

Assembly Constitutional Amendment

No. 38

Introduced by Assembly Member DeVore

April 25, 2006

Assembly Constitutional Amendment No. 38—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 10 of, and adding Section 10.5 to, Article VI thereof, relating to courts.

LEGISLATIVE COUNSEL'S DIGEST

ACA 38, as introduced, DeVore. The Supreme Court: jurisdiction: initiative measure and referendum.

The California Constitution provides that the Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings. Those courts also have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition. The Constitution also provides that the appellate division of the superior court has original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition directed to the superior court in causes subject to its appellate jurisdiction. Superior courts have original jurisdiction in all other causes.

This measure would provide that the Supreme Court has original jurisdiction, and no other state court has jurisdiction, in any civil action challenging the facial validity of any statewide initiative measure or referendum placed on the ballot by signature petition of the voters and approved by the voters at a statewide election, and that no civil action may be brought in any state court to challenge the facial validity of an initiative measure or referendum after the 90-day

period immediately following the effective date of that initiative measure or referendum.

The bill would authorize the Supreme Court, upon the filing of an action to challenge any statewide initiative measure or referendum as described above, to issue a preliminary injunction to enjoin the operation of that initiative measure or referendum if the petitioner provides clear and convincing evidence of irreparable damages and posts a bond in an unspecified amount. The bill would provide for the proceeds of the bond to be paid as liquidated damages to the State of California if the plaintiff fails to prove he or she is entitled to the relief demanded. The bill would generally require the Supreme Court to render a final decision within 90 days of the filing of the action, but would authorize the court to order one or more extensions upon extraordinary circumstances, which shall be set forth in the public records of the court.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

1 *Resolved by the Assembly, the Senate concurring,* That the
2 Legislature of the State of California at its 2005-06 Regular
3 Session commencing on the sixth day of December 2004,
4 two-thirds of the membership of each house concurring, hereby
5 proposes to the people of the State of California, that the
6 Constitution of the State be amended as follows:

7 First—That Section 10 of Article VI thereof is amended to
8 read:

9 SEC. 10. (a) The Supreme Court, courts of appeal, superior
10 courts, and their judges have original jurisdiction in habeas
11 corpus proceedings. Those courts also have original jurisdiction
12 in proceedings for extraordinary relief in the nature of
13 mandamus, certiorari, and prohibition. The appellate division of
14 the superior court has original jurisdiction in proceedings for
15 extraordinary relief in the nature of mandamus, certiorari, and
16 prohibition directed to the superior court in causes subject to its
17 appellate jurisdiction.

18 (b) (1) *The Supreme Court has original jurisdiction, and no*
19 *other state court has jurisdiction, in any civil action, brought in*
20 *accordance with Section 10.5, that challenges the facial validity*
21 *of any statewide initiative measure or referendum placed on the*

1 *ballot by signature petition of the voters and approved by the*
2 *voters at a statewide election.*

3 (2) *After the 90-day period immediately following the effective*
4 *date of an initiative measure or referendum described in*
5 *paragraph (1), no civil action may be commenced in any state*
6 *court to challenge the facial validity of that initiative measure or*
7 *referendum.*

8 (c) Superior courts have original jurisdiction in all other
9 causes.

10 (d) The court may make any comment on the evidence and
11 the testimony and credibility of any witness as in its opinion is
12 necessary for the proper determination of the cause.

13 Second—That Section 10.5 is added to Article VI thereof, to
14 read:

15 SEC. 10.5. (a) Upon the filing of an action with the Supreme
16 Court to challenge the facial validity of any statewide initiative
17 measure or referendum pursuant to subdivision (b) of Section 10,
18 the Supreme Court may issue a preliminary injunction to enjoin
19 the operation of that initiative measure or referendum if the
20 petitioner provides clear and convincing evidence of irreparable
21 damages and posts a bond in an amount of ____ dollars (\$____).
22 The proceeds of the bond shall be paid as liquidated damages to
23 the State of California upon the failure of the plaintiff to prove he
24 or she is entitled to the relief demanded.

25 (b) Except as provided in subdivision (c), the operation of an
26 initiative measure or referendum shall not be enjoined pursuant
27 to this section for more than 90 days after the filing of an action
28 with the Supreme Court pursuant to subdivision (b) of Section
29 10.

30 (c) The Supreme Court shall render a final decision within 90
31 days of the filing of any action with the Supreme Court pursuant
32 to subdivision (b) of Section 10, except that before the 90-day
33 period expires, the Supreme Court may order one or more
34 extensions upon extraordinary circumstances, which shall be set
35 forth in the public records of the court. In the event of any
36 extension pursuant to this subdivision, the Supreme Court may
37 extend any preliminary injunction issued to enjoin the operation
38 of the initiative measure or referendum until the date of decision.

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