[ms-0398.027.001.002]

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

NICHOLAS C. PETRIS, DONALD PERATA, RICHARD HONGISTO, and GERALD UELMEN, Petitioners, v. MARCH FONG EU, California Secretary of State, Respondent.	NO. _____ DECLARATION OF DR. C. DANIEL VENCILL IN SUPPORT OF PETITION FOR WRIT OF MANDATE
JOHN VAN DE KAMP, California Attorney General, DONALD E. MALE, California State Printer, ELIZABETH G. HILL, California Legislative Analyst, Real Parties in Interest.	

I, C. Daniel Vencill, declare:

1. I declare that I am an economist with the following degrees: an M.A. (1965) and a Ph.D. (1971) from Stanford University, and a B.A. from the University of California, Riverside. Currently, I am a Professor and Chair of the Department of Economics at San Francisco State University, where I have been employed since 1974. Prior to my appointment at San Francisco state, I was an Assistant Professor of Economics at the University of California, Davis, from 1967 to 1974. I also worked for such federal government agencies as the Federal Reserve Bank and the President's Council of Economic Advisors, in Washington, D.C.

I teach economic principles, monetary theory and finance, the graduate seminar on macroeconomics, and specialty electives such as the economics of crime and criminal justice. In addition to my research and publications, I have testified extensively as an expert witness in projecting economic losses, and providing valuations of damages, in both California Superior Court and Federal District Court. I am a member of several professional associations, including the Western Economic Association, International, and the National Association of Forensic Economists.

A copy of my Curriculum Vitae with a list of my publications, cases and expert testimony, is attached hereto as Exhibit 1.

2. I have read Proposition 115 and have given careful consideration to the fiscal impact of the proposition if enacted and implemented, on state and local governments in California. In my professional opinion, the minimum net cost of this proposition

will be in excess of $500 million, and probably far more, based on my initial assessment of available empirical information, published data, my own personal knowledge, research and experience, and the informed opinions of individuals in the criminal justice sector of our state's economy. My calculations allow for certain identified, offsetting cost savings to counties should the measure be adopted and implemented. The basis for forming my opinions is fully detailed below in the Analysis, together with appended data and information sources, as well as my own knowledge and experience and the other Declarations filed in support of this Petition for Writ of Mandate.

ANALYSIS.

3. A sample of fiscal budgets from California's 58 counties indicates that Proposition 115 will result in both cost savings and additional budgetary expenses. A complete analysis would require more research time and resources. However, on the basis of initial empirical evidence and statistical analysis, it is possible to conclude that the measure's cost impact on additional required staff, especially in Public Defender and District Attorney offices, far outweighs the cost savings for California taxpayers. There is ample evidence to conclude, allowing for projected offset savings resulting from the proposition (e.g., in the form of streamlined hearings, additional "joined" felony cases, and court-conducted voir dire) that there will be significant net incremental cost.

4. Reports from a sample of Public Defender offices show that Proposition 115 will undoubtedly increase the required number of felony attorneys by 100 percent. It is conceivable that the

enactment of the proposition will require more than a doubling of attorneys, together with the attendant increase in office space, equipment, investigators, paralegals, and legal secretaries. This is because there is currently no slack or excess capacity in the system. The cost estimates are provided by a sample which includes San Diego, Sacramento, Santa Cruz, San Francisco, and Alameda counties, which I understand will be set forth in documents and declarations filed herewith. Based on the reported range of increases in the budgets of these Public Defender offices, I extrapolated to include all 58 counties using a fixed ratio based on the percentage of annual felony sentencing which each county accounted for. For instance, if San Diego had 6% of the total felony convictions with an increase of $10 million projected for its Public Defender felony attorney budget, and Los Angeles had 42% (7 times the rate), then it is reasonable to project that Los Angeles would incur an additional $70 million in Public Defender staff costs if the proposition were implemented. My calculations did not include any costs for additional office space or equipment.

5. Based on the sample of Public Defender office projections of additional budget needs under Proposition 115, I estimated that all Public Defender offices will require an additional $152 million per annum for additional attorneys and support staff.

6. I am informed that in California counties, the staffing proportion coefficient is 2 District Attorney felony attorneys to 1 Public Defender attorney. That is, two prosecuting attorneys (together with complementary staff and indirect costs such as

office space) are hired by the District Attorney's office for each felony attorney hired by the corresponding Public Defender's office. Some counties reported a ratio as high as 4:1. Conservatively, I have assumed a need to merely match staff and resources on the prosecutor side on a 1:1 ratio. Also, I assumed the salaries are the same for both Public Defender and District Attorney staff. Therefore, the $152 million added costs to Public Defender budgets implies a $152 million cost increment on the District Attorney side in the 58 counties.

7. In sum, if Proposition 115 is enacted, the total added attorney and support staff required statewide to implement it are projected to be in excess of $300 million.

COSTS OF COMPARATIVELY MORE FELONY DEFENDANTS WHO ARE CONVICTED AT TRIAL WITHOUT A PLEA OF GUILTY.

8. If Proposition 115 is enacted, many cases which previously terminated by guilty plea are now expected to be tried due to the absence of a "reality check" and the opportunity afforded by the preliminary hearing procedure and associated discovery to disclose and test the evidence against the defendant. Grand jury indictments would, under Proposition 115, eliminate the preliminary hearing process in which both sides test the strength of their respective cases, and confront actual witnesses and evidence.

9. This forecast reduction in historical conviction rates via guilty pleas before trial implies substantial downstream increases in both court costs and prison costs as additional cases reach full trial stage in Superior Courts, and longer sentences

are imposed for convictions following trial than would be the case with a plea of guilty prior to trial.

10. Attached as Exhibit 2 is a true and correct copy of California Superior Courts Table 16 published by the Judicial Council of California in its Annual Data Reference volume for 1988-89. Table 16 indicates there were 113,386 felony convictions in California in the 1988-89 fiscal year. Of these, 107,525 individuals were convicted before trial on a plea of guilty; 1,686 persons were convicted after court trial, and 4,175 were convicted after jury trial, for a total of 5,861 convicted in trials. Except where otherwise indicated, I developed the projections below utilizing these data.

11. Approximately 94.8% of all cases are resolved by entering a guilty plea prior to trial (but generally after the preliminary hearing under current California criminal justice system procedures).

12. I understand that the criminal procedures that Proposition 115 would impose on California trial courts, such as the absence of post-indictment preliminary hearings, are based on the procedures now used in the federal courts. In the "streamlined" federal court system, only 84.81% plead guilty prior to trial. This figure was determined on the basis of Exhibit 3 attached hereto, which is a data compilation prepared by the Administrative Office, U.S. Courts, Criminal Branch, Statistics and Reports Division, Washington, D.C. Thus, assuming that if Proposition 115 passes, the guilty plea rate in the state court system will approximate that in the federal court system. This would mean that an additional 10% of cases now resolved by a

guilty plea would instead proceed to a trial, thus incurring more costs to the state. At the currently observed felony conviction rates shown in Exhibit 2, approximately 11,147 extra trials would result.

13. The estimate of 11,147 extra trials is very conservative, because the data presented in Exhibit 2 refer only to convictions, not trials. They do not include the number of additional felony trials which would result in dismissals or acquittals.

14. In California the average cost per case-related minute (judge plus indirect court costs) is $7.5223, or $2,588 per case-related day. This data is taken from Table A-3, p. 73, Judicial Council of California, 1989 Annual Report, Vol. I, a true and correct copy of which is attached as Exhibit 4.

15. Applying this average cost factor to the case rate we currently have and the additional trials that would result under Proposition 115 (as noted in paragraphs 10 and 12 above), and assuming an average trial of 5 days for felony cases, the resulting added cost to the California criminal justice system is:

11,147 more cases x 5 = 55,735 added case days
x $2,588 per case-related day
= $144,242,000

PROPOSITION 115 IMPACT ON CALIFORNIA PRISON COSTS.

16. Given the forecast additional 11,147 convictions after Superior Court trials per annum, it is feasible to estimate the incremental cost burden to the California Department of Corrections (CDC) based on the fact that according to empirical

studies and experience, sentences following trial have greater average length (I assumed 8 to 12 months more) than those sentences imposed on felony defendants who plead guilty prior to trial (which under the current system saves the State the cost of court time).

17. Exhibit 5 attached hereto is a true and correct copy of an article entitled "California Prisons," authored by the Legislative Analyst and published in The 1989-90 Budget: Perspectives and Issues, which states at page 210 that the CDC's 1988-89 fiscal year per inmate average operating cost was $19,355. Applying this figure, the range of additional annual costs under Proposition 115 is estimated to be $172,600,148 to $215,750,185.

18. Note that the figures of $173 to $215 million do not include the longer sentences for persons convicted of crimes that are classified as "more serious" under Proposition 115. As the State Legislative Analyst implies, these costs which I have not yet estimated may indeed be "significant."

ALLOWANCE FOR COST SAVINGS TO THE CRIMINAL JUSTICE SYSTEM UNDER PROPOSITION 115.

19. Some significant cost savings and efficiencies clearly would result from the implementation of Proposition 115. These must be included in the analysis to obtain a fair and proper benefit-cost analysis, and weight the total positive and negative fiscal impacts of the measure in order to provide a net system cost. Again, we need to examine the opportunity cost of the measure -- that is, what are the tradeoffs and what must be sacrificed in terms of alternative uses of the funds required by this proposition.

20. There will be possible savings gained by the elimination of the preliminary hearing process. To be safe, I made the conservative assumption that there are now 100,000 cases with preliminary hearings. I ignored the extra costs entailed by the approximately 11,000 additional trial setting conferences implied by Proposition 115.

21. It is estimated that, on average, elimination of the use of testimony from percipient witnesses in preliminary hearings would save 45 minutes per case. This results in the following budget savings:

	100,000	preliminary hearings
x	45	court-related minutes
=	4,500,000	judge/court minutes
=	75,000	judge/court hours saved
x	$ 7.5223	cost per case-related minute
=	$33,850,350	cost savings per year

22. Next, I forecast the cost savings due to a significant reduction in the voir dire process. Assume that on average one-half day is saved per felony trial for all 17,000 trials. This gives the following result:

	17,000	trials
x	180	minutes court-time saved per trial
=	3,060,000	minutes saved per year
x	$ 7.5223	cost per case-related minute
=	$23,018,238	costs savings per year

23. Finally, I provide the budgetary savings estimate which will flow from the consolidation of trials. In my judgment, this will be of minor overall significance in comparison with other provisions already estimated above.

Assume that 1% of all trials will be consolidated if Proposition 115 passes. That implies, at currently observed rates:

	170	fewer trials per year
x	5	average days per felony trial in California
=	850	trial days saved by the system
x	$ 2,588	cost per case-related day
=	$ 2,199,800	total cost savings per year

24. This projection assumes there is currently no slack in the judicial system. According to the 1989 Judicial Council Annual Report, the indication is exactly the opposite; namely, the system is operating in excess of its efficient capacity, and the implementation of Proposition 115 will exacerbate the existing situation because the court/judge time saved under one provision will be cancelled by the increase in court/judge time required under other provisions.

25. I prepared the following two tables to summarize most of the calculations referred to above:

TABLE 1: SUMMARY

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 Million - $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 based on above factors:	$561.9 Million

TABLE 2.

COMPARATIVE DATA AND CALCULATIONS
FEDERAL COURTS V. STATE COURTS: CONVICTIONS AT TRIAL
IN CONTRAST TO CONVICTIONS BY GUILTY PLEA PRIOR TO TRIAL

1988-89 FY
[SOURCE: EXHIBIT 2: CALIFORNIA SUPERIOR COURTS TABLE 16]

Total Felony Convictions after Jury Trial	4,175
Total Felony Convictions after Court Trial without Jury	1,686
Subtotal	5,861
Total Felony Convictions Including Guilty Please	113,386
15% of 113,386	17,008
less:	5,861
	11,147
Percent Convictions at Trial (Proportion of Convictions not achieved prior to trial) for California	5.169%
Percent Convictions at Pre-Trial Stage (Proportion of convictions achieved prior to trial)	94.831%
Comparable Rate in the Federal Judicial System	84.81%
Percent convictions at Trial (Proportion of Convictions not achieved prior to trial) for Federal Courts	15.19%
Difference between two Rates (15.19% - 5.169%)	10.02%

Result: If Proposition 115 passes, approximately 10% more felony convictions will be achieved by trial as opposed to a conviction by a pretrial guilty plea.

I declare under penalty of perjury that the foregoing is true and correct and that this Declaration is executed this 2nd day of March, 1990 in Berkeley, California.

C. Daniel Vencill, Ph.D.