

Two death penalty propositions on California ballot

By Adam Mclean
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While the focus on Election Day will be on the contest between two extremely reactionary big business candidates who are both opposed by the majority of the population, Californians will also be voting on 17 separate statewide propositions.

Two of these, Proposition 62 and Proposition 66, concern the death penalty. One calls for ending the death penalty and the other for streamlining the process of state murder. If they are both passed, the one with the most votes would become law.

The current law providing for the death penalty in California was passed by a 70 percent majority in 1978. It came in the aftermath of a 1972 U.S. Supreme Court decision in *Furman v. Georgia*, which found that capital punishment was being applied in an unconstitutional manner while making no ruling on the constitutionality of capital punishment itself.

In 2012, a proposition similar to the one on the current ballot calling for an end to the death penalty in California was narrowly defeated in a 53-47 percent vote.

While capital punishment remains the law in California, only 13 of the 930 individuals who received a death sentence since 1978 have been executed. The last inmate executed in the state, Clarence Ray Allen, was killed by means of lethal injection in 2006 at the age of 76, after having spent 23 years on death row. As of July 1, there were 741 individuals still on California's death row, out of the 2,905 people sentenced to die throughout the US.

Millions of people in California and throughout the country oppose the death penalty as a barbaric practice that represents the ultimate violation of democratic rights and the U.S. Constitution's prohibition of "cruel and unusual punishment." A poll conducted last month by Pew Research found that, for the first time in half a century, less than half of those polled nationwide supported capital punishment. The US remains the only Western advanced capitalist country to continue the practice of state murder.

Yet both of these propositions concentrate not on these fundamental considerations, but rather on the fact that "legal and bureaucratic hurdles" have led to a backlog of inmates on death row and a fiscal burden upon the state in dealing with legal appeals and the maintenance of death row facilities.

Proposition 66 attempts to remove or mitigate these hurdles

and make the entire process more efficient, i.e., to streamline the operation of the state murder apparatus. It does this by setting arbitrary time limits for legal review windows, eliminating special housing for death row inmates, limiting successive appeals by defendants, exempting prison officials from existing regulations for developing execution methods and enabling the transfer of inmates between prisons. It also changes the method for selecting attorneys to handle death penalty appeals in a manner that would leave those facing execution with less than competent counsel. Police and jail guard unions across the state have endorsed the measure, along with the Republican Party.

Proposition 66 would additionally require the condemned to work while awaiting their execution, and would mandate the transfer of up to 70 percent of their wages to the families of their victims.

The supporters of Proposition 66 argue that the death penalty is a necessary and generally appropriate legal response to certain crimes, but that, in practice, legal impediments have rendered it a waste of time and money. Its supporters claim its proposed changes will save tens of millions of dollars annually.

Proposition 62, dubbed "The Justice that Works Act," would legally end the death penalty in the state. Should it be passed, California would be the 21st state to abolish the death penalty. The legality of the death penalty is facing judicial challenges in several other states, including Delaware and Nebraska, and its fate in those states is still unresolved.

The arguments put forward by those motivating Proposition 62, however, are based not on the fundamental inhumanity of the death penalty, but, like Proposition 66, on the prospect of saving the state money. Supporters claim that Proposition 62 will do this more effectively than Proposition 66, estimating savings on the order of \$1 billion within five years.

After indicting California's current system of capital punishment as both ineffective in producing executions and a waste of money, the text of Proposition 62 endorses the sentence of life in prison without the possibility of parole as a preferable alternative.

The text of the proposition reads: "Violent murderers who are sentenced to serve life in prison without the possibility of parole in California are *never* eligible for parole. They spend

the rest of their lives in prison and they die in prison.”
(Emphasis in original)

In other words, the proposition proposes replacing what is now a very uncertain death penalty, given the lack of any executions in a decade, with a very certain one: condemnation to die in prison after an indefinite period of incarceration. No one sentenced to life without parole has left prison alive in California or any other state.

It is worth noting that this barbaric form of sentencing, based on the premise that the purpose of the so-called “criminal justice system” is maximum punishment, retribution and revenge, does not exist even in some countries that, like the U.S., are notorious for continuing to carry out executions, such as China and Pakistan.

In the US as a whole, out of 159,000 people sentenced to life in prison as of 2012, just under a third—nearly 50,000—were serving life without a chance of parole. The numbers have grown rapidly with a decline in the use of the death penalty.

Proposition 62 would further “require everyone convicted of first degree murder and sentenced to life imprisonment without the possibility of parole to work while in prison, and to increase to 60 percent the portion of wages they must pay as restitution to their victims.”

This additional punishment is advanced under conditions where there has been a wave of strikes in prisons across the country by inmates protesting their being compelled to perform what amounts to slave labor.

Wages for labor in prison are already extremely low, when there are any wages at all. Wages for prisoners working for Federal Prison Industries, a government corporation that employs seven percent of the prison workforce, range from 23 cents to \$1.15 per hour.

There are currently many more prisoners serving sentences of life without parole than there are death row inmates. Since the new restitution clause would apply to the entirety of the former category and not just those on death row, the 60 percent deduction would apply to a layer of the prison population that is several orders of magnitude larger than those presently on death row.

When Proposition 34, very similar in its content to Proposition 62, was on the ballot in 2012, attempts were made to poll death row prisoners on their attitude to the ballot measure. The results suggested overwhelming opposition to the proposition by prisoners, who saw their death sentences being commuted to life without parole as worsening their conditions of imprisonment and automatically depriving them of their right to obtain state-appointed lawyers to pursue their habeas corpus appeals and potentially prove their innocence.

Proposition 62 is endorsed by the Democratic Party and those in its orbit, including the Peace and Freedom Party and the Greens. It also has the backing of several California billionaires, primarily from the technology industry.

Huge sums of money have been raised in support of both

death penalty propositions. Supporters of Proposition 62 have raised \$9 million for its support and another \$10 million to oppose Proposition 66. Backers of Proposition 66 have raised \$13 million for its support and another \$12.5 million to oppose Proposition 62.

Opposition to the death penalty is steadily growing. This is of a piece with popular revulsion over police violence and growing opposition to the political establishment as a whole. The death penalty is increasingly seen as another tool of state repression, imposed overwhelmingly against the most oppressed layers of the working class. Yet proposition 62 makes no appeal to these mass sentiments.

Nowhere in the arguments advanced for this proposition is there a hint of the Enlightenment principle that the justice system should aim for reform rather than punishment or retribution. There is no trace of the notion that “every punishment which does not arise from absolute necessity is tyrannical,” as Montesquieu said.

In place of this, and in place of the rights of the accused, there is homage to victims’ rights, which is broadened to include revenge in the name of “closure.”

No question on the ballot can be considered outside of broader political considerations. Each proposition comes from capitalist elements and is drafted with capitalist political and economic interests in mind. Even where there is an element of progressive content — ending the death penalty — it is laced with reactionary caveats.

The barbaric practices of capital punishment and life imprisonment without the possibility of parole are both expressions of the violent and criminal character of the American capitalist state and the vast social inequality that is a pervasive feature of American life. They are both predicated on the aristocratic principle that the wealthy and powerful are free to do whatever they want, while the poor and powerless are to be humiliated and degraded. Those conditions cannot be changed by ballot propositions, but only by means of the class struggle.

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