

## **SHORT BALLOT TITLE**

An Initiative Creating A Special Grand Jury With Statewide Jurisdiction In Order To Review Every Judges' Actions And Decisions

## **LONG BALLOT TITLE**

An Initiative creating a special grand jury with statewide jurisdiction for the purpose of eliminating judicial immunity in all forms, reviewing the decisions and actions of judges in all cases before them, empowering the special grand jury to employ professional counsel for a one year term, establishment of a special grand jury seat placed centrally according to population but not located within one mile of any judicial body, creating annual funding by deducting 2.9% from each judge's salary, creating filing fees, establishing surcharges to insure funding for the special grand jury, creating salaries for each grand juror, creating an annual budget, which shall be funded by the legislature and administered by the State Controller, creating jurisdiction and for direct appeals to the U.S. Supreme Court, establishing qualifications, selection, and service of jurors, procedures for the special grand jury, eliminating public indemnification, redress, prohibiting any challenge to this initiative to be heard by any judge in this state, establishing the preeminence of this initiative, and a severability clause.

## **FULL TEXT**

The Idaho Judicial Accountability Initiative Law (J.A.I.L.)

(a) Preamble. We, the People of the State of Idaho, find that the doctrine of judicial immunity has been greatly abused; and when judges abuse their power, the people are obliged - it is their duty - to correct that injury, for the benefit of themselves and their posterity. In order to ensure judicial accountability and domestic tranquility, we hereby petition, with the following provisions, and it shall be known as the "Judicial Accountability Initiative Law", referred to as by the short title of "The Idaho J.A.I.L. Act of 2002".

(b) Definitions. For purposes of this Initiative:

1. The term "blocking" shall mean any act that impedes the lawful conclusion of a case, to include unreasonable delay and willful rendering of a void judgment or order.
2. The term "judge" shall mean justice, judge, magistrate, district, commissioner, judge pro-tem, private judge, judicial mediator, arbitrator, referee, administrative officer and every other person given, or requesting, consideration of shielding by judicial immunity.
3. The term "juror" shall mean a Special Grand Juror.
4. The term "seat" shall mean a situs and facility that is suitable for usage by the Jury.
5. The term "strike" shall mean an adverse immunity decision.

Where appropriate, the singular shall include the plural.

(c) Immunity. Notwithstanding common law or any other provision to the contrary, no immunities shall be extended to any judge of this State except as is specifically set forth in this

Initiative. Preserving the purpose of protecting judges from frivolous and harassing actions, no immunity shielding a judge shall be construed to extend to any deliberate violation of law, fraud or conspiracy, intentional violation of due process of law, deliberate disregard of material facts, judicial acts without jurisdiction, blocking of a lawful conclusion of a case, or any deliberate violation of the Constitutions of Idaho or the United States.

(d) Special Grand Jury. There are hereby created within this State a twenty-five member Special Grand Jury with statewide jurisdiction having power to judge both law and fact. This body shall exist independent of statutes governing any county or other grand juries. The responsibility of the Special Grand Jury shall be limited to determining, on an objective standard, whether a civil suit against a judge would be frivolous and harassing, or fall within the exclusions of immunity as set forth herein, and whether there is probably cause of criminal conduct by the judge complained of.

(e) Professional Counsel. The Special Grand Jury shall have exclusive power to retain non-governmental advisors, special prosecutors, and investigators, as needed, who shall serve no longer than one year, after which term said officers shall be ineligible. Notwithstanding the one year, a special prosecutor may be retained to prosecute current cases in which they are involved through all appeals and any complaints for judicial misconduct.

(f) Establishment of Special Grand Jury Seat. Within ninety days following the people voting their confidence in this initiative, the Legislature shall provide a seat for the Special Grand Jury. Such seat shall be placed centrally according to population, but shall not be located within a mile of any judicial body.

(g) Annual Funding. The Legislature shall cause to be deducted two and nine-tenths percent from the gross judicial salaries of all judges, which amount shall be deposited regularly into the exclusive trust account created by this Initiative in paragraph (k) for its operational expenses, together with filing fees under paragraph (h), surcharges under paragraph (i), forfeited benefits of disciplined judges under paragraph (q), and fines imposed under paragraph (r).

(h) Filing Fees. Attorneys filing a civil complaint or answer before the Special Grand Jury in behalf of their client, shall, at the time of filing, pay a fee equal to the filing fee due in a civil appeal to the State Supreme Court. Individuals filing a civil complaint or answer before the Special Grand Jury in their own behalf as a matter of right, shall, at the time of filing, post a fee of fifty dollars, or shall file a declaration, which shall remain confidential, stating that they are impoverished and unable to pay and/or object to such fee.

(i) Surcharges. Should this Initiative lack sufficient funding through its fines, fees and forfeitures (including deductions in paragraph (g)), the Legislature shall impose appropriate surcharges upon the civil court filing fees of corporate litigants as necessary to make this Initiative self-supporting.

(j) Compensation of Jurors. Each Juror shall receive a salary commensurate to a District Court Judge, prorated according to the number of days actually served.

(k) Annual Budget. The Special Grand Jury shall have an annual operation budget commensurate to double the combined salaries of the twenty-five Jurors serving full time, which sum shall be initially deposited by the Legislature into an exclusive trust account to be annually administered by the State Controller. Should the trust balance within any budget year drop to less than an

amount equivalent to the annual gross salaries of twenty District Court judges, the State Controller shall so notify the Legislature which shall replenish the account, prorated based on the actual average expenditures during the budget year. Should the trust balance in any subsequent year exceed the annual operational budget at the beginning of a new budget year, the State Controller shall return such excess to the state treasury.

(l) Jurisdiction. Such Special Grand Jury shall have exclusive power to establish rules to assure attendance, to provide internal discipline, and to remove any of its members on grounds of misconduct; the Special Grand Jury shall immediately assign a docket number to each complaint brought. Except as provided in paragraphs (s) and (w), no complaint of misconduct shall be considered by the Special Grand Jury unless the complainant shall have first attempted to exhaust all judicial remedies available in this State within the immediately preceding six-month period. (Such six-month period, however, shall not commence in complaints of prior fraud or blocking of a lawful conclusion until after the date the Special Grand Jury becomes functional. This provision applies remedially and retroactively.) Should the complainant opt to proceed to the United States Supreme Court, such six-month period shall commence upon the disposition by that Court.

(m) Qualifications of Jurors. A Juror shall have attained to the age of thirty years, and have been nine years a citizen of the United States, and have been an inhabitant of Idaho for two years immediately prior to having his/her name drawn. Those not eligible for Special Grand Jury service shall include elected and appointed officials, members of the State Bar, judges (active or retired), judicial, prosecutorial and law enforcement personnel, without other exclusion except previous adjudication of mental incapacity, imprisonment, or parole from a conviction of a felonious crime against persons.

(n) Selection of Jurors. The Jurors shall serve without compulsion and shall be drawn by public lot by the Secretary of State from names on the voters' rolls and any citizen submitting his/her name to the Secretary of State for such drawing.

(o) Service of Jurors. Excluding the establishment of the initial Special Grand Jury, each Juror shall serve one year. No Juror shall serve more than once. On the first day of each month, two persons shall be rotated off the Special Grand Jury and new Citizens seated, except in January it shall be three. Vacancies shall be filled on the first of the following month in addition to the Jurors regularly rotated, and the Juror drawn to fill a vacancy shall complete only the remainder of the term of the Juror replaced.

(p) Procedures. The Special Grand Jury shall serve a copy of the filed complaint upon the subject judge and notice to the complainant of such service. The judge shall have twenty days to serve and file an answer. The complainant shall have fifteen days to reply to the judge's answer. (Upon timely request, the Special Grand Jury may provide for extensions for good cause.) The Special Grand Jury shall have power to subpoena witnesses, documents, and other tangible evidence, and to examine witnesses under oath. The Special Grand Jury shall determine the causes properly before it with its reasoned findings in writing within one hundred twenty (120) calendar days, serving on all parties its decision on whether immunity shall be barred as a defense to any civil action that may thereafter be pursued against the judge. A rehearing may be requested of the Special Grand Jury within fifteen days with service upon the opposition. Fifteen days shall be allowed to reply thereto. Thereafter, the Special Grand Jury shall render final determination within thirty days. All allegations of the complaint shall be liberally construed in favor of the complainant. The Jurors shall keep in mind, in making their decisions, that they are entrusted by

the People of this State with the duty of restoring a perception of justice and accountability of the judiciary, and are not to be swayed by artful presentation by the judge. Jurors shall avoid all influence by judicial and government entities. The statute of limitations on any civil suit brought pursuant to this Initiative against a State judge shall not commence until the rendering of a final decision by the Special Grand Jury. Special Grand Jury files shall always remain public record following their final determination. A majority of thirteen shall determine any matter.

(q) Removal. Whenever any judge has received three strikes, the judge shall be permanently removed from office, and thereafter shall not serve in any State judicial office, including that of private judge. Judicial retirement for such removed judge shall not exceed one-half of the benefits to which such person would have otherwise been entitled. Retirement shall not avert third-strike penalties.

(r) Indictment. Should the Special Grand Jury also find probable cause of criminal conduct on the part of any judge against whom a complaint is docketed, it shall have the power to indict such judge except where double jeopardy attaches. The Special Grand Jury shall, with voir dire beyond personal relationships, cause to be impaneled twelve special trial jurors, plus alternates, which trial jurors shall be instructed that they have power to judge both law and fact. The Special Grand Jury shall also select a non-governmental special prosecutor and a judge with no more than four years on the bench from a county other than that of the defendant judge. The trial jury shall be selected from the same pool of jury candidates as any regular jury. The special prosecutor shall thereafter prosecute the cause to a conclusion, having all the powers of any other prosecutor within this State. Upon conviction, the special trial jury shall have exclusive power of sentencing (limited to incarceration, fines and/or community service), which shall be derived by an average of the sentences of the trial jurors.

(s) Criminal Procedures. In addition to any other provisions of this Initiative, a complaint for criminal conduct of a judge may be brought directly to the Special Grand Jury upon all the following prerequisites: (1) an affidavit of criminal conduct has been lodged with the appropriate prosecutorial entity within ninety (90) days of the commission of the alleged conduct; (2) the prosecutor declines to prosecute, or one hundred twenty (120) days has passed following the lodging of such affidavit and prosecution has not commenced; (3) an indictment, if sought, has not been specifically declined on the merits by a county Grand Jury; and (4) the criminal statute of limitations has not run. Any criminal conviction (including a plea bargain) under any judicial process shall constitute a strike.

(t) Public Indemnification. No judge complained of, or sued civilly by a complainant pursuant to this Initiative, shall be defended at public expense or by any elected or appointed public counsel, nor shall any judge be reimbursed from public funds for any losses sustained under this Initiative.

(u) Enforcement. No person exercising strict enforcement of the findings of the Special Grand Jury shall be held liable civilly, criminally, or in contempt.

(v) Redress. The provisions of this Initiative are in addition to other redress that may exist and are not mutually exclusive.

(w) Challenges to Initiative. No judge under the jurisdiction of the Special Grand Jury, or potentially affected by the outcome of a challenge to this Initiative, shall have any jurisdiction to sit in judgment of such challenge. Such pretended adjudication shall be null and void for all

purposes and a complaint for such misconduct may be brought at any time, without charge, before the Special Grand Jury by class-action, or by any adversely affected person.

(x) Preeminence. Preeminence shall be given to this Initiative in any case of conflict with statute, case law or common law provision. The foreperson of the Special Grand Jury shall read, or cause to be read, this Initiative to the respective Jurors semi-annually during the first week of business in January and July. Should any part of this Initiative be determined unconstitutional, the remainder shall remain in full force and effect as though no challenge thereto existed.