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Californians for Privacy

*Support the right of **choice**.*

May 9, 1990

RECEIVED
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Ans'd.....

RE: Proposition 115 -- A Proposed Amendment to the State Constitution Relating to Criminal Justice Procedures

Dear County Board of Supervisors Member:

The enclosed packet contains information important to your county regarding the fiscal impact that will be suffered by all California counties should Proposition 115 be passed on June 5, 1990.

In addition to the more than $500 million that will be borne by county governments in the event Proposition 115 passes, there is also grave concern by multiple California women's groups about the elimination of the privacy protection in California's Constitution, and the threat to reproductive choice in this state [please see letter enclosed]. For that reason, all of California's major women's organizations are opposed to Proposition 115.

After reviewing the enclosed material, we strongly urge your Board to take the unanimous position to oppose Proposition 115. We believe that Proposition 115 is a fraud being perpetrated on the voters of this state, and your opposition to this initiative will inform your constituents of your concern. While we strongly urge your Board to take a unanimous position, individual opposition by Board Members is also very important, and we have provided in your packet an individual's opposition certificate and return envelope.

Should you require additional information, or wish to discuss this matter further, please do not hesitate to contact our offices.

Sincerely,

Michael Rothschild
Co-Chair
"No" on Proposition 115

Enclosures

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Richard Eichman, Treasurer
ID #892121

Californians for Privacy, sponsored by pro-choice, legal and medical organizations against Proposition 115

Californians for Privacy

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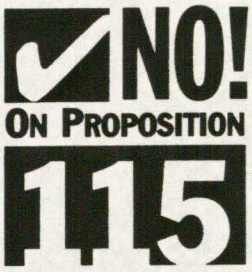

May 8, 1990

Partial List of Endorsers:

American Academy of Pediatrics
American Association of University Women
American Civil Liberties Union
American College of Obstetricians and Gynecologists of California
California Abortion Rights Action League
California Attorneys for Criminal Justice
California Women Lawyers
National Council of Jewish Women
National Lawyers Guild
Southern California Women's Law Center
Women For:
San Francisco County Bar Association

Dear County Supervisor:

Thanks for taking the time to consider our arguments against passage of Proposition 115 on the June ballot. We hope once you've examined its negative impacts, you'll agree that California is better off without this complicated, far-reaching proposal.

Our specific concern is that Proposition 115 threatens reproductive rights and privacy. The measure adds to the already uncertain status of reproductive choice and, if passed, will fuel the fires of controversy and generate conflict in our communities.

Because Proposition 115 removes California's independent right of privacy as it pertains to criminal cases, a number of authorities believe that abortion would be re-criminalized in California should the United States Supreme Court overrule *Roe v. Wade*.

Unlike its federal counterpart, the California Constitution specifically mentions the right to privacy:

> "All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining safety, happiness and privacy."
> (Article 1, Section 1 of the California Constitution.)

California's explicit privacy right, added by the voters i 1972, is far broader than the implied right to privacy contained in the Federal Constitution. In numerous cases, California Courts have emphasized the independent force and vitality of such rights. The California right to privacy protects a range of reproductive rights including abortion, contraception, childbirth, access to sterilization and freedom from coerced sterilization.

California's privacy right is independent of the federal right to privacy recognized in *Roe v. Wade*. This state right is of critical importance, since the U.S. Supreme Court is only one vote away from overruling *Roe* at anytim. Last summer's *Webster v. Reproductive Health Services* decision indicates that a majority of the current Supreme Court no longer agrees with *Roe*. It is widely felt that the Court is waiting for a better case then *Webster* to dilute or destroy *Roe's* Federal Constitution protection for reproductive freedom.

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If *Roe v. Wade* were overruled, California women's fundamental right to make decisions about pregnancy would be protected only by our state constitutional right to privacy. Proposition 115 throws that protection into doubt, because it instructs California courts to interpret the state right to privacy no more broadly than the federal right in criminal cases. In this case, the law would return to the Therapeutic Abortion Act, which is still on the books (Health and Safety Code §25951). Under this pre-existing law, the vast majority of abortions performed in a clinic would be a felony for both the woman and her doctor!

Thus, if Proposition 115 passes and *Roe v. Wade* were overturned, California courts could decide that old penal laws criminalizing abortions are still valid. Abortion would become homocide, subject only to whatever new rules the United States Supreme Court might devise and subject to the remaining provisions of the Health and Safety Code.

While we are have compassion for the trauma of crime victims, Proposition 115 victimizes all Californians in the name of crime victims. We urge you to join us in opposing Proposition 115.

Sincerely,

Eileen Givens, President, California State Division
American Association of University Women

Carole Wagner Vallianos, President
League of Women Voters of California

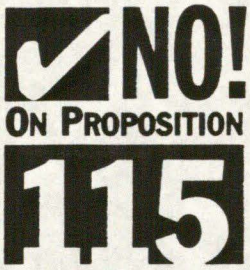
Norma Clevenger, Executive Director
Planned Parenthood Affiliates of California

Linda Joplin, State Coordinator
California National Organization for Women, Inc.

Robin Schneider, Executive Director
California Abortion Rights Action League-South

Susan P. Kennedy, Executive Director
California Abortion Rights Action League-North

Original Signatures on File



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Fiscal Assessments to Local Government by Passage of

Proposition 115

The opponents of Proposition 115 believe that state-wide local governments will be required to pay at least an additional $500 million annually to implement Proposition 115. The analysis was presented in a Petition for Writ of Mandate filed in Sacramento Superior Court on March 2 by four plaintiffs, including two county supervisors, challenging the ballot description as it pertains to financial impact.

The case was assigned to Sacramento Superior Court Presiding Judge James T. Ford who concluded that the Secretary of State's ballot materials seem ***"...to lull the voters into an improper sense of security."*** As a result, he ordered the rewriting of the materials to include the phrase, ***"There might be only a minor fiscal impact on state and local governments, or there might be a major fiscal impact."***

Of the numerous changes that the passage of Proposition 115 proposes, there are five which hold the greatest potential for fiscal impact to your county:

I. Changes To The Current Discovery Practices

II. Changes In The Current Preliminary Hearing Practices

III. Changes To The Current Voir Dire Practices

IV. Changes In The "Speedy Trial Provisions"

I. Changes To The Current Discovery Practices

In the criminal justice system currently, defense attorneys and their clients receive a great deal of information about a case from the police or sheriff arrest report. The prosecution is now required to provide these reports to the defense in the early stages of the case. In addition to assisting in the preparation of a case, this information allows the defense to determine the relative worth of a case and is therefore imperative for maintaining a high percentage of cases being settled in the pre-trial stage. The Proposition would remove the currrent early release mandate and allow the prosecutor to hold the report until 30 days before trial. This provision holds the potential for a significant increase in the number of cases which could go to trial. Experienced defense attorneys agree that defendents usually will not plead guilty until they know what the casc against them consists of.

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II. Changes In The Current Preliminary Hearing Practices

Proposition 115 supporters continue to state that passage of this initiative will bring the California court system parallel to the Federal system by eliminating preliminary hearings, thus cutting trial time and saving local government dollars.

But many experts believe that the elimination of preliminary hearings will increase the number of cases that go to trial thereby costing the counties more money.

At present in California, 95% of cases are settled before going to a full trial after preliminary hearings. [Many defense attorneys call preliminary hearings "reality therapy" for criminals.] But in the Federal system, where there are no preliminary hearings, only 85% of cases are settled before going to a full trial.

The threat of Proposition 115 resulting in more criminal trials worried Judge Ford throughout the hearing. An additional 11,000 trials would result if the guilty plea rate declined as opponents predicted:

> THE COURT: ***"...If you are right...or even if you are a third right, and there are four thousand more criminal trials, the cost is incalculable."***
>
> Los Angeles Times (January 1, 1990) - ***"If it were to pass and survive constitutional scrutiny, the state would have to increase spending on the courts dramatically or watch justice grind to a halt."***

Judge Ford also was concerned that the increase in criminal trials would utilize all available courts which would result in the elimination of civil litigation in this state.

> THE COURT: ***"The Legislature doesn't have the money for more judges and courtrooms. I mean they are not going to provide that...We are barely making it as it is...***
>
> ***We sink.***
>
> ***What kind of economy can we have where you can't go to trial in civil litigation? The economy of the State of California, I suppose, would collapse...It is catastrophic."***

The new ballot language that Judge Ford approved is designed, in his own words: ***"...to...signal a warning to the voters that there may be significant and substantial economic consequences to us."***

III. Changes To The Current Voir Dire Practices

In the present system, jurors are screened via a process known as voir dire. In this process which results in the selection of a jury, attorneys question potential jurors, sometimes quite extensively. In some cases, the voir dire process has taken as much time as the actual trial. The proposition would change the system so that the judge does the questioning, and the judge's range of questions would be limited. There is agreement that this change would produce a positive fiscal impact (savings), but those savings would be a relative reduced workload for the courts and attorneys. Decreased expenditures could result from reduced payments for jury fees, court reporters, and transcripts. However, this potential savings in cost per trial is likely to be more than offset by an increase in the number of trials.

IV. Changes to the "Speedy Trial Provisions"

This initiative is being touted as a speedy trial measure and according to the sponsors will make changes in the State Constitution that will stop the delays in criminal trials by restricting continuances.

The initiative says that the court shall assign council who warrants, on the record, that he or she will be ready to proceed with trial on the prescribed date.

If Proposition 115 passes, the granting of continuances due to scheduling conflicts will no longer be allowed. The number of additional Public Defenders and District Attorneys for each county in California would double or triple.

> THE COURT: ***"If...a Public Defender has to get up and aver that he or she will be available for trial and will have no other trials on that day, then that poses great difficulties, right?"***

The attorneys for the supporters stated in court that the public defenders would not be required to "be available" only to "be ready". In effect, they were saying no speedy trials, business as usual. But they continue out of court to state that defense attorneys will no longer be granted delays and must proceed on the assigned date.

State Senator Quentin L. Kopp, San Francisco - (Joint Hearing of Senate Committee on Judiciary and Assembly Committee on Public Safety, December 11, 1989) revealed the truth about Proposition 115 which will result in extreme cost increases: ***"...the provision that's relevant indicates that a lawyer is barred from taking the case if the lawyer cannot be assured of proceeding to trial..."***

Ballot Argument (Yes on Proposition 115 campaign) - repeatedly returns to the issue of court delays stating again and again how Proposition 115 will solve the problem:

> ***"...permit hardened criminals to get a fair but prompt trial without the useless delays that frustrate criminal justice in California."***
>
> ***"Because defense lawyers love delays."***
>
> ***"With judges and prosecutors frustrated by delay..."***

Public Defenders around the state have stated that the passage of Proposition 115 may result in "speeder trials" but will result in increased budgets for counties. Currently, Public Defenders accept many cases per attorney, knowing that the majority of those cases will settle and the likelihood of simultaneous hearings on those cases which do not settle is low. The "Speedy Trial Provisions" would force them to lower, by 40-50 percent, the number of cases which are assigned to each attorney.

> **Francis Bardsley, San Diego County Public Defender -**
> ***"I have prepared and submitted to the County Board of Supervisors a 1990-91 budget request which states that if Proposition 115 is passed by the voters, the Public Defender's Felony Division attorneys would, at a minimum, have to be doubled...which would cost San Diego County at least $10,258,000 annually."***
>
> **Lawrence Biggam, Santa Cruz County Public Defender**
> ***"...the budget for the Public Defenders in Santa Cruz may have to be doubled and perhaps tripled."***
>
> **Jeff Brown, San Francisco Public Defender**
> ***"...caseloads by Public Defender attorneys in felony work will have to be reduced from a caseload of 40 to a caseload of 20 or 10."***
>
> **Jay Gaskell, Alameda County Public Defender**
> ***"At present, the most probable scenario that I have considered would require an additional appropriation of $2,689,838...to...$5,206,160."***
>
> **Stuart Rappaport, Santa Clara County Public Defender**
> ***"...the budget for the Public Defender's Felony staff in Santa Clara County would have to be increased by as much as 50%."***
>
> **Douglas Welch, Sacramento County Assistant Public Defender**
> ***"...the budget for the Defense Section Public Defenders in Sacramento County would have to at least be doubled."***

Additionally, the analysis of Proposition 115 as prepared by the impartial staff of the Senate Committee on Judiciary concluded:

> ***"If the Public Defender system, which currently handles the bulk of these (appointed indigent) cases, rejects most of them to avoid trial conflicts, their cost efficiency will be lost, as each deputy's caseload would be reduced from several hundred to 10-20 cases."***

In testimony before the Sacramento County Board of Supervisors on April 3, 1990, when asked to respond to the charges regarding the fiscal impact on the County made by the opponents of Proposition 115, the **District Attorney of Sacramento, Steve White**, stated:

> ***"I can't tell you here that anything that they said is wrong...If read literally, the provision which is most problematical and which could endanger the kind of representation that we have come to expect and appreciate from the private bar as well as the Public Defender's office could be considerably more expensive. That is a genuine possibility."***

We have included for your review a copy of the cost analysis on Proposition 115 prepared by **Professor C. Daniel Vencill**, Chairman, Department of Economics, San Francisco State University in which he states:

> ***"In my professional opinion, the minimum net cost of this proposition will be in excess of $500 million and probably far more."***

Sources: Petition for Writ of Mandate (Nicholas C. Petris et al V. March Fong Eu); Transcript of Proceedings of the March 20, 1990 Hearing in the Courtroom of Hon. James T. Ford, Sacramento, California, case no.363610; Sacramento County Potential Fiscal Impact Report, April 3, 1990; Joint Hearing of the Senate Committee on Judiciary and Assembly Public Safety Committee on Proposition 115, December 11, 1989; Sacramento Board of Supervisors Hearing, April 3, 1990.

Summary of Costs

Additional Costs to PD Offices	$152 Million
Additional Costs to DA Offices	$152 Million
Increased Cost of Trials	$144 Million
Increased Prison Costs	$173-215 Million
Subtotal:	*$621-663 Million*
Less: Cost Saving Offset Preliminary Hearing Elimination	$ 33.9 Million
Voir Dire Streamline	$ 23.0 Million
Consolidation of Trials	$ 2.2 Million
Subtotal	*$ 59.1 Million*
Total Projected Net Cost	**$561.9 Million***

Because of the Gann Limit, these costs must be borne solely by local government. Since they are the product of the initiative and not legislatively mandated, state funding is not compelled.

Enclosures:
Cost Analysis: Dr. C. Daniel Vencill, Chair, Dept. of Economics, San Francisco State University.

San Diego County Public Defenders Office

Santa Clara County Public Defenders Office

Sacramento County Public Defenders Office