

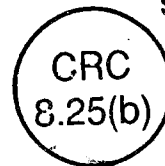
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**IN THE SUPREME COURT OF THE STATE OF CALIFORNIA**

In Re CHRISTOPHER LEE WHITE

No. S248125

Petitioner,



SUPREME COURT  
**FILED**

NOV 14 2018

Jorge Navarrete Clerk

On Habeas Corpus.

Deputy

Appeal from the Fourth Appellate District, Division One, Case No. D073054  
Superior Court of San Diego County, Case No. SCN376029  
The Honorable Robert J. Kearney, Judge

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## **ISSUES PRESENTED**

(1) Under what circumstances does the California Constitution permit bail to be denied in noncapital cases? Included is the question of what constitutional provision governs the denial of bail in noncapital cases - article I, section 12, subdivisions (b) and (c), or article I, section 28, subdivision (f)(3), of the California Constitution - or, in the alternative, whether these provisions may be reconciled.

(2) What standard of review applies to review of the denial of bail?

(3) Did the Court of Appeal err in affirming the trial court's denial of bail?

## **SUMMARY RESPONSE**

Article I, section 12, subdivisions (b) and (c), and Article I, section 28, subdivision (f)(3), of the California Constitution, address the same subject matter of a trial court's authority to set, reduce, or deny pre-trial bail. While sections 12(b) and 12(c) are mandatory, section 28(f)(3) is discretionary. Under Section 12(b), a defendant who is charged with a violent felony or sexual felony offense and, by clear and convincing evidenced, is shown to pose a substantial likelihood to commit great bodily harm to others, may be denied bail. A non-capital defendant who is not so charged and who does not pose a substantial likelihood to commit great bodily harm to other is entitled to pre-trial bail by sufficient sureties. Under section 28(f)(3) a court is to consider public and victim safety, seriousness of the charged non-capital offense, defendant's criminal record and probability of defendant appearing at trial or hearing before setting, reducing, or denying bail. The preceding provisions of Article I, sections 12(b) and 28(f)(3) may be reconciled.

Next, the standard of review to be applied to the lower court's denial of petitioner's motion for pre-trial bail in this case is whether substantial evidence supports the judgment. A trial court's resolution of pure questions



of fact is accepted as final if that judgment is supported by substantial evidence. (*In re Richards* (2012) 55 Cal.4th 948, 960.) Independent appellate review of the lower court's judgment is not applicable in this case because the lower court judgment did not resolve a question of law and apply the law to the facts.

Finally, the Court of Appeal did not err by applying a substantial evidence standard of review to affirm the lower court's denial of petitioner's motion for pre-trial bail. The lower court's denial of petitioner's motion was based on its resolution of pure questions of disputed facts and whether clear and convincing evidence presented showed that petitioner, who was charged with violent felony and sexual felony offenses as delineated in Article I, section 12(b), posed a substantial likelihood of causing great bodily harm to others if released.

#### **STATEMENT OF THE CASE<sup>1</sup>**

Petitioner and his co-defendant, Jeremiah Owens, were charged by the San Diego County District Attorney of attempted kidnaping with intent to commit rape (Pen. Code, § 209, subd. (b)), assault with intent to commit rape (Pen. Code, § 220, subd. (a)(1)), contact with a minor with intent to commit a sexual offense (Pen. Code, § 288.3, subd. (a)), and false imprisonment (Pen. Code, §§ 236 & 237, subd. (a)), of the same female victim. (*White, supra*, 21 Cal.App.5th at pp. 21, 23.)

On October 5, 2017, the lower court magistrate found sufficient evidence was presented to bind over petitioner and Owens to superior court for trial. The magistrate found Owens to be the actual perpetrator of the charged crimes and petitioner to be an aider and abettor to those crimes.

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<sup>1</sup> Respondent's Statements of Case and Facts are drawn from the published decision *In re Christopher White* (2018) 21 Cal.App.5th 18 (*White*).

(*White, supra*, 21 Cal.App.5th at p. 23.) With respect to petitioner being an aider and abettor, the magistrate found persuasive that:

(1) petitioner and Owens loitered in front of the victim's house without any legitimate purpose, (2) they stared at the victim in an abnormal manner, (3) petitioner told Owens that Owens should go into the house with the victim, (4) petitioner waited for Owens to come back from attacking the victim and drove away with him, and (5) petitioner behaved like a lookout during the attack.

(*Ibid.*)

The magistrate also read and considered petitioner's motion for bail pending trial. After listening to the parties' arguments pertaining to that request, the magistrate denied petitioner's request for bail pending trial.

(*White, supra*, 21 Cal.App.5th at pp. 23-24.) While noting that holding an accused on a non-capital offense without bail would be unusual, the magistrate stated that the circumstances of the underlying crimes justified its denial of petitioner's pre-trial bail motion because:

on the basis of the clear and convincing evidence that there is a substantial likelihood that the release of either [petitioner or Owens] would result in great bodily harm to others. I think the individuals [sic] at threat would be [the victim] herself. I also think other children, who are the most vulnerable members of our society, would be at risk based on the conduct in this case and what's alleged to have occur[red] in this case. So, it is extremely unusual, but I do find under these particular facts that the burden is met.

(*Id.* at p. 24.)

On November 3, 2017, petitioner filed a Petition for Writ of Habeas Corpus in the Court of Appeal challenging the magistrate's denial of his motion for pre-trial bail. (*White, supra*, 21 Cal.App.5th at p. 24.) The District Attorney filed its opposition to the habeas petition. On March 6, 2018, the Court of Appeal denied petitioner's habeas petition based on, in part, that sufficient evidence supported the magistrate's clear and convincing finding of proof that a substantial likelihood existed petitioner's

and Owens' pre-trial release would result in great bodily harm to others. (*White, supra*, 21 Cal.App.5th at pp. 29-31.)

On April 10, 2018, petitioner filed his Petition for Review in this court. (Case No. S248125.) The petition was granted on May 23, 2018. (*Ibid.*)

### STATEMENT OF FACTS

Fifteen-year-old J.D. lived with her family near the beach in Encinitas, California. On July 26, 2017, she was staying with friends. In the afternoon, she rode her bicycle to her family's house to get her surfboard and go surfing. Across from her house she saw two men standing near a blue truck. They were playing loud music and looked out of place. J.D. felt like they were watching her. (*White, supra*, 21 Cal.App.5th at p. 21.)

A woman loading her car nearby saw the two men and thought they looked "creepy." The men were staring at her as well. She was concerned that they might burglarize her vacation rental after she left. The woman's son thought they were being "creepy" also, so he took a Snapchat video of them. He told police he was worried about the men wanting to kidnap his younger brothers. (*White, supra*, 21 Cal.App.5th at p. 22.)

J.D. had a bad feeling about the men, so she went through a gate into her neighbor's yard, hopped over the fence, and went into her garage. She later said she was trying to prevent the men from seeing where she lived. J.D. retrieved her surfboard from the garage, went out front, and left the surfboard in her driveway. The men were still staring at her, which made her feel uncomfortable. (*White, supra*, 21 Cal.App.5th at p. 22.)

J.D. grabbed some surfboard wax and started to wax the surfboard. The men were still standing by their truck. J.D. noticed a few people walk by, and a surfer came up from the beach and asked to borrow some wax. (*White, supra*, 21 Cal.App.5th at p. 22.)

J.D. continued to wax her surfboard in the driveway. At some point, when she had her back to the road, one of the men from the truck came up behind her and grabbed her neck “like a pressure lock.” The man—later identified as White’s roommate Jeremiah Owens—shoved J.D.’s face toward the driveway, but J.D. managed to catch herself with her hands. Owens said, “All right. Let’s do this.” He tried to pull her upright and toward the truck. J.D. repeatedly told him “no” and “stop.” (*White, supra*, 21 Cal.App.5th at p. 22.)

J.D. managed to fight Owens off and step away from him. She saw the other man—later identified as White—still standing by the truck, looking up and down the street. She told Owens and White, “That’s not cool. You can’t do that.” White said, “We’re sorry” or “Sorry,” and J.D. backed away toward her house. But then, while J.D. was watching them, White looked at Owens and said, “Go in the house.” J.D. thought Owens would try and attack her again. (*White, supra*, 21 Cal.App.5th at p. 22.)

J.D. went through the gate, locked it “as fast as [she] could,” and ran into the house. Her neighbor’s dog was barking near the gate. J.D. was “really scared” and locked both doors into the house. She thought Owens and White were going to follow her inside. She thought they might break the lock on the gate or hop over the fence. She was going to hide, but she heard the truck’s engine start. She looked outside and saw White in the driver’s seat. Owens ran around to the passenger side. They drove quickly away. She started hyperventilating and crying. She called her parents, who told her to call the police. She called 911, and police responded. (*White, supra*, 21 Cal.App.5th at p. 22.)

The police began an investigation and detained White. In two interviews with police, White denied knowing that Owens intended to attack J.D. White said Owens told him he thought J.D. was pretty. White admitted he “might have said go and get her” to Owens, but he said he

meant go “talk to her.” Owens then told him “hey watch out” or “watch this” and walked over to J.D. White said he thought Owens was just going to talk to her. White claimed that, when the attack began, he yelled at Owens to stop and told J.D. he was sorry. White said Owens told him afterwards that a “primal instinct” came over him. White was concerned that Owens had mental health issues. Forensic examination of White’s mobile phone revealed an internet search history in the days after the attack that included the questions, “Why would someone act on their primal instinct?,” “How can you tell if someone you know is being brain washed?,” and “What to do if someone you know is being brainwashed?” Owens was later arrested as well. (*White, supra*, 21 Cal.App.5th at p. 23.)

## ARGUMENT

### I.

**CALIFORNIA CONSTITUTION, ARTICLE I, SECTIONS 12(b) AND 12(c), AUTHORIZE A COURT TO DENY BAIL IN FELONY, NON-CAPITAL CASES INVOLVING SEXUAL ASSAULT, VIOLENT ACTS UPON ANOTHER PERSON, AND MAKING BODILY HARM THREATS TO ANOTHER; SECTIONS 12(b) AND 12(c) SPECIFY NON-CAPITAL CRIMES FOR WHICH BAIL MAYBE DENIED; UNDER THE HARMONIOUS RULE, ARTICLE I, SECTION 28(f)(3), CONTAINS FACTORS A COURT IS TO CONSIDER WHEN SETTING OR DENYING BAIL**

The relationship of the current California Constitution, Article I, sections 12(b) and 12(c) (hereafter “section 12(b)” and “section 12(c)” respectively), to Article I, section 28(f)(3) (hereafter “section 28(f)(3)”), are reconcilable with one another under the harmonious rule principle. That principle allows a court to harmonize statutes by considering them in the context of their statutory framework as a whole. Under the harmonious rule principle, sections 12(b) and 12(c), and 28(f)(3), do not conflict with one another. Sections 12(a), 12(b) and 12(c) mandate that a defendant who commits (1) a capital crime; (2) a violent felony crime; (3) sexual felony

assault upon another person, or; (4) threatens to commit great bodily harm, and poses a substantial likelihood to commit great bodily harm or to carry out the threat if released is excluded from pre-trial bail. Section 28(f)(3), which excludes a defendant charged with a capital crime from being released on pre-trial bail, gives discretionary authority to a court to set, reduce, or deny bail for a defendant after it considers public safety, the victim's safety, the seriousness of the charged crime, the defendant's criminal past, and the probability the defendant will appear at scheduled hearings and at trial. Thus, section 28(f)(3) does not conflict with the court's authority, under section 12(b), to deny pre-trial bail to a defendant charged with violent felony crimes against another person or charged with felony sexual assault.

**A. Current Version of California Constitution, Article I, Sections 12(b) and 12(c), Was Created by the 1974 (Proposition 7), 1982 (Proposition 4), and 1994 (Proposition 189), Amendments of the State Constitution; None of Those Amendments Were Ruled To Be Invalid**

From 1879 to November 1973, the California Constitution provided that, except for defendants charged with capital crimes, all persons were entitled to bail by sufficient sureties. That bail provision initially appeared as Article I [declaration of rights], section 6 [bail-unusual punishment-detention of witnesses], which read:

SEC. 6. All persons shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed; nor shall cruel or unusual punishments be inflicted. Witnesses shall not be unreasonably detained, nor confined in any room where criminals are actually imprisoned.

(See California State Assembly, Office of the Chief Clerk, Statutes and Amendments to the Codes 1973

(<https://clerk.assembly.ca.gov/content/statutes-and-amendments-codes->

1973) and California Constitution, as amended and in force, November 8, 1972, p. A-10

([https://clerk.assembly.ca.gov/sites/clerk.assembly.ca.gov/files/archive/Statutes/1973/73Vol1\\_Constitution.pdf#page=7](https://clerk.assembly.ca.gov/sites/clerk.assembly.ca.gov/files/archive/Statutes/1973/73Vol1_Constitution.pdf#page=7).)

In November 1974, the state's electorate voted on and enacted Proposition 7 (entitled "declaration of rights") which amended California Constitution, Article I [declaration of rights] by repealing section 6, the bail provision, renumbering the bail provision as section 12 to read as follows:

That Section 12 of Article I be added, to read: SEC. 12. A person shall be released on bail by sufficient sureties, except for capital crimes when the facts are evident or the presumption great. Excessive bail may not be required. [¶] A person may be released on his or her own recognizance in the court's discretion.

(UC Hastings Scholarship Repository; Voter Information Guide for 1974, General Election, pp. 26-27, 70-71 (text of proposed law)

([https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1803&context=ca\\_ballot\\_props](https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1803&context=ca_ballot_props).) Additionally, the amendment gave courts authority to release a defendant on his or her own recognizance. (*Ibid.*)

In 1982, the state's electorate voted on and approved Proposition 4 (entitled "bail") which approved the amendment of California Constitution, Article I, section 12 (bail). The amendment restated defendants charged with capital crimes are excluded from people entitled to bail, and courts have authority to release a defendant on his or her own recognizance. (UC Hastings Scholarship Repository; Voter Information Guide for 1982, Primary, pp. 16, 17 (text of proposed law)

([https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1917&context=ca\\_ballot\\_props](https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1917&context=ca_ballot_props).) Further, Proposition 4 added sections 12(b) and 12(c) which provided that a defendant charged with felony crimes involving acts of violence on another person or who threatens another person is excluded

from being granted bail if the defendant's release would pose a substantial likelihood of resulting in great bodily injury to another or the threat would be carried out:

Sec. 12. A person shall be released on bail by sufficient sureties, except for:

- .....
- (b) Felony offenses involving acts of violence on another person when the facts are evident or the presumption great and the court finds based upon clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to others; or
  - (c) Felony offenses when the facts are evident or the presumption great and the court finds based on clear and convincing evidence that the person has threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released. . . .

*(Ibid.)*

In 1994, the state's electorate voted on and approved Proposition 189 (entitled "bail exception-felony sexual assault-Legislative Constitutional Amendment") which amended California Constitution, Article I, section 12 (bail). That amendment restated that a defendant charged with capital crimes, charged with violent felony acts on another, or charged with threatening another with great bodily injury, is excluded from being granted bail. The amendment also restated that courts have discretion to release a defendant on his or her own recognizance. (UC Hastings Scholarship Repository; Voter Information Guide for 1994, General Election, pp. 6-7, 18 (text of proposed law) ([https://repository.uchastings.edu/ca\\_ballot\\_props/1091/](https://repository.uchastings.edu/ca_ballot_props/1091/))). Further, that amendment added to section 12(b) that a defendant charged with committing a felony sexual assault crime upon another person is



excluded from being granted bail if the defendant's release posed a substantial likelihood that great bodily harm would result:

SEC. 12. A person shall be released on bail by sufficient sureties, except for:

. . . .  
(b) Felony offenses involving acts of violence on another person, *or felony sexual assault offenses on another person*, when the facts are evident or the presumption great and the court finds based upon clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to others; . . .

(*Ibid*; italics in original.)

This most recent amendment of section 12(b) was in effect when the magistrate judge issued its October 5, 2017, order denying petitioner's motion for pre-trial bail. (*White, supra*, 21 Cal.App.5th at pp. 23-24.)

It is significant that the amendments to the bail provision ultimately embodied in Article I, section 12, did not change the mandatory directive of that section. The amendments gradually expanded the types of crimes for which a defendant, who is charged with those crimes, is to be excluded from being granted pre-trial bail to the current version of section 12(b). Section 12(b) authorized the lower court in this case to exclude petitioner from being granted pre-trial bail after finding, by clear and convincing evidence, that petitioner was an active aider and abettor to a violent felony or felony sexual assault on another, and that a substantial likelihood existed his release would result in great bodily harm to another.

**B. The Current Version of California Constitution, Article I, Section 28(F)(3) Was Created By The 2008 (Proposition 9), Amendment of The State Constitution Which Has Not Been Ruled To Be Invalid**

In 2008, the state's electorate voted on and approved Proposition 9 (entitled "criminal justice system-victims' rights-

parole-initiative constitutional amendment”), an initiative measure (Cal. Const., Art. II, § 8) that amended the state constitution and Penal Code and added sections to the Penal Code. (UC Hastings Scholarship Repository; Voter Information Guide for 2008, General Election, pp. 58-60, 128-130 (text of proposed law) ([https://repository.uchastings.edu/cgi/viewcontent.cgi?article=2265&context=ca\\_ballot\\_props](https://repository.uchastings.edu/cgi/viewcontent.cgi?article=2265&context=ca_ballot_props))). The authors proffered Proposition 9 to the electorate because the 1982, Proposition 8, “Victim’s Bill of Rights” measure, although passed by the electorate, was not effective.<sup>2</sup> (*Id.* at p. 128.) Germane to the instant bail issue, the 2008, Proposition 9 amended California Constitution, by adding Article I, section 28(f)(3) (“public safety bail”) which: 1) excepted defendants charged with capital crimes from being released on bail by sufficient sureties, and 2) required a court’s setting, reducing, or denying of bail to be based on consideration of the public’s protection, the seriousness of charged offense, the defendant’s criminal record and the probability of the defendant appearing at a future trial or court hearing. (*Id.* at p. 130.) Additionally, amended

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<sup>2</sup> The Findings and Declarations, section 3, in the 2008 Proposition 9, cited the ineffectiveness of the 1983 Proposition 8 as the reason for presenting Proposition 9:

[Section] 3. The People of the State of California find that the “broad reform” of the criminal justice system intended to grant these basic rights mandated in the Victims’ Bill of Rights initiative measure passed by the electorate as Proposition 8 in 1982 has not occurred as envisioned by the people. Victims of crime continue to be denied rights to justice and due process.

(UC Hastings Scholarship Repository; Voter Information Guide for 2008, General Election, p. 128 (text of proposed law).)

section 28(f)(3) required the victim's and public's safety to be primary factors when the court set, reduced, or denied bail:

(3) Public Safety Bail. A person may be released on bail by sufficient sureties, except for capital crimes when the facts are evident or the presumption great. Excessive bail may not be required. In setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, the safety of the victim, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. Public safety and the safety of the victim shall be the primary consideration considerations.

(*Ibid.*)

It is significant that section 28(f)(3) gives the court discretion to release a defendant, charged with a non-capital crime, on pre-trial bail but requires the court to consider specific factors, including public and the victim's safety, before setting, reducing or denying that bail.

Amended section 28(f)(3) was in effect when the magistrate judge issued its October 5, 2017, order denying petitioner's motion for pre-trial bail. (See *White, supra*, 21 Cal.App.5th at pp. 23-24.)

**C. California Constitution, Article I, Sections 12(b), 12(c), and 28(f)(3), Concern the Same Subject Matter, i.e., , the Setting, and Denial of Bail, and Can Be Harmonized With One Another Such That The Text of Each Section Remains Unchanged**

Notably, the 1974 (Proposition 7), 1982 (Proposition 4), and 1994 (Proposition 189), amendments of state constitution Article I, section 12, and the 2008 (Proposition 9) amendment of state constitution Article I, section 28, have not been ruled to be invalid or unconstitutional. Thus, when the trial court considered petitioner's motion for pre-trial bail in this case, section 12(b), which excludes a defendant from being bail eligible who is charged with violent

felony crimes upon others, or with felony sexual assault offenses upon others, and who pose a substantial likelihood of causing great bodily harm to others if released, was applicable to petitioner's case because he was charged with those class of crimes. Section 28(f)(3), which gives a court discretion to set or deny bail, is also applicable to petitioner's case because that section requires the court's consideration of specific facts before setting or denying bail.

It is also notable that sections 12(b) and 28(f)(3), concern the same subject matter: the setting or denial of bail. In particular, the no-bail provision of Article I, section 12, applicable to persons charged with violent felony crimes or with felony sexual crimes, was added to the constitution by the passage of Proposition 4 (bail) in the June 8, 1982, primary election. The Legislative Analyst described the Proposition 4 to the electorate as constitutionally broadening circumstances which the courts may deny bail in felony cases:

Bail could be denied in felony cases involving acts of violence against another person when (a) the proof of guilt is evident or the presumption of guilt is great and (b) there is a substantial likelihood that the accused's release would result in great bodily harm to others; . . . .

(Ballot Pamp., Primary Elec. (June 8, 1982) Analysis by the Legislative Analyst Prop. 4, p. 16.)

Consistent with the Legislative Analyst's report, the "Argument in Favor of Proposition 4" noted the proposition would, "enable judges to refuse to release on bail persons accused of violent felonies in clear cases where the court finds based upon clear and convincing evidence that there is a substantial likelihood the defendant's release would result in great bodily harm to others." (Ballot Pamp., Primary Elec. (June 8, 1982) argument in favor of Prop., at p. 18.)

The preceding Proposition 4 material is significant because it shows the voters were told the intent of the proposition was to authorize judges to deny bail based on factors more than simply assuring the defendant's appearance at scheduled court dates. The measure authorized courts to consider the seriousness of the defendant's current offense and previous criminal record, and the proponents of the measure made it clear they intended that victim's and public safety should be primary considerations in bail decisions. (*People v. Standish* (2006) 38 Cal.4th 858, 875, citing Ballot Pamp., Primary Elec. (June 8, 1982) argument in favor of Prop. 4, at p. 18.)<sup>3</sup>

Similarly, the Legislative Analysis' summary of the 1994 Proposition 189 informed the electorate that passage of the proposition would add felony sexual assault as a crime for which a court would have authority to deny a charged defendant pre-trial bail. The electorate was told the court already had the authority to deny pre-trial bail to persons accused of a capital crime, or accused of committing a violent felony upon another or threatening another person with serious bodily injury and posing a substantial likelihood of being able to cause great bodily harm or carry out the threat if released. (Supp. Ballot Pamp., Gen. Elec. (Nov. 8, 1994) Analysis by the Legislative Analyst Prop. 189, p. 7(G94).) The Legislative Analyst told the electorate that the constitutional amendment of Proposition

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<sup>3</sup>In *People v. Standish, supra*, 38 Cal.4th 858, this court held because Proposition 4 garnered more votes than Proposition 8 which appeared on the same 1982 primary ballot, the bail provisions of Proposition 8 never became effective and the bail provisions of Proposition 4 prevailed. (*Id.*, at pp. 874-875.) The bail provisions of Proposition 8 proposed to repeal Article I, section 12, of the state constitution by substituting Article I, section 28, subdivision (e) that would have excepted persons who committed capital crimes from being released on bail by sufficient sureties. (See *Id.*, at pp. 877-878.)

189 would add the additional category of crimes, e.g. felony sexual assault crimes, for which a court could deny a defendant pre-trial bail:

Proposal. This constitutional amendment would permit the courts to deny bail for a wider range of sexual offenses. Specifically, this measure would allow the courts to deny bail if a person is accused of committing any felony "sexual assault" offense.

(*Id.*, Analysis by the Legislative Analyst Prop. 189, p. 7 (G94).)

Because the electorate was clearly told the purpose of Propositions 4 and 189 was to authorize courts to deny pre-trial bail to defendants charged with specific felony crimes, the electorate's passage of those propositions necessarily reflects the electorate's intent to give courts that authority.

The passage of Proposition 9 in 2008, which added section 28(f)(3) to the constitution, does not conflict with the court's authority, under section 12(b), to deny pre-trial bail to a defendant charged with violent felony crimes against another person or charged with felony sexual assault. Rather, section 28(f)(3) represents the electorate's intent that a court's discretionary decision to deny bail to a non-capital defendant must be based on its consideration of more than whether the accused will appear at future hearings or trial.

As petitioner correctly observes, neither the Attorney General's summary, the Legislative Analyst's analysis of Proposition 9 nor the text of the proposed amendment of California Constitution Article I, section 28, states or suggests that proposition was intended to repeal Article I, section 12 (bail). (Petn. Merits Brief at p. 17; see Ballot Pamp., General Elec. (Nov. 4, 2008), Official Title and Summary prepared by the Attorney General, pp. 58-61, and Text of Proposed Laws, Proposition 9, pp. 128-132.) The absence of text or suggestion by Proposition 9 that the purpose of the proposition was to repeal Article I, section 12, is significant.