the part of any judge against whom a complaint is docketed, it shall have the power to indict such judge except where double jeopardy attaches. The Special Grand Jury shall, without *voir dire* beyond personal relationship, cause to be impaneled twelve special trial jurors, plus alternates, which trial jurors shall be instructed that they have power to judge both law and fact. The Special Grand Jury shall also select a non-governmental special prosecutor and a judge with no more than four years on the bench from a county other than that of the defendant judge. The trial jury shall be selected from the same pool of jury candidates as any regular jury. The special prosecutor shall thereafter prosecute the cause to a conclusion, having all the powers of any other prosecutor within this State. Upon conviction, the special trial jury shall have exclusive power of sentencing (limited to incarceration, fines and/or community service), which shall be derived by an average of the sentences of the trial jurors.

**(s) Criminal Procedures.** In addition to any other provisions of this Amendment, a complaint for criminal conduct of a judge may be brought directly to the Special Grand Jury upon all the following prerequisites: (1) an affidavit of criminal conduct has been lodged with the appropriate prosecutorial entity within ninety (90) days of the commission of the alleged conduct; (2) the prosecutor declines to prosecute, or one hundred twenty (120) days has passed following the lodging of such affidavit and prosecution has not commenced; (3) an indictment, if sought, has not been specifically declined on the merits by a county Grand Jury; and (4) the criminal statute of limitations has not run. Any criminal conviction (including a plea bargain) under any judicial process shall constitute a strike.

**(t) Public Indemnification.** No judge complained of, or sued civilly by a complainant pursuant to this Amendment, shall be defended at public expense or by any elected or appointed public counsel, nor shall any judge be reimbursed from public funds for any losses sustained under this Amendment.

**(u) Enforcement.** No person exercising strict enforcement of the findings of a Special Grand Jury shall be held liable civilly, criminally, or in contempt.

**(v) Redress.** The provisions of this Amendment are in addition to other redress that may exist and are not mutually exclusive.

**(w) Challenges to Amendment.** No judge under the jurisdiction of the Special Grand Jury, or potentially affected by the outcome of a challenge to this Amendment, shall have any jurisdiction to sit in judgment of such challenge. Such pretended adjudication shall be null and void for all purposes and a complaint for such misconduct may be brought at any time, without charge, before the Special Grand Jury by class-action, or by any adversely affected person.

**(x) Preeminence.** Preeminence shall be given to this Amendment in any case of conflicts with statute, case law or constitutional provision. The foreperson of each Special Grand Jury shall read, or cause to be read, this Amendment to the respective Jurors semi-annually during the first week of business in January and July. Should any part of this Amendment be determined unconstitutional, the remainder shall remain in full force and effect as though no challenge thereto existed.