

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,
v.
RUBEN PHILLIP FRANCO,
Defendant and Appellant.

Case No. S233973 **SUPREME COURT FILED**
JUL 12 2017
Jorge Navarrete Clerk

Deputy

Court of Appeal, Second Appellate District, Case No. B260447
Los Angeles County Superior Court, Case No. VA125859
The Honorable Roger Ito, Judge

RESPONDENT'S ANSWER BRIEF ON THE MERITS

XAVIER BECERRA
Attorney General of California
GERALD A. ENGLER
Chief Assistant Attorney General
LANCE E. WINTERS
Senior Assistant Attorney General
LOUIS W. KARLIN
Deputy Attorney General
THERESA A. PATTERSON
Deputy Attorney General
State Bar No. 185407
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 620-6004
Fax: (213) 897-6496
Email: DocketingLAAWT@doj.ca.gov
Theresa.Patterson@doj.ca.gov
Attorneys for Plaintiff and Respondent

TABLE OF CONTENTS

	Page
Issue Presented	9
Introduction	9
Statement of the Case and Facts	10
Argument.....	13
I. For Purposes of Section 473, Subdivision (b), the Term “Value” Means the “Stated” or “Face” Value of the Forged Instrument.....	13
A. Standard of Review and Relevant Principles of Statutory Interpretation	13
B. In the Context of a Forged Financial Instrument, the Plain Meaning of “Value,” as Used in Section 473, Subdivision (b), is the Instrument’s “Stated” or “Face” Value.....	15
1. In the context of a forged financial instrument, which by definition has no meaningful legal value, and which is likely to contain a stated value, the stated value of the instrument was likely intended	16
2. The essence of forgery is the defendant’s means and intent to defraud, and, unlike theft offenses, the crime is completed before any loss occurs; in this context, the plain meaning of “value” is the “stated” value, as this amount is commensurate with the defendant’s culpability	18
3. The “fair market value” test is inapplicable in the context of forgery	24
C. The Official Voter Information Guide for Proposition 47 Suggests That the Electorate Intended “Stated” or “Face” Value.....	29
D. The Rule of Lenity is Inapplicable	32

TABLE OF CONTENTS
(continued)

	Page
II. Even Under Franco’s Proposed Definition of “Monetary Worth,” as Measured by the Worth of the Money or Property Taken or Likely to be Taken Via the Forged Instrument, Franco Failed to Meet his Burden of Establishing Eligibility Under Proposition 47	32
Conclusion.....	35

TABLE OF AUTHORITIES

	Page
CASES	
<i>Bowland v. Municipal Court</i> (1976) 18 Cal.3d 479	14, 23
<i>Bruns v. E-Commerce</i> (2011) 51 Cal.4th 717	13
<i>Buck v. Superior Court</i> (1965) 232 Cal.App.2d 153	20
<i>Horwich v. Superior Court</i> (1999) 21 Cal.4th 272	13, 24
<i>In re Basinger</i> (1988) 45 Cal.3d 1348	33
<i>In re Derrick B.</i> (2006) 39 Cal.4th 535	14, 21
<i>In re Harris</i> (1989) 49 Cal.3d 131	14, 23
<i>In re J.W.</i> (2002) 29 Cal.4th 200	26
<i>In re Lance W.</i> (1985) 37 Cal.3d 873	14
<i>Lee v. Hanley</i> (2015) 61 Cal.4th 1225	21
<i>Lewis v. Superior Court</i> (1990) 217 Cal.App.3d 379	18
<i>Life Technologies Corp. v. Promega Corp.</i> (2017) 137 S.Ct. 734	16

TABLE OF AUTHORITIES
(continued)

	Page
<i>Madrigal v. Victim Compensation and Government Claims Board</i> (2016) 6 Cal.App.5th 1108	<i>passim</i>
<i>Manhattan Sepulveda, Ltd. v. City of Manhattan Beach</i> (1994) 22 Cal.App.4th 865	27
<i>People ex rel. Lungren v. Superior Court</i> (1996) 14 Cal.4th 294.....	32
<i>People v. Baender</i> (1924) 68 Cal.App. 49	20
<i>People v. Bendit</i> (1896) 111 Cal. 274.....	18, 19
<i>People v. Cook</i> (1965) 233 Cal.App.2d 435	27
<i>People v. Cruz</i> (1996) 13 Cal.4th 764.....	15
<i>People v. Cuellar</i> (2008) 165 Cal.App.4th 833	17, 21, 28
<i>People v. Floyd</i> (2003) 31 Cal.4th 179.....	14
<i>People v. Franco</i> (2016) 245 Cal.App.4th 679	12
<i>People v. Gonzales</i> (2016) 6 Cal.App.5th 1067	12
<i>People v. Horowitz</i> (1945) 70 Cal.App.2d 675	19, 20
<i>People v. Johnson</i> (2016) 1 Cal.App.5th 953	12, 33

TABLE OF AUTHORITIES
(continued)

	Page
<i>People v. Johnson</i> (2015) 61 Cal.4th 674.....	13
<i>People v. Jones</i> (1962) 210 Cal.App.2d 805	25, 33
<i>People v. Lowery</i> (2017) 8 Cal.App.5th 533	<i>passim</i>
<i>People v. McAffery</i> (1960) 182 Cal.App.2d 486	20
<i>People v. McKenna</i> (1938) 11 Cal.2d 327	25
<i>People v. Morgan</i> (1956) 140 Cal.App.2d 796	20
<i>People v. Neder</i> (1971) 16 Cal.App.3d 846	19, 24
<i>People v. Nuckles</i> (2013) 56 Cal.4th 601	32
<i>People v. Park</i> (2013) 56 Cal.4th 782.....	13
<i>People v. Parker</i> (1967) 255 Cal.App.2d 664	20, 25
<i>People v. Rivas-Colon</i> (2015) 241 Cal.App.4th 444	33
<i>People v. Rizo</i> (2000) 22 Cal.4th 681	13, 29
<i>People v. Romanowski</i> (2017) 2 Cal.5th 903.....	<i>passim</i>

TABLE OF AUTHORITIES
(continued)

	Page
<i>People v. Salmorin</i> (2016) 1 Cal.App.5th 738	12, 23, 24
<i>People v. Sherow</i> (2015) 239 Cal.App.4th 875	33
<i>People v. Turner</i> (1896) 111 Cal. 278.....	19
<i>Robert L. v. Superior Court</i> (2003) 30 Cal.4th 894.....	14, 15
<i>United States Rubber Co. v. Union Bank & Trust Co.</i> (1961) 194 Cal.App.2d 703	17, 21, 28
<i>United States v. Williams</i> (2008) 553 U.S. 285	16
<i>Welco Electronics, Inc. v. Mora</i> (2014) 223 Cal.App.4th 202	21
STATUTES	
Evid. Code § 500	33

TABLE OF AUTHORITIES
(continued)

	Page
Pen. Code	
§ 166	19
§ 470	17, 18, 19, 26
§ 470a.....	19
§ 470b	19
§ 471.5	19
§ 472	19
§ 473	<i>passim</i>
§ 474	19
§ 475	11, 19, 26
§ 476	17, 19, 27
§ 476a.....	30, 31
§ 484	19, 20
§ 490.2	22
§ 496	11
§ 1170.18.....	33

OTHER AUTHORITIES

2 Bish. Cr. Law (8th Ed.) § 523	18
2 Witkin, Cal. Crim. Law (4th ed. 2012).....	18
Antonin Scalia & Bryan A. Garner, <i>Reading Law: The Interpretation of Legal Texts</i> 69 (2012)	16
CALCRIM	
No. 1930.....	20
No. 1932.....	20
CALJIC	
No. 15.03.....	20
Merriam Webster’s Collegiate Dict. (10th ed. 1997) p. 1305.	17
Voter Information Guide, Gen. Elec. (Nov. 4, 2014).....	15, 29, 30, 31

ISSUE PRESENTED

For the purpose of the distinction between felony and misdemeanor forgery, is the value of an uncashed forged check the face value (or stated value) of the check or only the intrinsic value of the paper it is printed on?

INTRODUCTION

Applying longstanding rules of statutory construction, the term “value” as used in Penal Code section 473, subdivision (b)¹ should be interpreted to mean the “face” or “stated” value of a forged instrument, as this would preserve the commonsense meaning most likely intended by the electorate in enacting Proposition 47. A punishment determination based on the forged instrument’s face amount rationally reflects the defendant’s culpability—the amount the defendant intended to take. In contrast, an intrinsic or fair market valuation would bear little if any rational relationship to culpability.

Unlike theft, which requires a taking, the essence of forgery is the “means” (i.e., possessing a forged check with the intent to defraud) as opposed to the “end” (i.e., obtaining property). For purposes of forgery, it is immaterial whether the instrument has any independent value because the crime is complete when the deceptive act is done with the requisite intent. It follows that because the crime is keyed to intent and requires no taking, valuation makes sense only in reference to the instrument’s face or stated value. That is, to the extent a person would *potentially* be defrauded by acting upon a forged check as *genuine*, the stated value is the only relevant value, as it represents the controlling value of a check believed to be genuine.

¹ All further statutory references are to the Penal Code, unless otherwise stated.

In contrast, Franco's approach of determining the value of a forged check (its monetary worth, measured by the amount of money obtained or likely to be obtained) ignores the very nature of the crime of forgery, while focusing on concerns that are relevant only to theft-related offenses. Because forged checks have no legal value, factors such as the quality of the forgery and the likelihood of the instrument being honored should have no significance in determining "value." These factors are already accounted for in determining whether the instrument in question may properly form the basis of a forgery offense; an instrument that is so defective on its face that, as a matter of law, it is not capable of defrauding anyone, may not be the subject of forgery. But absent such a showing, the likelihood of actual loss should have no role in evaluating whether a forgery automatically qualifies as a misdemeanor, as the offense focuses on the defendant's intent to defraud and requires no proof of actual loss. In short, as the Court of Appeal found in rejecting Franco's argument, it would be absurd to believe the Proposition 47 voters intended to impose a \$950 cutoff for misdemeanor punishment, while applying a theft-derived definition of value whereby every forged instrument would be deemed inherently worthless, instead of a commonsense, straightforward focus on the face amount, which would rationally inform the salient determination—whether a defendant's culpability is deserving of felony punishment.

STATEMENT OF THE CASE AND FACTS

On July 17, 2012, Jeni Muniz's purse, containing her checkbook, was stolen from her parked car while she shopped at a drugstore in Whittier. (1CT 20-21.) A few days later, Los Angeles County Sheriff's deputies contacted Franco on the street, searched Franco's wallet, and discovered one of Muniz's checks. The check bore a signature of "Jeni Muniz," it was made out for the amount of \$1,500, and the payee was left blank. (1CT 4-7, 21-22.) Franco told the deputies that his employer, "Chris," had owed

him \$200. Franco said that Chris had given him the check because it was a “bad check” and he could not cash it; Chris said that if Franco could cash the check, he could keep the money. (1CT 11-12, 15, 18-19.) Muniz denied signing her name on the check, and denied giving anyone permission to sign the check on her behalf. (1CT 21-22.)

On January 16, 2013, Franco pleaded guilty to one count of forgery (§ 475, subd. (a)) and one count of receiving stolen property (§ 496, subd. (a)). (1RT 4-9; 1CT 48-49.)² Franco was sentenced to prison for four years. Execution of sentence was suspended, and Franco was placed on formal probation for three years, with a condition that he serve 365 days in county jail. (1RT 7-9; 1CT 49-51.)

Almost two years later, Franco appeared in superior court for a probation violation hearing. Franco apparently made an off-the-record request for his forgery conviction to be reclassified as a misdemeanor. (See 1ART 301.)³ The trial court stated that notwithstanding the fact that the check was never tendered, it appeared that the offense would constitute a felony if the amount owed on the check exceeded \$950. Franco’s counsel argued that the amount written on the check had no relevance absent an attempt to cash it. The trial court denied the request to reclassify the forgery offense to a misdemeanor, finding that the amount written on the

² In the instant proceeding, Franco’s sole claim focuses on his forgery conviction. Franco’s conviction for receiving stolen property is not at issue.

³ The clerk’s transcript on appeal does not include any written petition or application. Further, the reporter’s transcript on appeal does not include any oral request made by Franco. At the outset of the probation violation hearing held on November 19, 2014, the court began by addressing an argument that had apparently been made off the record by Franco’s counsel. The trial court characterized it as a “request for reclassification as a misdemeanor.” (1ART 301-302.)

check was determinative. (1ART 301-302.) The trial court then found that Franco had violated the terms of his probation. Franco’s probation was revoked, and the previously suspended sentence of four years was imposed. (1CT 62; 1ART 305-308.)

Franco appealed, arguing that the trial court erred in denying his request to reclassify his forgery conviction as a misdemeanor. Franco maintained that the value of the check should be measured by its intrinsic value, which was less than \$950.⁴ The Second Appellate District, Division Seven, affirmed. (*People v. Franco* (2016) 245 Cal.App.4th 679, review granted June 15, 2016, S233973.) In a published opinion, the court rejected Franco’s claim that the intrinsic value of the check was determinative for purposes of evaluating a check’s “value” under section 473, subdivision (b). The court held that when viewed in the context of forgery, the word “value,” as used in section 473, subdivision (b), must correspond to the face value of the check in order to avoid absurd consequences. (*Id.* at p. 684.)⁵ This Court granted Franco’s petition for review.

///

///

///

⁴ Franco also raised other issues on appeal which are not before this Court.

⁵ See also *People v. Gonzales* (2016) 6 Cal.App.5th 1067, 1072, fn. 6 [“When viewed in the context of forgery, the word ‘value’ as used in section 473(b) must correspond to the stated value of the instrument as opposed to its inherent value [citation] in order to avoid the absurd consequences of a monetary limit that would not have any meaning [citation].”], review granted Feb. 15, 2017, S240044; *People v. Salmorin* (2016) 1 Cal.App.5th 738, 744-745 [“for purposes of resentencing under Proposition 47, the value of a forged check is the face value of the check”]; but see *People v. Lowery* (2017) 8 Cal.App.5th 533, rev. granted April 19, 2017, S240615.

ARGUMENT

I. FOR PURPOSES OF SECTION 473, SUBDIVISION (B), THE TERM “VALUE” MEANS THE “STATED” OR “FACE” VALUE OF THE FORGED INSTRUMENT

In the context of check forgery, it is immaterial whether the instrument has any independent value. Liability focuses on the means and intent to defraud, and does not require proof of actual loss. In this context, consistent with the reasoning of the Court of Appeal in this case, the most commonsensical, straightforward interpretation of the term “value” is the check’s “stated” or “face” value because it reflects the defendant’s criminal intent. Franco’s contrary interpretation, that “value” means “intrinsic” or “actual monetary worth,” is inconsistent with forgery law and would lead to absurd results.

A. Standard of Review and Relevant Principles of Statutory Interpretation

Reviewing courts independently determine issues of law, such as the interpretation and construction of statutory language. (*Bruns v. E-Commerce* (2011) 51 Cal.4th 717, 724.)

The interpretation of a ballot initiative is governed by the same rules that apply in interpreting a statute enacted by the Legislature. (*People v. Park* (2013) 56 Cal.4th 782, 796; *People v. Rizo* (2000) 22 Cal.4th 681, 685.) It is well-settled that the objective of statutory construction is to ascertain and effectuate legislative intent. (*Horwich v. Superior Court* (1999) 21 Cal.4th 272, 276.) Because the statutory language is generally the most reliable indicator of intent, a reviewing court looks first to the words of the statute, giving them their usual and ordinary meaning and construing them in in the context of the statutory scheme. (*People v. Johnson* (2015) 61 Cal.4th 674, 682.) However, “[t]he words must be construed in context and in light of the statute’s obvious nature and

purpose,” and “[t]he terms of the statute must be given a reasonable and commonsense interpretation that is consistent with the Legislature’s apparent purpose and intention.” (*Madrigal v. Victim Compensation and Government Claims Board* (2016) 6 Cal.App.5th 1108, 1113.) In so doing, the interpretation “should be practical, not technical, and should also result in wise policy, not mischief or absurdity.” (*Id.* at pp. 1113-1114.) As a corollary, “a specific provision should be construed with reference to the entire statutory system of which it is a part, in such a way that the various elements of the overall scheme are harmonized,” so as to respect the “policy sought to be implemented . . . , and to this end, titles of acts, headnotes, and chapter and section headings may properly be considered in determining legislative intent.” (*Bowland v. Municipal Court* (1976) 18 Cal.3d 479, 489.) “Generally, the drafters who frame an initiative statute and the voters who enact it may be deemed to be aware of the judicial construction of the law that served as its source.” (*In re Harris* (1989) 49 Cal.3d 131, 136, citing *In re Lance W.* (1985) 37 Cal.3d 873, 890, fn. 11 [“The adopting body is presumed to be aware of existing laws and judicial construction thereof”].)

If the language of the statute is ambiguous and supports more than one reasonable interpretation, a reviewing court looks to a variety of extrinsic aids, including the objects to be achieved, the evils to be remedied, the legislative history, the statutory scheme of which the statute is a part, and contemporaneous administrative construction, as well as questions of public policy. (*In re Derrick B.* (2006) 39 Cal.4th 535, 539.) For a statute passed via a ballot initiative, the reviewing court will look to “other indicia of the voters’ intent, particularly the analyses and arguments contained in the official ballot pamphlet.” (*Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 900; see also *People v. Floyd* (2003) 31 Cal.4th 179, 187-188 [ballot pamphlet information is a valuable aid in construing the

intent of voters].) Any ambiguities in an initiative statute are “not interpreted in the defendant’s favor if such an interpretation would provide an absurd result, or a result inconsistent with apparent legislative intent.” (*People v. Cruz* (1996) 13 Cal.4th 764, 782, internal citation and quotation marks omitted.) Ultimately, the court’s duty is to interpret and apply the language of the initiative so as to effectuate the electorate’s intent. (*Robert L., supra*, 30 Cal.4th at p. 901.)

B. In the Context of a Forged Financial Instrument, the Plain Meaning of “Value,” as Used in Section 473, Subdivision (b), is the Instrument’s “Stated” or “Face” Value

Prior to Proposition 47, forgery statutes did not refer to the “value” of the forged instrument for purposes of distinguishing between a felony and a misdemeanor. As enacted by Proposition 47, section 473, subdivision (b) now makes certain types of forgery (forgery related to a check, bond, bank bill, note, cashier’s check, traveler’s check, or money order) a misdemeanor if the “value” of the instrument does not exceed \$950. (Official Voter Information Guide, Gen. Elec. (Nov. 4, 2014) text of Prop. 47, § 6, p. 71.) Viewed in the context of the statutory language, where the term “value” is used to modify forged financial instruments that have no meaningful value in the legal sense, but are likely to include a stated amount commensurate with the intended fraud, the plain meaning of “value” is the “stated” or “face” value of the instrument. This plain meaning is also evident when viewing the term “value” in the unique context of forgery law, which, unlike theft, does not require a taking and instead focuses on the means, coupled with the intent to defraud, as opposed to an actual loss.

///

///

///

///

1. In the context of a forged financial instrument, which by definition has no meaningful legal value, and which is likely to contain a stated value, the stated value of the instrument was likely intended

A term may have multiple meanings when viewed in isolation, and therefore should be viewed in the context of the surrounding language appearing in the statute. (See *Life Technologies Corp. v. Promega Corp.* (2017) 137 S.Ct. 734, 740 [although the word “substantial” is ambiguous when viewed in isolation, the context in which the word appeared in the statute (“all or a substantial portion of the components of a patented invention”) resolved the ambiguity and pointed to a quantitative rather than a qualitative meaning]; see also *United States v. Williams* (2008) 553 U.S. 285, 294 [“[A] word is given more precise content by the neighboring words with which it is associated”].)

As two leading commentators explain, legal meaning will typically depend on context. “Words are to be understood in their ordinary, everyday meanings—unless the context indicates that they bear a technical sense.” (Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 69 (2012).) “Most common English words have a number of dictionary definitions, some of them quite abstruse and rarely intended. One should assume the contextually appropriate ordinary meaning unless there is reason to think otherwise. Sometimes there *is* reason to think otherwise, which ordinarily comes from context.” (*Id.* at p. 70, italics in original; see also *People v. Garcia* (2017) 2 Cal.5th 792, 805 [words and phrases should be construed according to their statutory context].)

Dictionary definitions for the term “value” include “a fair return or equivalent in goods, services, or money for something exchanged”; “the monetary worth of something”; “relative worth, utility, or importance”; and “a numerical quantity that is assigned or is determined by calculation or

measurement.” (Merriam Webster’s Collegiate Dict. (10th ed. 1997) p. 1305.) But the context of the statutory language used in section 473, subdivision (b), as well as the history and purpose of laws prohibiting forgery, compel a finding that the electorate intended “value” to mean the stated numerical quantity on the face of the forged instrument.

In section 473, subdivision (b), the term “value” is used to modify a list of seven specific financial instruments that may be used to commit forgery. It is important to note that while forgery may be committed via a variety of different instruments (see, e.g., §§ 470-476), the seven instruments selected for inclusion in Proposition 47 (check, bond, bank bill, note, cashier’s check, traveler’s check, or money order) share a common feature: each is a financial instrument that typically contains a “face” or “stated” value which represents the purported monetary worth of the instrument, assuming it is genuine. A forged instrument has no “value” in the legal sense, aside from the intrinsic value of the paper on which the instrument is written. (*People v. Cuellar* (2008) 165 Cal.App.4th 833, 838-839; *United States Rubber Co. v. Union Bank & Trust Co.* (1961) 194 Cal.App.2d 703, 708-709.) Since a forged instrument will never have a legal value exceeding \$950, and because the seven types of instruments selected for misdemeanor forgery treatment are likely to have a stated value, the most logical inference is that in this context, the “stated” value was intended. (See *Madrigal v. Victim Compensation and Government Claims Board*, *supra*, 6 Cal.App.5th at pp. 1113-1114 [a statute should be interpreted to avoid absurd results].)

///

///

///

///

///

2. The essence forgery is the defendant's means and intent to defraud, and, unlike theft offenses, the crime is completed before any loss occurs; in this context, the plain meaning of "value" is the "stated" value, as this amount is commensurate with the defendant's culpability

Interpreting "value" as "stated" value is consistent with the history and purpose of laws prohibiting forgery, which differ in crucial ways from theft-related offenses. Understanding the critical distinctions between forgery and theft-related offenses makes clear that recourse to intrinsic or market value is appropriate to the latter, but anomalous to the former.

Under California law, the crime of forgery derives from the common law definition of forgery. (See *Lewis v. Superior Court* (1990) 217 Cal.App.3d 379, 385-387.) At common law, forgery was defined as the "false making or materially altering, with intent to defraud, of any writing which, if genuine, might apparently be of legal efficacy, or the foundation of a legal liability." (*People v. Bendit* (1896) 111 Cal. 274, 280, internal quotation marks omitted, citing 2 Bish. Cr. Law (8th Ed.) § 523.) California's main forgery statute, section 470, differs from the common law to the extent it "enumerates a very large number of writings as subjects of forgery." (*Id.* at p. 280;⁶ see also 2 Witkin, Cal. Crim. Law (4th ed. 2012)

⁶ Section 470, subdivision (a) states in relevant part that "[e]very person who, with the intent to defraud, knowing that he or she has no authority to do so, signs the name of another person or of a fictitious person to any of the items listed in subdivision (d) is guilty of forgery." Subdivision (d) provides in relevant part that "[e]very person who, with the intent to defraud, falsely makes, alters, forges, or counterfeits, utters, publishes, passes or attempts or offers to pass, as true and genuine, any of the following items, knowing the same to be false, altered, forged, or counterfeited, is guilty of forgery: any check, bond, bank bill, or note, cashier's check, traveler's check, money order"

(continued...)

Crimes Against Property § 166, Listed Writings; see also §§ 470a, 470b, 471.5, 472, 474-476 [addressing various instruments that may form the basis of a forgery conviction].) But aside from enumerating the specific documents that may be the subject of forgery, the definition of forgery as codified in the Penal Code has remained consistent with the common law definition. (*Bendit, supra*, 111 Cal. at p. 280.)

It is well recognized that forgery differs from theft in a crucial way: theft requires a taking, while forgery does not. (See *People v. Neder* (1971) 16 Cal.App.3d 846, 852; compare § 470-476 [forgery statutes do not include a “taking” element] with § 484 [definition of theft requires a “taking”].) Unlike theft, where the essential act is a taking, the “real essence” of forgery is not concerned with the “end,” i.e., what is obtained or taken by the forgery, but rather the “means,” i.e., the act of signing the name of another with the intent to defraud, or of falsely making a document or of uttering the document with the intent to defraud. (*Id.* at pp. 852-853; see also *People v. Horowitz* (1945) 70 Cal.App.2d 675, 687 [the intent to defraud another constitutes the essence of the crime of forgery, and the fact of forgery may imply an intention to defraud].)

Similarly, unlike theft-related offenses, forgery does not require proof that anyone was actually defrauded or suffered a loss as a result of the defendant’s actions. (See *People v. Turner* (1896) 111 Cal. 278, 280-281 [if the counterfeit writing might *possibly* deceive another, and it was prepared with intent to deceive and defraud another, it is immaterial

(...continued)

Section 475, subdivision (a) states: “Every person who possesses or receives, with the intent to pass or facilitate the passage or utterance of any forged, altered, or counterfeit items, or completed items contained in subdivision (d) of Section 470 with intent to defraud, knowing the same to be forged, altered, or counterfeit, is guilty of forgery.”

whether any person was actually injured]; *People v. Baender* (1924) 68 Cal.App. 49, 59 [to establish a forgery, it is unnecessary to prove that someone was actually defrauded, if the instrument might possibly deceive another, and was prepared with the intent to deceive and defraud another]; see also CALCRIM Nos. 1930-1932 [“It is not necessary that anyone actually be defrauded or actually suffer a financial, legal, or property loss as a result of the defendant’s actions”]; CALJIC No. 15.03 [“The existence of a specific intent to defraud is an essential element of the crime of forgery, but it is not necessary to complete the crime that any person be actually defrauded or suffer a loss by reason of the forgery”].)

The crime of forgery is completed before any actual loss is suffered. (*People v. Parker* (1967) 255 Cal.App.2d 664, 672; *Buck v. Superior Court* (1965) 232 Cal.App.2d 153, 162; *People v. McAffery* (1960) 182 Cal.App.2d 486, 493; *People v. Morgan* (1956) 140 Cal.App.2d 796, 800-801; *People v. Horowitz, supra*, 70 Cal.App.2d at p. 688.) In order to understand the manner in which value functions in the context of forgery, the crucial point is that because a forgery is complete “when the act is done with the requisite intent,” it necessarily follows that “[w]hether the instrument forged has independent value is unimportant.” (*Buck v. Superior Court, supra*, 232 Cal.App.2d at p. 162, italics added.)

In stark contrast, because theft offenses require a taking, any assessment of culpability is necessarily tethered to a determination of the property’s monetary value. As this Court recently explained, the Penal Code’s definition of theft “requires courts to determine the value of property obtained by theft based on ‘reasonable and fair market value.’” (*People v. Romanowski* (2017) 2 Cal.5th 903, 914 [quoting § 484, subd. (a)] [“In determining the value of the property obtained, for the purposes of this section, the reasonable and fair market value shall be the test.”].) Thus, when a forged instrument is the object of a theft offense, courts have no

choice but to determine the instrument's market value in that manner. In that context—as well as in the analogous context of conversion⁷—“a forged check does not have a value equal to the amount for which it is written. [Citation.] The check's value is ‘a nullity’; it is merely ‘an order to pay [citation] and is of no value unless accepted.’” (*People v. Cuellar, supra*, 165 Cal.App.4th at pp. 838-839 [quoting *United States Rubber Co. v. Union Bank & Trust Co., supra*, 194 Cal.App.2d at pp. 708-709] [holding a forged check could not be the subject of a conversion].) Absent any market value for theft purposes, the value of a forged instrument is merely the “slight intrinsic value by virtue of the paper it was printed on.” (*People v. Cuellar, supra*, 165 Cal.App.4th at pp. 838-839.)

Thus, for theft purposes, it makes perfect sense to construe value as intrinsic or market value, but it hardly follows that the same meaning should be imported into a statute intended to assess a defendant's culpability for forgery. Read in isolation, section 473, subdivision (b)'s reference to “value” may appear ambiguous because it is not expressly qualified by terms such as “face” or “stated.” But when interpreting words of a statute, the reviewing court should take into account context, the object of the legislation, the evils to be remedied, and existing law. (*In re Derrick B., supra*, 39 Cal.4th at p. 539.) Viewing the term “value” in the context of forgery law, and the evils to be remedied by laws targeting forgery, it is most likely that the voters intended “value,” as used to modify the seven

⁷ Conversion is defined as the “wrongful exercise of dominion over the property of another.” (*Lee v. Hanley* (2015) 61 Cal.4th 1225, 1240, internal quotation marks omitted, citing *Welco Electronics, Inc. v. Mora* (2014) 223 Cal.App.4th 202, 208.) The elements of a conversion claim include: (1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages. (*Lee v. Hanley, supra*, 61 Cal.4th at p. 1240; *Welco Electronics, Inc. v. Mora, supra*, 223 Cal.App.4th at p. 208.)

types of forgery designated as eligible for misdemeanor treatment under Proposition 47, in a sense that would comport with the statute's purpose—assessing the culpability of persons guilty of forgery.

A comparison of section 490.2, the provision that reduces certain theft offenses to misdemeanors under Proposition 47, with its forgery analogue, section 473, subdivision (b), shows that the initiative recognized the presence or absence of a taking as the key factor in distinguishing theft crimes from forgeries: Where the former refers to misdemeanor punishment for those who “obtain[] any property by theft where the value of the money, labor, real or personal property *taken* does not exceed nine hundred fifty dollars (\$950),” (§ 490.2, italics added), the latter refers to the “value of the check, bond, bank bill, note, cashier's check, traveler's check, or money order,” (§ 473, subd. (b)), without any reference to a taking, much less to whether the defendant successfully obtained money through the forgery—one of the rare instances in which Franco argues it could be shown that a forged check's value exceeded \$950. (AOBM 29-30.)

As noted above, the seven instruments selected for inclusion in Proposition 47 are financial instruments likely to contain a “face” or “stated” value which represents the purported monetary worth of the instrument, assuming it is genuine. This fact, combined with the nature of the offense of forgery (which focuses on the defendant's intent to defraud and requires no proof of actual loss), strongly suggests that the electorate intended “face” or “stated” value to be controlling for purposes of section 473, subdivision (b). Simply put, when a defendant intends to defraud another with a financial instrument bearing a stated amount, that amount is the most reliable indicator of the severity of the offense, as it represents the amount intended to be misappropriated.

It is presumed that the drafters of an initiative and the voters who approve it are aware of existing statutory law and its judicial construction.

(*In re Harris, supra*, 49 Cal.3d at p. 136.) Thus, at the time the voters enacted Proposition 47, it is presumed that they were aware of the basic principles of forgery jurisprudence. Since forgery focuses on a *potential* loss as opposed to *actual* loss, and the offense includes those instruments that have the effect of defrauding one who acts upon them as *genuine*, in this context, the \$950 threshold included in section 473, subdivision (b) should be interpreted as referring to the “face” or “stated” value. If the evil targeted by the offense of forgery is the *potential* that a person could be deceived into believing the instrument is genuine, and the offense requires proof of the defendant’s intent to defraud, the stated value of the instrument is the most relevant value for purposes of measuring the seriousness of the offense. Accordingly, interpreting “value” as “face” or “stated” value is most consistent with the voters’ intent.

By the same token, specific provisions like section 473, subdivision (b) “should be construed with reference to the entire statutory system of which it is a part,” in order to ensure the various elements of the overall scheme are harmonized, consistent with the “policy sought to be implemented.” (*Bowland v. Municipal Court, supra*, 18 Cal.3d at p. 489.) The fact that forgery and theft-related offenses are in different Penal Code chapters bolsters the reasonable inference that Proposition 47’s forgery-related provisions were intended to be treated in accord with forgery, rather than theft, jurisprudence. (*See ibid.*) Thus, the same kind of analysis that supported treatment of theft-of-access-card offenses as a theft offense for purposes of applying Proposition 47’s \$950 misdemeanor cutoff—the placement of that offense in a Penal Code chapter titled, “Theft”—argues against doing so here. (*See People v. Romanowski, supra*, 2 Cal.5th at pp. 911-12.)

In *People v. Salmorin, supra*, 1 Cal.App.5th at page 745, the court recognized “value” should be interpreted in accord with the nature of