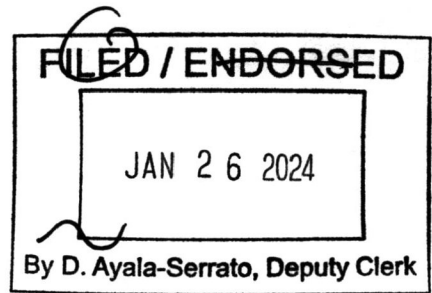


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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SACRAMENTO**

11 CRIMINAL JUSTICE LEGAL
12 FOUNDATION, a California nonprofit
13 corporation, SAMANTHA CARTER,
14 RIZPAH BELLARD, and
15 MINA MOYNEHAN,

16 *Petitioners and Plaintiffs,*

17 vs.

18 CALIFORNIA DEPARTMENT OF
19 CORRECTIONS AND
20 REHABILITATION; JEFFREY
21 MACOMBER, Secretary of CDCR; and
22 CALIFORNIA BOARD OF PAROLE
23 HEARINGS,

24 *Respondents and Defendants.*

Case No. 34-2022-80003807-CU-WM-GDS

JUDGMENT

Hearing Date: October 9, 2023
Dept: 4
Judge: Hon. Jennifer K. Rockwell
Action Filed: January 26, 2022

25 The motion of Petitioners Criminal Justice Legal Foundation, Samantha Carter,
26 Rizpah Bellard, and Mina Moynehan for judgment on the peremptory writ of mandate was
27 heard on October 9, 2023. Petitioners were represented by Kent S. Scheidegger.
28 Respondents California Department of Corrections and Rehabilitation, Jeffrey Macomber,
and Board of Parole Hearings were represented by Gregory J. Marcot.

[PROPOSED] JUDGMENT

1 The Court issued a written ruling on December 13, 2023, attached as Exhibit A and
2 incorporated in this judgment, granting the petition in part and denying it in part.

3 Good cause appearing, the petition for writ of mandate is granted in part and denied
4 in part.

5 IT IS ORDERED, ADJUDGED, AND DECREED THAT:

6 A. A peremptory writ of mandate issue, ordering that:

7 1. Respondents shall not use credits to advance the minimum eligible
8 parole date of any inmate sentenced to an indeterminate term to a date earlier than
9 authorized by section 3046 of the Penal Code, notwithstanding anything to the contrary in
10 sections 3043 through 3043.7 of title 15 of the California Code of Regulations.

11 2. Respondent Board of Parole Hearings shall not conduct an initial
12 parole hearing for any indeterminately sentenced inmate based on the minimum eligible
13 parole date more than one year before the minimum eligible parole date computed in
14 accordance with section 3046 of the Penal Code, without advancement of that date via
15 credits not authorized by that section.

16 3. Respondents California Department of Corrections and
17 Rehabilitation and Jeffrey Macomber shall not release any indeterminately sentenced
18 inmate on parole based on the minimum eligible parole date earlier than the minimum
19 eligible parole date computed in accordance with section 3046 of the Penal Code, without
20 advancement of that date via credits not authorized by that section.

21 B. Respondents shall file a return to the writ within sixty (60) days of the order
22 directing issuance of the writ indicating what steps they have taken to comply with the writ.

23 C. The petition for writ of mandate is denied in all other respects.

24 D. The complaint for declaratory and injunctive relief is dismissed on the
25 ground that relief on the complaint would be duplicative of the relief ordered on the writ of
26 mandate.

27 E. In accordance with Code of Civil Procedure section 1033 and California
28 Rules of Court, rule 3.1700, Petitioners may claim trial court costs and Respondents may

1 contest such costs. Petitioners may seek an award of attorneys' fees by an appropriate
2 noticed motion, and this Court retains jurisdiction to determine the amount of such fees.

3
4
5 Dated: 01/26/2024

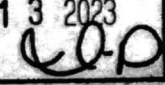


[Handwritten Signature]

Judge of the Superior Court of California
County of Sacramento

EXHIBIT A

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

DATE:	December 13, 2023	DEP. NO.:	4
JUDGE:	HON. JENNIFER K. ROCKWELL	CLERK:	I. DELGADO
CRIMINAL JUSTICE LEGAL FOUNDATION, a California nonprofit corporation, SAMANTHA CARTER, RIZPAH BELLARD, and MINA MOYNEHAN, Petitioners, vs. CALIFORNIA DEPARTMENT OF CORRECTIONS, et al., Respondents.		Case No.: 34-2022-80003807 <div style="border: 1px solid black; padding: 5px; text-align: center;">FILED & ENDORSED DEC 13 2023  By I. Delgado, Deputy Clerk</div>	
Nature of Proceedings:		RULING ON SUBMITTED MATTER AND ORDER: PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF	

RULING ON SUBMITTED MATTER AND ORDER

This matter entails a challenge to regulations (the Regulations) promulgated by California Department of Corrections and Rehabilitation (CDCR) implementing Proposition 57—the Public Safety and Rehabilitation Act of 2016 (Proposition 57). These Regulations implement a system of credits toward inmate sentences, which credits are granted and administered by CDCR. In this case, the Court must decide the validity of the Regulations as applied to: (1) sentencing for various categories of offenders; and, (2) sentencing and parole as it impacts the Minimum Eligible Parole Date (MEPD) for indeterminately-sentenced offenders.

• **Background**

The Legislature has statutorily authorized credits toward inmate sentences. The two primary sources of credits are Penal Code sections 2933 and 2933.05. These Legislatively-granted credits generally apply to determinate, as opposed to indeterminate, sentences.¹

¹ In California, prison sentences are either: (1) determinate, expiring on a date fixed at sentencing; (2) indeterminate, up to life with release on parole, as determined by the Board of Parole Hearings; or (3) death or life without parole. (See *In re Monigold* (1983) 139 Cal.App.3d 485, 490.)

In 2010, a federal District Court ordered a reduction in prison population. The United States Supreme Court affirmed the District Court's decision. (*See Brown v. Plata* (2011) 563 U.S. 493, 509-510, 545.)

Thereafter, in 2016, the California electorate passed Proposition 57. Proposition 57 reflects the electorate's desire to decrease the California prison population by adding section 32 to article I of the California Constitution (Section 32). (*In re Mohammad (Mohammad)* (2022) 12 Cal.5th 518, 527.)

Section 32 provides:

(a) The following provisions are hereby enacted to enhance public safety, improve rehabilitation, and avoid the release of prisoners by federal court order, notwithstanding anything in this article or any other provision of law:

(1) Parole Consideration: Any person convicted of a nonviolent felony offense and sentenced to state prison shall be eligible for parole consideration after completing the full term for his or her primary offense.

(A) For purposes of this section only, the full term for the primary offense means the longest term of imprisonment imposed by the court for any offense, excluding the imposition of an enhancement, consecutive sentence, or alternative sentence.

(2) Credit Earning: The Department of Corrections and Rehabilitation shall have authority to award credits earned for good behavior and approved rehabilitative or educational achievements.

(b) The Department of Corrections and Rehabilitation shall adopt regulations in furtherance of these provisions, and the Secretary of the Department of Corrections and Rehabilitation shall certify that these regulations protect and enhance public safety.

"Uncodified portions of Proposition 57 further identify the initiative's purpose and intent, in relevant part, as follows: '1. Protect and enhance public safety. [¶] 2. Save money by reducing wasteful spending on prisons. [¶] 3. Prevent federal courts from indiscriminately releasing prisoners. [¶] 4. Stop the revolving door of crime by emphasizing rehabilitation, especially for juveniles.'" (*Mohammad, supra*, 12 Cal.5th at p. 528 [citing Voter Information Guide, Gen. Elec. (Nov. 8, 2016) text of Prop. 57, § 2, p. 141].) "The initiative further states that the 'act

shall be liberally construed to effectuate its purposes.”² (*Ibid.* [citing Voter Information Guide, Gen. Elec. (Nov. 8, 2016) text of Prop. 57, § 9, p. 146].)

Following the passage of Proposition 57, the Office of Administrative Law approved temporary emergency regulations implementing Proposition 57, pending completion of the rulemaking process under the Administrative Procedures Act. (See Third Amended Petition, ¶¶13, 22, 23; Petitioners’ May 3, 2002 Request for Judicial Notice, Exhs. D, E, G.) CDCR has now adopted permanent regulations.³ (See also *In re Canady* (*Canady*) (2020) 57 Cal.App.5th 1022, 1027.)

The challenged Regulations are codified at California Code of Regulations, title 15, sections 3043 to 3043.6. The Regulations appear in Article 3.3 of Title 15, Division 3, Chapter 1 of the Code of Regulations, under the title “Credits.” Generally, the Regulations provide how inmates may earn credits toward their sentence, and thus reduce their term of incarceration. These credits are granted by the CDCR pursuant to the Regulations, as opposed to the statutory provisions granting credits. It is the alleged inconsistency between these two schemes that is the subject of the Petition.

Petitioners contend that the Regulations are invalid because: (1) they are inconsistent with statutes; (2) they are an impermissible Constitutional revision; and, (3) they are inconsistent with provisions of the California Constitution. Again, Petitioners’ challenges can be divided into two groups: one challenge is to credits as applied to various categories of offenders; the other addresses credits as applied to the reduction of the MEPD for indeterminately-sentenced inmates only. The Court summarizes Petitioners’ challenges to the Regulations below.

Petitioners challenge Regulation 3043.2(b)(2)(B), which allows “Good Conduct Credits” to inmates sentenced for a “violent felony” at a credit rate of 33.3 percent. Petitioners aver that by allowing such credits, Regulation 3043.2(b)(2)(B) contradicts: (1) the statutory “cap” of 15 percent set by Penal Code section 2933.1; (2) the prohibition of credits for those convicted of murder, set by Penal Code section 2933.2; and, (3) the prohibition for credits for recidivist felons set by Penal Code section 2933.5. (Third Amended Petition, ¶14.)

² This is consistent with the principle that “the initiative power must be *liberally construed* to promote the democratic process.” (*Legislature v. Eu* (1991) 54 Cal.3d 492, 501 [emphasis in original].)

³ CDCR’s emergency regulations were challenged in this litigation, and in two other matters that are now dismissed, Sacramento Superior Court Case No. 34-2021-00312867 and Sacramento Superior Court Case No. 34-2021-00301253. In a September 1, 2023 order in this litigation, the Court found that Petitioners’ challenges to the temporary regulations were mooted by the adoption of permanent regulations.

Petitioners challenge Regulation 3043.2(b)(3)(B), which allows "Good Conduct Credits" at the rate of 50 percent to inmates in "Work Group F," which Petitioners allege are inmates sentenced under the "Three Strikes Law" (see Pen. Code, § 667), but not serving a term for a violent felony. Petitioners allege that Regulation 3043.2(b)(3)(B) is contrary to Penal Code sections 667, subdivision (c)(5) and 1170.12, subdivisions (a)(5), which "cap" credits for "Three Strike" inmates at 20 percent. (Third Amended Petition, ¶15.)

Petitioners challenge Regulations 3043.3(c), 3043.4(b), and 3043.5(b), which allow "Milestone Completion Credit," "Rehabilitative Achievement Credit," and "Educational Merit Credit" for all inmates eligible for "Good Conduct Credit" under Regulation 3043.2. Petitioners aver that these Regulations contradict Penal Code section 2933.05, subdivision (c), which bars program credits for: (1) violent felons; (2) "second and third-strikers;" (3) sex offenders required to register; and (4) parole violators returned to prison. Petitioners further allege that the Regulations contradict Penal Code section 2933.05, subdivision (a), which Petitioners aver limits "program credit" to six weeks per 12 months. (Third Amended Petition, ¶16.)

Petitioners challenge Regulation 3043.2(b)(5) as authorizing credits for inmates in minimum security custody, and allege that this regulation has no basis in any statute or the California Constitution. Petitioners allege that credits for a minimum security custody status violates Penal Code section 2933, subdivision (a) and article I section 28, subdivision (f)(5) of the California Constitution.⁴ Petitioners also challenge Regulation 3033.2(b)(4)(B), and (C) as violating Penal Code section 2933, subdivision (a). (Third Amended Petition, ¶18.)

Finally, Petitioners challenge the Regulations as containing language that the credits would "advance an inmate's initial parole hearing date.... if sentenced to an indeterminate term." (15 Cal Code Regs., §§ 3043(a), 3043.2(b), 3043.3(c), 3043.4(b), 3043.5(b).) Petitioners allege that this language is contrary to Penal Code sections 3046, 3041, subdivision (a)(2), and Penal Code sections 190 subdivision (e) and 2933.2 (as applied to persons sentenced for murder), Penal Code sections 3046, 667, subdivision (c)(5) and 1170.12, subdivision (a)(5) (for persons sentenced under the "Three Strikes Law"). (Third Amended Petition, ¶17.)

On January 21, 2022, this litigation was filed. Thereafter, Petitioners filed a First Amended Petition and unsuccessfully sought ex parte relief to expedite a hearing on the merits. The matter has been before several judicial officers through the ordinary operations of the Court and Petitioners' application for a peremptory challenge.

On January 30, 2023, Judge Gevercer ordered the proceedings in this litigation stayed until resolution of Sacramento Superior Court Case No. 34-2021-

⁴ Petitioners now argue in their briefs that this regulation violates the plain text of Section 32.

00301253. Thereafter, the plaintiffs in that action moved to dismiss Sacramento Superior Court Case No. 34-2021-00301253. Petitioners notified the Court of the dismissal. With permission of the Court, Petitioners filed the Second Amended Petition in this case.

On August 28, 2023, the Court held oral argument on the demurrer to the Second Amended Petition and the merits to the Second Amended Petition, and directed the parties to appear and answer the Court's questions. At oral argument, the Court ordered supplemental briefing on the Court's questions, and set a further hearing on the merits of the Second Amended Petition. The parties filed supplemental briefs and replies thereto. Oral argument on the merits of the Petition was then held on October 9, 2023. Thereafter, Petitioners filed a Third Amended Petition, which forms the operative pleadings in this matter. The Court now rules as follows.

- **Discussion**

- **Requests for Judicial Notice**

Petitioners' requests for judicial notice are unopposed and granted.

- **Standard of Review and Principles of Regulatory Construction**

In determining whether the Regulations are valid, the Court inquires whether the Regulations are "consistent and not in conflict with the constitutional provision that authorizes it [Citation] and whether the regulation[s] [are] reasonably necessary to effectuate the purpose of the authorizing law. [Citation.]" (*Mohammad, supra*, 12 Cal.5th at p. 529 [internal citations and quotations omitted].)

The Court's task "is to decide whether the [agency] reasonably interpreted the legislative mandate. [Citation.] In doing so, [it] presumes the validity of the regulation [Citation] [and] the burden lies with the party challenging the regulation to show its invalidity. [Citation.]" (*Mohammad, supra*, 12 Cal.5th at p. 529 [internal citations and quotations omitted].) This inquiry poses a question of law, and the Court's review is de novo. (*Ibid.*)

The Court's "primary concern in construing a constitutional provision enacted through voter initiative is giving effect to the intended purpose of the provisions at issue [Citation] by applying the same principles that govern statutory construction. [Citation.] In doing so, [the Court] look[s] to the text of the constitutional provision at issue and, as appropriate, extrinsic sources such as an initiative's ballot materials. [Citation.]" (*Mohammad, supra*, 12 Cal.5th at pp. 529-530 [internal citations and quotations omitted].)

Courts look “first to the words of the initiative measure, as they generally provide the most reliable indicator of the voters’ intent.” (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 979.) A court ascribes “to words their ordinary meaning, while taking account of related provisions and the structure of the relevant statutory and constitutional scheme.” (*California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 933.) If the language is unambiguous, the “plain meaning of the language governs.” (*People v. Colbert* (2019) 6 Cal.5th 596, 603 [quotation omitted].)

If the language is ambiguous, courts “may resort to extrinsic sources” to determine its meaning. (*People v. Hazelton* (1996) 14 Cal.4th 101, 105.) Those extrinsic sources include “the materials that were before the voters[,]” such as the Voter Information Guide. (*People v. Valencia* (2017) 3 Cal.5th 347, 364.) By law, the Voter Information Guide “must include a complete copy of each proposed measure, the arguments and rebuttals for and against, and an analysis prepared by the Legislative Analyst.” (*Briggs v. Brown* (2017) 3 Cal.5th 808, 873, [concurring and dis. opn. of Cuellar, J. (citing Elec. Code, §§ 9082, 88001)].) The guide is often the “primary means by which voters inform themselves about the policy choices in an election.” (*Ibid*; see, e.g., *People v. Valencia, supra*, 3 Cal.5th at p. 364.)

“Although [the Court is] obligated to strike down regulations that alter or amend the constitutional provision or its scope [Citation] [the Court’s] role is not to examine the wisdom of the regulations but their legality [Citation].” (*Mohammad, supra*, 12 Cal.5th at pp. 529-530 [internal citations and quotations omitted].)

○ Significant Cases Interpreting Proposition 57

Many cases have addressed CDCR’s regulations promulgated following the passage of Proposition 57. In particular, subdivision (a) of Section 32 has been the subject of much litigation. (See *In re Gadlin* (2020) 10 Cal.5th 915; *Mohammad, supra*, 12 Cal.5th 518.) No cases have addressed subdivision (b) of Section 32—CDCR’s authority to promulgate regulations awarding credits pursuant to Proposition 57. As such, this is a matter of first impression. However, the Court finds useful the decisions of the California Supreme Court interpreting the validity of CDCR’s regulations in furtherance of Proposition 57.

In *In re Gadlin* (2020) 10 Cal.5th 915, the California Supreme Court considered CDCR’s regulations addressing parole consideration for nonviolent offenders pursuant to Proposition 57. These regulations also excluded inmates who were convicted of nonviolent sexual offenses. The California Supreme Court held that this prohibition conflicted with article I, section 32(a)(1) of the constitution because it applied to all nonviolent felons. (*In re Gadlin, supra*, 10 Cal.5th at p. 920.)

In resolving the regulations' constitutionality, the *Gadlin* Court applied the same principles of statutory and regulatory interpretation discussed above, and looked to the plain language of Proposition 57. (*In re Gadlin, supra*, 10 Cal.5th at pp. 926-927.) The *Gadlin* Court also noted that although Section 32(a)(1) contained terms that "might be ambiguous, in other respects," the language pertinent to the issue before it was not. (*Id.* at p. 930.) It noted that it need not consider the ballot materials after making this finding. (*Id.* at p. 936.) However, it nonetheless looked to them and concluded that they supported its reading of Section 32. (*Ibid.*)

Applying the same principles of statutory and regulatory construction used in *Gadlin*, the California Supreme Court upheld another regulation promulgated by CDCR in the wake of Proposition 57. That regulation excluded inmates convicted of both violent and nonviolent felony offenses from early parole consideration under Proposition 57's parole provision. (*Mohammad, supra*, 12 Cal.5th at pp. 524-525.) It held that, although Proposition 57's language was somewhat ambiguous, CDCR's regulation was "consistent with a reasonable interpretation of the constitutional language and the ballot materials." (*Id.* at p. 542.)

These decisions are instructive, and the Court follows the guidance set forth therein when evaluating the validity of the Regulations here.

- o **Regulations Addressing Credits for All Offenders**

CDCR belatedly argues that that Petitioners bring a "facial challenge" to the Regulations, and that Petitioners must (but cannot) show that the Regulations cannot be constitutionally applied under any circumstances. Petitioners object to CDCR's new argument as improper.

Petitioners note that despite CDCR's numerous filings in this litigation, including their opposition to Petitioners' brief addressing the merits of the Petition, CDCR did not raise this argument until the Court requested supplemental briefing. Petitioners' objections are well-taken.

CDCR had the opportunity to raise this argument in the initial briefing, and chose not to do so. Accordingly, the Court will not address CDCR's newly-raised argument, here. (See *In re Gadlin, supra*, 10 Cal.5th at p. 929 [noting that Supreme Court had declined to consider belated arguments raised in party's opening brief, but considering and rejecting argument]; *Pacific Bay Recovery Inc., v. California Physicians' Serv., Inc.* (2017) 12 Cal.App.5th 200, 2010 [appellate court need not reach arguments first raised in reply brief].)

i. Whether the Challenged Regulations Conflict with Statutes

Petitioners advance a series of arguments as to why the Regulations are invalid. Again, they contend that the Regulations are invalid because: (1) they are inconsistent with statutes; (2) they are inconsistent with provisions of the California Constitution; and, (3) they are an impermissible Constitutional revision. The Court will address these challenges and then separately address Petitioners' challenge to the validity of Regulations as applied to advancing the parole date of indeterminately-sentenced offenders.

The Court first addresses Petitioners' claim that the Regulations are invalid because they conflict with various statutes.

Throughout this litigation, the CDCR Respondents have argued that there is no conflict between the Regulations and statutes. Rather, CDCR contends that the Regulations are *another* mechanism by which credits may be awarded—either by the Legislature under the statutes, or by CDCR pursuant to the Regulations.

Petitioners counter that there is a clear conflict between the Regulations and statutes. Petitioners specifically point to Penal Code section 2933, subdivision (a). It provides:

- (a) It is the intent of the Legislature that persons convicted of a crime and sentenced to the state prison under Section 1170 serve the entire sentence imposed by the court, except for a reduction in the time served in the custody of the Secretary of the Department of Corrections and Rehabilitation pursuant to this section and Section 2933.05.

(Pen. Code, § 2933, subd. (a).)

In construing a statute, the Court gives "significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose.... [Citations.] The Court avoid[s] an interpretation that renders any portion of the statute superfluous, unnecessary, or a nullity; this is so because [it] presume[s] that the Legislature does not engage in idle acts. [Citations.]" (*Teachers' Ref. Bd. v. Genest* (2007) 154 Cal.App.4th 1012, 1028.)

The plain language of this statute evidences a conflict between this statute and the Regulations. This is because it shows that the Legislature intends for persons convicted of an offense to serve their sentence, reduced only pursuant to this statute and Penal Code section 2933.05, and not any other credit scheme.

The parties have confirmed that, as of this date, the Legislature has taken no meaningful action regarding the statutory conflicts noted by Petitioners. Additionally, the Legislature has not enacted or amended any statutes regarding

CDCR's authority to promulgate regulations addressing credits. As such a statute is not before the Court, the Court declines to opine on its validity.

The existence of a statutory conflict does not end the Court's inquiry. The Court next looks to the text of Proposition 57.

Proposition 57 adds article I, section 32 to the California Constitution and mandates that CDCR "adopt regulations in furtherance of these provisions." (Cal. Const., art. I, § 32(b).) This includes adopting regulations that award "credits for good behavior and approved rehabilitative or educational achievements." (*Id.*, art. I, § 32(a)(2).) Further, Section 32 orders that these changes take effect "notwithstanding...any other provision of law." (Cal. Const., art. I, § 32(a).) The State's Constitution is supreme to statutory authority. (*Los Angeles County v. Payne* (1937) 8 Cal.2d 563, 574.)

Thus, the fact that a conflict exists between the Regulations and the existing statutes is not, in and of itself, a basis for determining that the Regulations are invalid.

- **Proposition 57 is not an Impermissible Constitutional Revision**

The Court next addresses Petitioners' two arguments directed at the entirety of Proposition 57, and the Regulations flowing therefrom.

Petitioners first contend that Proposition 57 allows CDCR to award credits in conflict with existing statutes, thereby repealing them. Thus, Petitioners argue that Proposition 57 is an improper constitutional revision.

CDCR objects to this argument. CDCR claims that Petitioners raised this argument in their Opening Brief but did not raise it in the Petition, and argue that Petitioners waived this argument. The Court has reviewed the Third Amended Petition. Petitioners have adequately raised this argument, and it is not waived. The Court will consider it.

Petitioners argue that if the California Constitution authorizes CDCR to award credits in excess of existing statutory limits, then this means that Proposition 57 improperly revised, as opposed to amended, the Constitution. The distinction between a revision and amendment is significant; voters may amend the Constitution by initiative, but a constitutional revision is "accomplished only by convening a constitutional convention and obtaining popular ratification [Citation], or by legislative submission of the measure to the voters. [Citation]." (*Legislature v. Eu* (*Eu*) (1991) 54 Cal.3d 492, 506 [internal citations omitted].)

The Constitution does not define the terms "amendment" or "revision." However, the California Supreme Court has distinguished between these two terms by

examining both the quantitative and qualitative effects of a constitutional change. (*Eu, supra*, 54 Cal.3d at p. 506.)

A quantitative change is "a measure effecting widespread deletions, additions and amendments involving many constitutional articles." (*Raven v. Deukmejian* (*Raven*)(1990) 52 Cal.3d 336, 351.) On the other hand, a qualitative revision "involves a change in the basic plan of California government, i.e., a change in its fundamental structure or the foundational powers of its branches." (*Eu, supra*, 54 Cal.3d at p. 509; see also *Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1046 [a revision exists where an enactment "is so extensive in its provisions as to change directly the 'substantial entirety' of the Constitution by the deletion or alteration of numerous existing provisions" or "accomplish[es] such far reaching changes in the nature of our basic governmental plan"].) "[I]t must necessarily or inevitably appear from the face of the challenged provision that the measure will substantially alter the basic governmental framework set forth in [the California] Constitution." (*Eu, supra*, 54 Cal.3d at p. 510 [emphasis in original].)

Here, Proposition 57 makes only minimal quantitative and qualitative changes.

Petitioners concede that Proposition 57 does not constitute a substantial quantitative change to the Constitution. Additionally, the enactment of Proposition 57 does not constitute a qualitative change to the Constitution, as discussed below.

Petitioners cite the *Eu* and *Raven* cases in support of their arguments that Proposition 57 is an invalid revision. Neither case demonstrates that Proposition 57 improperly revised the Constitution, as opposed to amending it.

The ballot initiative in *Raven*, Proposition 115, included a provision requiring "that certain enumerated criminal defendants' rights would be construed consistently with the United States Constitution and that criminal and juvenile defendants would not be afforded greater rights than that afforded by the federal Constitution." (*Raven, supra*, 52 Cal.3d at pp. 342-343.) The California Supreme Court found that the substantial qualitative impact imposed by the law constituted an invalid constitutional revision.

The California Supreme Court interpreted Proposition 115 as essentially vesting "all judicial *interpretive* power, as to certain fundamental criminal defense rights, in the United States Superior Court." It concluded that the effects of Proposition 115 would be "devastating." (*Raven, supra*, 52 Cal.3d at pp. 353.) Specifically, the California Supreme Court found that Proposition 115 would drastically limit the procedural rights of criminal defendants, by infringing on the power of the state judiciary to protect California citizens from arbitrary or capricious legislation, and by "substantially alter[ing] the substance and integrity

of the state Constitution as a document of independent force and effect." (*Id.* at pp. 352-354.)

In *Eu*, the Supreme Court upheld Proposition 140, which was a ballot initiative that imposed term and budget limitations on the Legislature. (*Eu, supra*, 54 Cal.3d at p. 500.) *Eu* held, among other things, that Proposition 140 constituted a constitutional amendment, not a revision. (*Id.* at p. 512.) The Court noted that the immediate foreseeable effects of the foregoing term and budgetary limitations contained in Proposition 140 (primarily, the eventual loss of experienced legislators and support staff) would be substantial. (*Id.* at p. 509.)

However, these changes did not transform Proposition 140 into an invalid revision. The Court compared the qualitative effects of Proposition 140 to the ballot initiative discussed in *Raven*. (*Eu, supra*, 54 Cal.3d at pp. 508-509.) In *Raven*, the ballot initiative constituted a revision because it subordinated the constitutional role assumed by the judiciary branch of government. (*Id.* at p. 509.) In contrast, under Proposition 140, "the basic and fundamental structure of the Legislature as a representative branch of government is left substantially unchanged. . ." (*Id.* at p. 508.) The initiative "on its face does not affect either the structure or the foundational powers of the Legislature. . ." (*Id.* at p. 509.)

Here, Proposition 57 is more akin to the proposition upheld in *Eu*, rather than the one struck down in *Raven*. (See *Kempton, supra*, 40 Cal.4th at p. 1047 [voter-adopted proposition that removed constitutional restriction limiting the ability of public agencies to contract for architectural and engineering services did not change the "basic governmental plan"].) Proposition 57 amends the California Constitution to allow CDCR to promulgate regulations to award additional credits to its inmates, and only "for good behavior and approved rehabilitative or educational achievements." (Cal. Const., art. I, § 32, subds. (a)(2), (b).) It does not impose a substantial or fundamental change to the structure of California government.

Petitioners argue that Proposition 57 qualitatively revises the Constitution because it impairs the authority of the legislative branch by permitting the executive branch (through CDCR) to implement regulations that award credits in addition to those awarded under statutory law. The Court rejects this argument.

CDCR's "primary objective" is to maintain "public safety," meaning "public safety achieved through punishment, rehabilitation, and restorative justice." (Pen. Code, §§ 1170, subd. (a)(1), 5000.) It is the job of administrative agencies, such as CDCR, "to implement, interpret, or make specific the law enforced" in addition to make rules that "govern its procedure." (Gov. Code, § 11342.600; see, e.g., *Assn. of Cal. Ins. Companies v. Jones* (2017) 2 Cal.5th 376, 393.)

Promulgating regulations regarding prison credits falls within CDCR's statutory authority, as CDCR is the state agency tasked with housing and rehabilitating

prisoners. (Pen. Code, § 5054; *see also In re Cabrera* (2012) 55 Cal.4th 683, 688.) In fact, the Legislature has, in many instances, delegated to CDCR the authority to draft regulations regarding prison management (Pen. Code, § 5058), and regulations pertaining to prisoner credits (Pen. Code, §§ 2933, subds. (b), (d); 2933.05, subd. (a); 2933.3, subd. (c); 2933.6.). Thus, Proposition 57's grant of authority to CDCR to promulgate credit regulations is not unlike the authority CDCR already possessed.

Accordingly, for the reasons set forth above, Proposition 57 does not constitute a revision.

- **Article III, section 3.5**

Petitioners next argue that by promulgating the Regulations, CDCR is effectively declaring any conflicting statutes unconstitutional, in violation of article III, section 3.5 of the California Constitution. The Court is unpersuaded.

Article III, section 3.5 of the California Constitution provides in part, that an agency has no power to declare a statute unenforceable or unconstitutional or refuse to enforce a statute, on the basis of it being unconstitutional or in conflict with federal law, unless an appellate court has made a determination that such statute is unconstitutional. (Cal. Const., art. III, § 3.5.)

CDCR responds that because there is no conflict between the statutes and regulations it is not "refusing" to enforce any statute. The Court disagrees, in light of the conflict identified above.

However, the concerns underlying Article III, section 3.5—maintaining the integrity of the separation of powers between the executive and Legislature—are not present here. This is not a case where an agency is refusing to apply a statute based on the agency's view that the statute is unconstitutional. (*See Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1082, fn.16 [issue was whether local official could refuse to apply statute because of belief that statute is unconstitutional, not whether local official refused to apply statute because of questions regarding proper interpretation or because of doubts as to which competing statutory provisions to apply].) Rather, CDCR is acting pursuant to Section 32's directive to "promulgate credit regulations notwithstanding any other law." (Cal. Const., art. I, § 32, subd. (a).)

If Article III, section 3.5 applied here, CDCR would have violated the law no matter how it acted. By promulgating the Regulations to implement Proposition 57, CDCR would have violated statutes, as Petitioners contend, such as Penal Code section 2933, subdivision (a). However, if CDCR refused to promulgate the Regulations implementing Proposition 57, it would have violated Section 32 of the California Constitution. "Article III section 3.5 does not prohibit the [agency] from refusing to enforce a statute that is inconsistent with another

statute for good reason: the constitution cannot require the impossible." (*Burlington N. & Santa Fe Ry. Co v. Public Utilities Commission* (2003) 112 Cal.App.4th 881, 887-888.)

Therefore, Article III, section 3.5 does not apply to this case.

- **The Regulations Granting Credits are Consistent with and not in Conflict with Proposition 57 and are Reasonably Necessary to Effectuate its Purposes**

The Court has concluded that: (1) the constitutional authority to promulgate the Regulations overrides the existence of a statutory conflict; (2) the Regulations do not constitute an invalid revision; and, (3) Article III, section 3.5 does not apply. Therefore, the Regulations are not invalid on these bases. The Court is now left to determine whether the Regulations are valid under the principles of regulatory construction announced by courts in previous cases.

Proposition 57 grants CDCR constitutional "authority to award credits earned for good behavior and approved rehabilitative or educational achievements[.]" "notwithstanding anything in this article or any other provision of law." (Cal. Const., art. I, § 32, subd. (a).) "[T]he drafters of Proposition 57 intended for [CDCR] to have broad authority over the application of conduct credits to reduce inmates' sentences." (*Canady, supra*, 57 Cal.App.5th at p. 1034.) "By its plain terms, subdivision (a)(2) [of Section 32] authorizes [CDCR] to award—or not to award—credits as it sees fit." (*Ibid.*) CDCR's promulgation of the Regulations is reasonably necessary (and in fact, mandated) to effectuate the purpose of Section 32. (*Mohammad, supra*, 12 Cal.5th at p. 529.)

Even were the Court to find the language of Section 32 to be ambiguous regarding CDCR's authority to promulgate the Regulations, the ballot materials support CDCR's interpretation of its constitutional authority. In this case, the ballot materials in the Voter Information Guide include the official title and summary prepared by the Attorney General, the analysis of the Legislative Analyst, and the arguments in favor of and against Proposition 57. (*In re Gadlin, supra*, 10 Cal.5th at p. 896.)

First, the Voter Information Guide sets forth the text of Proposition 57 and informs voters that CDCR's authority "shall be liberally construed to effectuate [Proposition 57's] purposes." (Voter Information Guide, Gen. Elec. (Nov. 8, 2016) [text of Prop. 57, § 9, p. 146].) The intent of Proposition 57 was to give CDCR the authority to "prevent Federal Courts from indiscriminately releasing prisoners," "stop the revolving door of crime by emphasizing rehabilitation," and "save money by reducing wasteful spending on prisons." (*Id.*, [text of Prop. 57, § 2, p. 141].) The awarding of sentence-reducing credits for good conduct, rehabilitation, and education, effectuates these goals.

The analysis of the Legislative Analyst also explained to the voters that:

State law limit[ed] the amount that inmate sentences can be reduced through credits, [but under Proposition 57, CDCR] could award increased credits to those currently eligible for them and credits to those currently ineligible. As a result, CDCR could increase the amount of credits inmates can earn, which would reduce the amount of time served in prison.

(Voter Information Guide, Gen. Elec. (Nov. 8, 2016) [analysis by Legislative Analyst, pp. 55-56]; *see also Mohammad, supra*, 12 Cal.5th at pp. 536- 537 [consideration of ballot materials, including analysis of Legislative Analyst, as evidence of the reasonableness of CDCR's interpretation of its authority]; *In re Gadlin, supra*, 10 Cal.5th at pp. 936-937 [consideration of ballot materials, including analysis of Legislative Analyst, supported Court's interpretation of the constitutional text at issue].)

Additionally, the Argument Against Proposition 57 in the ballot materials states that "Proposition 57 authorizes state government bureaucrats to reduce many sentences for 'good behavior,' even for inmates convicted of murder, rape, child molestation and human trafficking." (Voter Information Guide, Gen. Elec. (Nov. 8, 2016) [argument against Proposition 57, p. 59].)

The analysis and the statements in the ballot materials support the Court's conclusion that Section 32, as added by Proposition 57, authorizes CDCR to promulgate the Regulations.

Thus, the Regulations are reasonably necessary to effectuate the purpose of Section 32. Further, even if the constitutional language of Section 32 were ambiguous as to the issue presented here, the ballot materials support CDCR's authority to promulgate the Regulations.

I. Regulations Allowing Credits for Minimum Security Classification

Petitioners also argue that CDCR's constitutional authority to grant additional credits is limited to credits "earned for good behavior and approved rehabilitative or educational achievements." (Cal. Const. art. I, § 32.) Thus, Petitioners contend that CDCR may not award credits based solely on an inmate's assignment to a minimum security facility. This argument fails to persuade.

Regulation 3043.2 grants additional credits to inmates based on their ability to maintain classification in a minimum security prison. This award of credits is a reasonable interpretation of CDCR's constitutional authority to provide additional credits for "good behavior." (*Mohammad, supra*, 12 Cal. 5th at p. 529.)

As discussed above, Regulation 3043.2's grant of credit for Minimum Security Inmates is also consistent with the text of Section 32 and reasonably necessary to effectuate its purpose. (*Mohammad, supra*, 12 Cal. 5th at p. 529.)

"Good behavior" is one of the main factors that contributes to an inmate's assignment to a minimum security facility. (See Cal. Code Regs., tit. 15, §§ 3375 (b), 3375.1 (a), 3375.2 (a)(13), (b)(3).) Because the purpose of the credit regulations is to promote an inmate's good behavior and rehabilitation, and because "[b]y its plain terms, subdivision (a)(2) [of Section 32] authorizes [CDCR] to award—or not to award—conduct credits as it sees fit" (*Canady, supra*, 57 Cal.App.5th at p. 1034), it is reasonable for CDCR to reward inmates with credits if they demonstrate good behavior and remain in a minimum security facility.

o **Regulations and the Minimum Eligible Parole Date for Indeterminately Sentenced Offenders**

The Court now addresses Petitioners' challenge to the Regulations on the basis that they conflict with statutes governing the MEPD for indeterminately-sentenced offenders. Specifically, Petitioners contend that the Regulations impermissibly allow CDCR to advance MEPDs before the date of the statutory limit set forth in Penal Code section 3046.

Penal Code section 3046 provides that the MEPD for indeterminately-sentenced offenders is determined by that statute and by the sentencing provisions of the statutes imposing indeterminate sentences, unaffected by credits, unless those sentencing provisions say otherwise.

That statute provides:

(a) An inmate imprisoned under a life sentence shall not be paroled until he or she has served the greater of the following:

(1) A term of at least seven calendar years.

(2) A term as established pursuant to any other law that establishes a minimum term or minimum period of confinement under a life sentence before eligibility for parole.

.....

(Pen. Code, § 3046.)

"A life sentence prisoner must serve a minimum calendar term before becoming eligible for parole. Conduct credits do not apply to that minimum term." (*In re Monigold, supra*, 139 Cal.App.3d 485, 491 [citing Penal Code, §§ 3046, 3049; *People v. Sampsell* (1950) 34 Cal.2d 757, 764].) Credits "cannot be used to

reduce the minimum eligible parole date" for an inmate, who has received an indeterminate or life sentence. (*People v. Carpenter* (1979) 99 Cal.App.3d 527, 535 [interpreting Penal Code section 3046].) Thus, Penal Code section 3046 prevents credits from reducing an inmate's MEPD.

CDCR responds that it may permissibly use credits to advance an inmate's MEPD under the Regulations. In support of this argument, CDCR argues that Proposition 57 grants CDCR broad authority to promulgate credits for good behavior and rehabilitative efforts. Therefore, CDCR contends, Proposition 57 also "contemplated" that CDCR could apply those credits to an inmate's MEPD.

CDCR notes that the Legislature has in other instances, allowed post-conviction credits to reduce a term of an indeterminately-sentenced inmate (citing Penal Code, §§ 191.5, subd (d), 217.1, subd (b), 667.7, subd. (a)(1)), and thus, CDCR's interpretation of Proposition 57 is reasonable.

CDCR also emphasizes that as to indeterminately-sentenced inmates, such credits only reduce the term of incarceration when the Board of Parole Hearings will consider the inmate for parole, and does not dictate when the inmate will be released. CDCR further argues that the ballot materials accompanying Proposition 57 support a broad grant authority to CDCR to use credits to reduce MEPDs.

The Court rejects these arguments.

▪ **Text of Proposition 57**

Although Proposition 57 is a broad grant of authority to CDCR, nothing in the text of Proposition 57 suggests that CDCR may allow credits to reduce the MEPD for indeterminately-sentenced inmates.

This observation is bolstered by the Court of Appeal's decision in *Canady, supra*, 57 Cal.App.5th 1022. *Canady* interpreted Proposition 57's use of the phrase "full term" as applied to a determinately-sentenced inmate who was sentenced for a non-violent felony and eligible for parole. It concluded that the voters intended the phrase "full term" voters to refer to the sentence imposed by the court without including conduct credits." (*Canady, supra*, 57 Cal.App.5th at pp. 1031-1033.)

Although *Canady* considered the phrase "full term" in the context of a determinately-sentenced inmate, it is persuasive here. This is because *Canady* evaluated whether credits earned via the Proposition 57 regulatory scheme could be applied to reduce a parole date. It concluded "[w]here a full term is required, service of the term is required without any reduction." (*Id.* at p. 1033.)

The Court finds *Canady* instructive and concludes that as to indeterminately-sentenced inmates, Penal Code section 3046 and case authority, requires those

inmates to serve a minimum term of at least seven years or another term, as prescribed by law, pursuant to Penal Code section 3046, subdivision (a)(2).

CDCR repeatedly notes that Proposition 57 gives it broad authority to promulgate regulations "notwithstanding...any other law." (Cal Const., art. I, §32, subd. (a).) Indeed, in response to direct questioning, CDCR asserted at the hearing that since Proposition 57 placed no limits on parole for inmates convicted of violent offenses, CDCR has unfettered discretion to advance the MEPD for indeterminately-sentenced inmates. CDCR contended that the only limitations on advancing parole dates were for non-violent offenders.

But the authority to grant credits, in and of itself, is not sufficient to advance an inmate's MEPD. A reading of Section 32 shows that it addresses the application of credits in detail for determinately-sentenced offenders. However, there is no discussion as to the application of credits for indeterminately-sentenced or "life" inmates—many of whom are also sentenced for the commission of violent crimes.

The Court cannot conclude from this omission that the electorate intended to afford CDCR the authority to promulgate Regulations applying credits to reduce an indeterminately-sentenced inmate's MEPD.

Additionally, Proposition 57 explicitly amended statutes related to juvenile justice. (See Voter Information Guide, Gen. Elec. (Nov. 8, 2016) pp. 141-144.) In contrast, Proposition 57 neither adds nor amends the California Constitution or statutes as to whether credits may be applied to reduce the MEPD for indeterminately-sentenced inmates. The Court will not infer that Proposition 57 conferred upon CDCR the authority to do otherwise.

▪ Proposition 57 Ballot Materials

CDCR argues that ballot materials informed voters that CDCR could award credits to indeterminately-sentenced inmates. (Supplemental Opposition, pp. 29-31.) In particular, CDCR contends that the Legislative Analyst's analysis of Proposition 57 "signaled" to voters that CDCR would be authorized to reduce MEPDs. CDCR observes that the Legislative Analyst: (1) explained the difference between determinately-sentenced and indeterminately-sentenced inmates, (2) explained that Proposition 57 would allow CDCR to "award increased credits to those currently eligible for them and credits to those currently ineligible, and (3) concluded that "as a result, CDCR could increase the amount of credits inmates can earn, which would reduce the amount of time spent in prison." (Voter Information Guide, Gen. Elec. (Nov. 8, 2016) [analysis by Legislative Analyst, pp. 54-56].)

Petitioners contend that other language in the Voter Information Guide presented this issue to the voters. Petitioners point to the arguments of the Proposition 57

proponents which included: "Prop. 57 ... Does NOT authorize parole for violent offenders." (Voter Information Guide, Gen. Elec. (Nov. 8, 2016) [Rebuttal to Argument Against Proposition 57, p. 59].) The proponents of Proposition 57 added that "The California Supreme Court clearly stated that parole eligibility under Prop. 57 applies, 'only to prisoners convicted of non-violent felonies.' (*Brown v. Superior Court*, June 6, 2016). Violent criminals as defined in Penal Code 667.5(c) are excluded from parole." (*Ibid.*)⁵

The Court is not persuaded by the arguments presented by CDCR on this issue.

The discussion cited by CDCR does not put a voter on notice that CDCR could then apply credits to reduce MEPDs. Indeed, this discussion does not even mention MEPDs, nor is there any discussion in the Voter Information Guide describing any changes being made to MEPDs. As the Supreme Court has noted, "[a]lthough the ballot materials do not directly answer the question, they conveyed to the voters that Proposition 57 would establish 'parole consideration for nonviolent offenders' and would not authorize early parole consideration for 'violent offenders'." (*Mohammad, supra*, at p. 537 [internal citations omitted].)

This Court "cannot presume that ... the voters intended the initiative to effect a change in law that was not expressed or strongly implied in either the text of the initiative or the analyses and arguments in the official ballot pamphlet." (*People v. Valencia, supra*, 3 Cal.5th at p. 364.) As discussed, neither the text of Proposition 57 nor the ballot materials support CDCR's authority to promulgate Regulations applying credits to reduce an indeterminately-sentenced inmates' MEPD. Therefore, the regulations that purport to alter the MEPD are void.

- **Disposition**

The Petition is denied in part and granted in part. The Court grants the Petition as to Petitioners' argument that the Regulations may not be used to issue credits that advance an indeterminately-sentenced inmate's MEPD. The Petition is denied in all other respects.

⁵ The court notes there have been two recent habeas corpus cases by two Appellate Districts examining Proposition 57 and the right to parole when an individual has been convicted of both violent and non-violent felonies. (*In re Hicks* (Nov. 17, 2023, B319925) __ Cal.App.5th __ [2023 Cal. App. LEXIS 887] and *In re Koenig* (Nov. 28, 2023, C098893) __ Cal. App. __ [2023 Cal. App. LEXIS 918].) Both cases held that CDCR's regulations excluding the inmates from parole consideration was within its rulemaking authority as not violative of Proposition 57. Both decisions relied on *In re Mohammad*, including its analysis of the ballot materials. For example, the Second Appellate District explained that "our examination of those materials reveals an intent of the voters to authorize early parole consideration for nonviolent offenders while ensuring that inmates convicted of violent felonies do not receive such consideration." (*In re Hicks, supra*, at p. 17.) The Court recognizes the question before it differs from those analyzed in these appellate decisions, but does believe this decision is consistent with the viewpoints espoused by them.

Petitioners are directed to prepare a formal order and a separate judgment. The order and judgment shall each incorporate this ruling as an exhibit thereto. The Court further directs Petitioners to prepare a separate writ of mandate.


Petitioners shall submit the order, judgment, and writ to opposing counsel for approval as to form, and thereafter submit them to the Court for approval in accordance with the California Rules of Court, rule 3.1312. The writ of mandate shall be prepared for the signature of the Clerk of the Court. CDCR shall file a return to the writ within sixty (60) days of the order indicating what steps it has taken to comply with the writ.

The Court stays this order for 30 days, to permit the parties to seek emergency relief.

IT IS SO ORDERED.

December 13, 2023




Jennifer K. Rockwell
Judge of the Superior Court of California
County of Sacramento