1956

CONSTITUTIONAL PROVISIONS RELATING TO JUDICIARY

Argument in Favor of Assembly Constitutional Amendment No. 54

Assembly Constitutional Amendment No. 54 amends present Section 4c of Article VI of the e Constitution. This article relates to the Judi- Department of our State Government.

This measure deals exclusively with petitions for hearing in the Supreme Court after decisions rendered by the district courts of appeal. It makes no substantive change in those provisions of existing Section 4c which relate to the transfer of a case filed in the Supreme Court to a district court of appeal for decision, to the transfer of a case by the Supreme Court from one district court of appeal to another, and to the transfer of a case before its decision in a district court of appeal to the Supreme Court for a hearing and determination by the latter court.

The adoption of this measure will relieve those undue burdens which present Section 4c now imposes upon the justices of the Supreme Court. Under the peculiar and needlessly restrictive time limitations now found in this Section 4c, and in Rule 28 of the Rules on Appeal as necessarily promulgated pursuant thereto, a party aggrieved by a decision in a district court of appeal has only 22 days in criminal cases, and 40 days in civil cases, following that decision within which to file a petition for a hearing in the Supreme Court; and even worse, our Supreme Court now has only 8 days in criminal cases, and 20 days in civil cases, within which to pass upon each such petition filed with it. These time limits are entirely too short, especially in view of the large number of these petitions which our Supreme Court must consider every ıth.

n contrast, the new Section 4d in this measure deletes these existing arbitrary time limits which cause the difficulties, and substitutes a modern procedure for the filing and determination of these petitions within extended and reasonable times to be provided by rules of the Judicial Council. Under this new provision, the Judicial Council, in a usual exercise of its rule-making powers, will first secure all possible information, including the views of the bench and bar, and thereafter promulgate rules to provide an adequate time within which an attorney can prepare a petition for a hearing in the Supreme Court, and even more important, to provide that the Supreme Court shall have several months within which to act upon the same.

The adoption of this measure is urgently needed. It was recommended in 1954 by a committee of the State Bar which made a study of this subject. It was introduced in the 1955 Legislature at the request of the Judicial Council of California, and it is endorsed by that body. It passed the Legislature without opposition in the committees, by a unanimous vote in the Senate, and with only one dissenting vote in the Assembly.

I urge your "Yes" vote on this constitutional amendment.

CLARK L. BRADLEY
Member of Assembly, Twenty-eighth District, Santa Clara County

Argument Against Assembly Constitutional Amendment No. 54

A.C.A. 54 proposes to amend Sec. 4c and add Sec. 4d to Article VI of the State Constitution and, at first reading, it appears that there has been merely a separation of the matters dealing with transfers from the District Courts of Appeal and from them to the Supreme Court. But there is one important change made in existing law—the time for filing petitions for hearings, which is now expressly provided for in the State Constitution, is left up to the Judicial Council under its rule making powers.

It seems better, in my opinion, that there should be a statement either in the Constitution or in the law, if power were to be granted to the Legislature to spell it out, so that there would be something definite to turn to for information. No satisfactory answer was given to this objection when the matter was voted upon in the Assembly and I voted NO. Perhaps the proponents give a more lucid explanation herein—if not, follow the safe rule when in doubt and vote NO.

ERNEST R. GEDDES
Member California Legislature, Forty-ninth Assembly District

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17 **CONSTITUTIONAL PROVISIONS RELATING TO JUDICIARY. Assembly Constitutional Amendment No. 53.** Repeals a constitutional provision which formerly regulated salaries of superior court and appellate judges. Repeals another provision dealing with the former Supreme Court Commission.

YES	
NO	

(For Full Text of Measure, See Page 48, Part II)

Analysis by the Legislative Counsel

This constitutional amendment would delete Section 17 of Article VI from the Constitution. That section purports to prescribe the compensation of the justices of the Supreme Court and of the District Courts of Appeal, and of the judges of the superior courts. It was abrogated, however, and the Legislature was given plenary power to prescribe the compensation of such justices and judges by an amendment to Section 11 of Article VI, adopted November 4, 1924. This latter section now ovides that, "The compensation of the justices judges of all courts of record shall be fixed, and ne payment thereof prescribed, by the Legislature."

This measure would also eliminate a 1904 prohibition (Section 25 of Article VI) against the creation of a Supreme Court Commission. It would repeal obsolete language abolishing the Supreme Court Commission which was, prior to such abolition, and prior to the creation of the District Courts of Appeal, utilized by the Supreme Court to assist it in the performance of its duties.

Argument in Favor of Assembly Constitutional Amendment No. 53

Assembly Constitutional Amendment No. 53 repeals in entirety two wholly obsolete sections in Article VI of the State Constitution. This article relates to the Judical Department of our State Government.

The first of these obsolete sections repealed in this measure is Section 17 of Article VI. This section has long since ceased to have any operation or effect. As amended in 1906, it set the salaries of justices and judges of the Supreme Court, the district courts of appeal, and the superior courts. However, since 1924 the Legislature has been authorized, under a provision added to Section 11 of Article VI in that year, to fix the salaries of the justices and judges of all courts of record; and from time to time the Legislature has done so. The 1924 amendment to Section 11 superseded Section 17 in entirety. An express repeal of this obsolete Section 17, as provided in this measure, is long overdue.

The second obsolete section repealed in this measure is Section 25 of Article VI. This section was added in 1904. It refers to a Supreme Court Commission. This Commission was created by statute around the turn of this Century. It consisted of from three to five Commissioners to aid the Supreme Court in research and other work. In 1904 the district courts of appeal were created to relieve the pressure of business upon the Supreme Court. With the establishment of these intermediate appellate courts, the Supreme Court Commission was abolished in this Section 25. There should no longer be any mention of this long defunct b in our Constitution. An express repeal of this o lete Section 25, as provided in this measure, wil delete all such reference to it.

The presence of this type of "deadwood" in the State Constitution is confusing and undesirable. This measure is a step in the right direction towards a shortening and other modernization of our Constitution. It was introduced at the request of the Judicial Council of California, and it is endorsed by that body. It passed the Legislature by a unanimous vote in each house.

I urge your "Yes" vote on this constitutional amendment.

CLARK L. BRADLEY
Member of Assembly, Twenty-eighth District, Santa Clara County

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18 **INFERIOR COURT JUDGES. Assembly Constitutional Amendment No. 63.** Makes judge of a justice court eligible for office as judge of a superseding municipal court established before January 1, 1960, even though he is not an attorney, where he has served as inferior court judge continuously since November 7, 1945.

YES	
NO	

(For Full Text of Measure, See Page 49, Part II)

Analysis by the Legislative Counsel

Article VI, Section 23, of the Constitution now restricts eligibility for municipal court judgeships to persons who have been admitted to the practice of law for at least five years. The inferior court reorganization plan, which was adopted by the electors on November 7, 1950, contemplated that some justice's courts and other inferior courts, whose judges were not required to be lawyers, would be superseded by new municipal courts. To protect the status of non-lawyer judges whose courts were superseded by new municipal courts, an exception to the requirement of admission to the practice of law was made so that any person who was an elected judge or justice of a court existing on November 7, 1950, and who had served as such for five years prior to that date, was eligible to be a judge of the new municipal court which superseded such court. This exception does not protect a non-lawyer judge in the case where his court was superseded under the 1950 reorganization, either by a justice court or by a municipal court of which he continued to be judge, if such justice or municipal court is in turn subsequently superseded by a new municipal court. Such non-lawyer judge would not be eligible to continue as judge of the new municipal court.

This amendment to Section 23 would provide continued eligibility for any person who has served as judge or justice of the peace, since November 7, 1945, of a court superseded either by a justice court or a municipal court under the 1950 reorganization. Such a person would be eligible to become judge of any new municipal court which, in turn, supersedes the court created under the 1950 reorganization if (a) he has continuously served as judge of the reorganized court until it is superseded, and (b) it is so superseded before January 1, 1960.

Argument in Favor of Assembly Constitution Amendment No. 63

The voters of California at the 1950 general election adopted a constitutional amendment providing for the reorganization of the inferior courts of this State and reducing the number of such courts to two classes known as municipal courts and justice courts. The Constitution then required admission to practice law before the Supreme Court for at least five years before a person is eligible to be a municipal court judge. The 1950 amendment made any elective judge or justice of an existing court superseded by a municipal court eligible to become the judge of such municipal court if he had served in his present capacity for five consecutive years immediately preceding the effective date of the amendment. It was the intent and spirit of the amendment that experienced incumbent Justices of the Peace would be permitted to continue in office, even though their courts were changed to municipal courts without requiring that they be lawyers.

The Attorney General rendered an opinion that the term "existing court" applied only to the court that existed at the time of the adoption of the Reorganization Act in 1950, and that from and after that time no Judge of a Justice Court would be eligible to succeed to a Municipal Court which superseded his Court unless he was an attorney. This construction was contrary to the intent of the Legislature in proposing the 1950 Constitutional Amendment.

In order to clarify the interpretation of the t "existing court" and to preserve the spirit intent of the Legislature to permit experienced incumbent Judges of Justice Courts to continue

CIVIL AND CRIMINAL APPEALS. Assembly Constitutional Amendment No. 54. Deletes present time limits within which Supreme Court hearing may be ordered after decision by District Court of Appeal. Authorizes Judicial Council to fix such time limits by rule.

16

YES	
NO	

(This proposed amendment expressly amends an existing section of the Constitution, and adds a new section thereto; therefore, **EXISTING PROVISIONS** proposed to be **DELETED** are printed in ~~STRIKE-OUT TYPE~~, and **NEW PROVISIONS** proposed to be **INSERTED** or **ADDED** are printed in **BLACK-FACED TYPE**.)

PROPOSED AMENDMENTS TO ARTICLE VI

First. That Section 4c of Article VI thereof be amended to read:

Sec. 4c. The Supreme Court ~~shall have power to~~ **may** order any ~~cause pending before the supreme court to be heard and determined by a district court of appeal, and to order any cause pending before a district court of appeal to be heard and determined by the supreme court. The order last mentioned may be made before judgment has been pronounced by a district court of appeal, or within fifteen days in criminal cases, or thirty days in all other cases, after such judgment shall have become final therein. The judgment of the district courts of appeal shall become final therein upon the expiration of fifteen days in criminal cases, or thirty days in all other cases, after the same shall have been pronounced.~~

~~The supreme court shall have power to order causes pending before a district court of appeal for one district to be transferred to the district court of appeal for another district, or from one division thereof to another, for hearing and decision~~ **case: (i) in the Supreme Court transferred to a district court of appeal for decision; and (ii) in the district court of appeal for one district transferred to the district court of appeal for another district, or in one division of a district court of appeal transferred to another division of the same district court of appeal, for decision. An order under this section must be made before decision by the court or division from which the case is to be transferred.**

Second. That Section 4d be added to Article VI thereof to read:

Sec. 4d. The Supreme Court may order any case in a district court of appeal transferred to it for decision. An order under this section may be made before decision by the district court of appeal or thereafter up to the time such decision becomes final as provided by rule of the Judicial Council.

CONSTITUTIONAL PROVISIONS RELATING TO JUDICIARY. Assembly Constitutional Amendment No. 53. Repeals a constitutional provision which formerly regulated salaries of superior court and appellate judges. Repeals another provision dealing with the former Supreme Court Commission.

17

YES	
NO	

(This proposed amendment expressly repeals existing sections of the Constitution, therefore, **EXISTING PROVISIONS** proposed to be **REPEALED** are printed in ~~STRIKE-OUT TYPE~~.)

PROPOSED AMENDMENTS TO ARTICLE VI

First. That Section 17 of Article VI thereof be repealed.

~~SEC. 17. The justices of the supreme court and of the district courts of appeal, and the judges of the superior courts, shall severally, at stated times during their continuance in office, receive for their service such compensation as is or shall be provided by law. The salaries of the judges of the superior court, in all counties having but one judge, and in all counties in which the terms of the judges of the superior court expire at the same time, shall not hereafter be increased or diminished after their election, nor during the term for which they shall have been elected. Upon the adoption of this amendment the salaries then established by law shall be paid uniformly to the justices and judges then in office. The salaries of the justices of the supreme court and of the district courts of appeal shall be paid by the State. One-half of the salary of each superior court judge shall be paid by the State, and the other half thereof shall be paid by the county for which he is elected. On and after the first day of January, A. D. one thousand nine hundred and seven, the justices of the supreme court shall each receive an annual salary of eight thousand dollars, and the justices of the several district courts of appeal shall each receive an annual salary of seven thousand dollars, the said salaries to be payable monthly.~~

Second. That Section 25 of Article VI thereof be repealed.

~~SEC. 25. The present supreme court commission shall be abolished at the expiration of its present term of office, and no supreme court commission shall be created or provided for after January 1st, A. D. 1905.~~