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IN THE SUPREME COURT OF FLORIDA

CASE NO. 79,674

IN RE: Constitutionality of Senate
Joint Resolution 2G, Special Apportionment
Session 1992
_____/

ON PETITION FOR REVIEW, APPORTIONMENT PLAN,
PURSUANT TO ARTICLE III,
SECTION 16, FLORIDA CONSTITUTION

BRIEF IN SUPPORT OF SENATE JOINT RESOLUTION 2G APPORTIONING THE LEGISLATURE OF THE STATE OF FLORIDA

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STATEMENT OF THE CASE

This case comes within this Court's original jurisdiction pursuant to Article III, Section 16, Florida Constitution, which provides in relevant part as follows:

> (c) **JUDICIAL REVIEW OF APPORTIONMENT**
> Within fifteen days after the passage of the joint resolution of apportionment, the attorney general shall petition the supreme court of the state for a declaratory judgment determining the validity of the apportionment. The supreme court, in accordance with its rules, shall permit adversary interests to present their views and, within thirty days from the filing of the petition, shall enter its judgment.
>
> (d) **EFFECT OF JUDGMENT IN APPORTIONMENT; EXTRAORDINARY APPORTIONMENT SESSION.**
> A judgment of the supreme court of the state determining the apportionment to be valid shall be binding upon all the citizens of the state. . . .

The nature of the case is that of a declaratory judgment to determine the facial constitutional validity of the 1992 joint resolution of apportionment, Senate Joint Resolution 2G. See In Re Apportionment Law, Senate Joint Res. No. 1E, 414 So.2d 1040, 1052 (Fla. 1982). See also this Court's Order of April 2, 1992. In Re: Joint Resolution of Apportionment, 17 FLW S228.

STATEMENT OF THE FACTS

In March, 1991, the State of Florida received from the Bureau of the Census the official census counts from the 1990 decennial census. This information was received in the form of Public Law 94-171 population data. This data broke down the population of the State into units the smallest of which were blocks, followed in ascending order block groups, tracts, or block-numbered areas, census county divisions, and counties. These various units were used by the Legislature to assemble the legislative districts which are the subject of the case at bar. (See Exhibit A)

Thirty-two (32) public hearings were held statewide under the joint sponsorship of the House and Senate to solicit public comment. Both House and Senate members participated in these hearings. Invitations were made for the submission of proposals for actual plans. Hearings were fully transcribed and copies made available for use by the Legislature. (See Exhibit B).

The plan at issue is embodied in Senate Joint Resolution 2G, which was passed by the Senate and the House on April 9 and 10, 1992, respectively, during a special apportionment session called by the Governor pursuant to Article III, Section 16(a), Florida Constitution.

The population of the state, as established by the Bureau of the Census, is 12,937,926. Accordingly, the ideal Senate district contains 323,448 people (the State population

divided by forty districts). The largest Senate district is District 31, with a population of 324,815, which is a deviation from the ideal of 1,367 people, or 0.45%. The smallest Senate district is District 26, with a population of 322,007, which is a deviation from the ideal of 1,441 people, or 0.42%. For the Senate, this results in a total deviation from the ideal of 2,808 people or 0.87%.

The ideal House district contains 107,816 people (population of the State divided by 120 districts). The largest House district is District 80, with a population of 108,460, which is a deviation from the ideal of 644 people or 0.60%. The smallest House district is District 111, with a population of 106,317, which is a deviation from the ideal of 1,499 people or 1.39%. The total deviation among the House districts, therefore, is 2,143 people or 1.99%.

Recognition of minority voters resulted in the drawing of districts where their voting strength will be concentrated. The plan includes nine (9) House districts with a Hispanic voting age population of 63.8% or higher (Districts 102, 107, 110, 111, 112, 113, 114, 115, 117) and eleven (11) House districts with a Black voting age population of 50.1% or higher. (Districts 14, 15, 39, 59, 84, 93, 94, 103, 104, 108, 109). Two (2) Senate districts have a Black voting age population of 51.7% or higher (Districts 30 and 36) and three (3) Senate districts have a Hispanic voting age population of 64.3% or higher. (Districts 34, 37 and 39). In addition, two

(2) House districts have a Black voting age population of 46% (District 8) and 46.9%, (District 55), respectively; one (1) Senate district has a Black voting age population of 45% (District 2); and two (2) House districts have a Hispanic voting age population of 38.4% and 46.4%, respectively (Districts 109 and 16). See Exhibits B, C, and D to Petition.

Finally, in every legislative district, the voters can travel from any point within the district to any other point within the district without leaving the district, and no part of any district is isolated from the rest of the district by the territory of another.

SUMMARY OF ARGUMENT

This case focuses on five issues concerning the facial validity of Senate Joint Resolution 2G which are summarized as follows:

I. SENATE JOINT RESOLUTION 2G APPORTIONS THE FLORIDA LEGISLATURE IN ACCORDANCE WITH THE 'ONE PERSON, ONE VOTE' STANDARD OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

The Equal Protection Clause of the Fourteenth Amendment requires that a State make an honest and good faith effort during legislative reapportionment to construct districts "as nearly of equal population as is practicable". With this principle in mind, population deviations of 10% and under have been characterized as de minimis and plans with such deviations are considered to be of prima facie constitutional validity. Senate Joint Resolution 2G contains a total deviation of 1.99% as to the House and 0.87% as to the Senate and therefore should be considered facially constitutionally valid.

II. SENATE JOINT RESOLUTION 2G APPORTIONS THE FLORIDA LEGISLATURE INTO CONSECUTIVELY NUMBERED DISTRICTS OF EITHER CONTIGUOUS, OVERLAPPING OR IDENTICAL TERRITORY.

A contiguous district has been defined as one in which a person can travel from any point within the district to any other point without leaving the district. Similarly, a district lacks contiguity only when a part is isolated from the rest by the territory of another district. All districts in Senate Joint

Resolution 2G are contiguous since they are constructed so that a person can travel from any point within that district to any other point without leaving the district, and no portion of a district is separated from the remainder of the district by the intervention of another district.

III. SENATE JOINT RESOLUTION 2G DOES NOT INVIDIOUSLY DISCRIMINATE AGAINST ANY RACIAL OR LANGUAGE MINORITY FOR THE PURPOSE OF MINIMIZING OR CANCELLING THE VOTING STRENGTH OF SUCH MINORITY IN VIOLATION OF THE FOURTEENTH OR FIFTEENTH AMENDMENTS.

Redistricting plans achieving substantial population equality may still be invalid under the Fourteenth or Fifteenth Amendments if they invidiously discriminate. Invidious discrimination may be found only where there is proof of a discriminatory purpose in the creation of the plan plus differential impact such as dilution of the voting strength of a minority. The present plan's use of single-member districts and the affirmative creation of minority districts (9 Hispanic House districts, 11 Black House districts, 2 Black Senate districts, and 3 Hispanic Senate districts) demonstrate that the plan was not created with the discriminatory purpose of minimizing or cancelling the voting strength of minorities. Thus, the plan does not invidiously discriminate in violation of the Fourteenth or Fifteenth Amendments.

IV. A DISCRIMINATION CLAIM UNDER SECTION 2 OF THE VOTING RIGHTS ACT REQUIRES A DETAILED FACT-SPECIFIC EVIDENTIARY SHOWING, THEREBY PRECLUDING ANY FACIAL CHALLENGE TO SENATE JOINT RESOLUTION 2G.

Evaluating a Section 2 vote dilution claim requires a thorough consideration of the "totality of the circumstances" based upon a searching practical evaluation of the past and present reality to determine whether the political process is equally open to minority voters. This requires a functional review of the political process and a determination peculiarly dependent on the facts of each case. Consequently, a Section 2 claim is not a "facial constitutional" claim and is not properly before this Court for purposes of this Court's jurisdiction under Article III, § 16, Florida Constitution.

V. A POLITICAL GERRYMANDERING CLAIM UNDER THE EQUAL PROTECTION CLAUSE REQUIRES A DETAILED FACT-SPECIFIC EVIDENTIARY SHOWING, THEREBY PRECLUDING ANY FACIAL CHALLENGE TO SENATE JOINT RESOLUTION 2G.

Evaluating a political gerrymandering claim requires a detailed, complex factual inquiry into whether a plan intentionally discriminates against a political group and actually has a discriminatory effect on that group. This also requires a functional review of the political process and a determination peculiarly dependent on the facts of each case. Consequently, a political gerrymander claim is not a "facial constitutional" claim and is not properly before this Court for purposes of this Court's jurisdiction under Article III, § 16 Florida Constitution.

ARGUMENT

POINT I

SENATE RESOLUTION 2G JOINT APPORTIONS THE FLORIDA LEGISLATURE IN ACCORDANCE WITH THE "ONE PERSON, ONE VOTE"[1] STANDARD OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

In Reynolds v. Sims, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964), the United States Supreme Court held:

> The Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable. We realize that it is a practical impossibility to arrange legislative districts so that each one has an identical number of residents, or citizens, or voters. Mathematical exactness or precision is hardly a workable constitutional requirement.

377 U.S. at 577 (emphasis supplied).

While acknowledging that somewhat more flexibility may be constitutionally permissible with respect to state legislative apportionment than in congressional districting, the Court did not establish any constitutional litmus test as to what constitutes "as nearly of equal population as is practicable." Rather, the Court deemed

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[1] As stated by Justice Douglas in Gray v. Sanders, 372 U.S. 368, 381, 83 S.Ct. 801, 9 L.Ed. 821 (1963), political equality "can mean only one thing -- one person, one vote." See also New York City Board of Estimate v. Morris, 489 U.S. 688, 109 S.Ct. 1433, 103 L.Ed.2d 717 (1989).

> it expedient not to attempt to spell out any precise constitutional tests. What is marginally permissible in one State may be unsatisfactory in another, depending on the particular circumstances of the case. Developing a body of doctrine on a case-by-case basis appears to us to provide the most satisfactory means of arriving at detailed constitutional requirements in the area of state legislative apportionment.

377 U.S. at 578 (emphasis supplied).

Nevertheless, the Court added that:

> Whatever the means of accomplishment, the overriding objective must be substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen in the State.

377 U.S. at 579.

Noting the historic pattern of deviations from the equal-population principle in the apportionment of state legislatures, the Court continued:

> So long as the divergencies from a strict population standard are based on legitimate considerations incident to the effectuation of a rational state policy, some deviations from the equal-population principle are constitutionally permissible with respect to the apportionment of seats in either or both of the two houses of a bicameral state legislature.

377 U.S. at 579.

In Conner v. Finch, 431 U.S. 407, 97 S.Ct. 1828, 52 L.Ed.2d 465 (1977), the United States Supreme Court said that when an apportionment is, as here, fashioned by a legislative body, population deviations of 10% and under are considered to be of prima facie constitutional validity. Brown v. Thomson,

462 U.S. 835, 103 S.Ct. 2690, 77 L.Ed.2d 214 (1983). See also Potter v. Washington County, Fla., 653 F. Supp. 121 (N.D. Fla. 1986).

Ten years ago, in In Re Apportionment Law, supra, this Court approved a reapportionment plan that had a total deviation from the ideal of 1.05% between the largest and the smallest Senate districts, and .46% total deviation between the largest and smallest House districts. This Court did not require any justification for these de minimis deviations because in Gaffney v. Cummings, 412 U.S. 735, 741, 93 S.Ct. 2321, 37 L.Ed.2d 298 (1973), the Court held that a 7.83% deviation in Connecticut's House districts and a 1.18% deviation in the Senate districts

> failed to make out a prima facie violation of the Equal Protection Clause of the Fourteenth Amendment, whether those deviations are considered alone or in combination with the additional fact that another plan could be conceived with lower deviations among the State's legislative districts. Put another way, the allegations and proof of population deviations among the districts fail in size and quality to amount to an invidious discrimination under the Fourteenth Amendment which would entitle appellees to relief, absent some countervailing showing . . . .
>
> * * * *
>
> (I)t is now time to recognize, in the context of the eminently reasonable approach of Reynolds v. Sims, that minor deviations from mathematical equality among state legislative districts are insufficient to make out a prima facie case of invidious discrimination under the Fourteenth Amendment so as to require justification by the State.

412 U.S. at 745 (emphasis supplied).

Against this background, the reapportionment plan before this Court contains a total deviation of 1.99% in the Florida House and 0.87% in the Florida Senate. These deviations are well under 10%, and, in accordance with the above analysis, are de minimis and do not require justification by the State. These deviations fail in size and quality to amount to an invidious discrimination under the Fourteenth Amendment; therefore, the plan represents an honest and good faith effort to construct districts as nearly of equal population as practicable and should be considered to be facially constitutionally valid.

POINT II

SENATE JOINT RESOLUTION 2G APPORTIONS THE FLORIDA LEGISLATURE INTO CONSECUTIVELY NUMBERED DISTRICTS OF EITHER CONTIGUOUS, OVERLAPPING OR IDENTICAL TERRITORY.

Article III, Section 16(a), Florida Constitution, provides that the Legislature shall apportion the State

> into not less than thirty nor more than forty consecutively numbered senatorial districts of either contiguous, overlapping or identical territory, and into not less than eighty nor more than one hundred twenty consecutively numbered representative districts of either contiguous, overlapping or identical territory.

A contiguous district, as that term has been used in legislative reapportionment, has been defined as "one in which a person can go from any point within the district to any other point without leaving the district." Comment, Reapportionment, 79 Harv.L.Rev. 1228 (1966). This court, in In Re Apportionment Law, supra, said that a "[d]istrict lacks contiguity only when a part is isolated from the rest by the territory of another district." 414 So.2d at 1051 [quoting Mader v. Crowell, 498 F.Supp. 226, 229 (M.D. Tenn. 1980)]. In Mader, the court pointed out that contiguity

> does not mean in contact by land. Certainly, so far as . . . islands are concerned, they may be considered contiguous, although separated by wide reaches of navigable deep waters.

498 F.Supp. 229 (emphasis the court's).

The Mader court concluded that "contiguity is absent, then, only when a portion of a district is separated from the remainder of the district by the intervention of the territory of another district." 498 F. Supp. at 229.

All districts in Senate Joint Resolution 2G are constructed so that a person can go from any point within that district to any other point without leaving the district, and no portion of a district is separated from the remainder of the district by the intervention of another district. Accordingly, all districts meet this Court's standard for Article III, Section 16 contiguity.

In addition to the requirement that districts be of either contiguous, overlapping or identical territory is the Article III, Section 16(a) requirement that districts be consecutively numbered. In addressing the 1982 Florida reapportionment plan this Court concluded that Article III, Section 16, requires only that district numbers be consecutive, and that the territory within each district be contiguous and not that each district be contiguous with the next consecutively numbered district. In Re: Apportionment Law, 414 So.2d at 1051.

Petitioner submits that consecutive numbering simply requires that there be no missing numbers, thus assuring the proper distribution of even- and odd-numbered districts. This guarantees that some senators would be elected for terms of four

years in the years the numbers of which are multiples of four and that some senators would be elected for terms of four years in the years the numbers of which are not multiples of four, thus maintaining staggered terms as required by Article III, Section 16(a), Florida Constitution.

In view of the above, district numbers do not need to be consecutive and contiguous but merely consecutive. Accordingly, Senate Joint Resolution 2G, which numbers the Senate districts 1 through 40 and the House districts from 1 through 120, apportions the State into 40 consecutively numbered Senate districts and 120 consecutively numbered House districts as required by Article III, Section 16(a), Florida Constitution.

POINT III

SENATE JOINT RESOLUTION 2G DOES NOT INVIDIOUSLY DISCRIMINATE AGAINST ANY RACIAL OR LANGUAGE MINORITY FOR THE PURPOSE OF MINIMIZING OR CANCELLING THE VOTING STRENGTH OF SUCH MINORITY IN VIOLATION OF THE FOURTEENTH OR FIFTEENTH AMENDMENTS.

The sole issue to be considered by this Court in this proceeding is the facial constitutional validity of Senate Joint Resolution 2G. See In Re Apportionment Law supra; In Re Apportionment Law, Senate Joint Resolution No. 1305, 263 So.2d 797 (Fla. 1972). See also this Court's Order of April 2, 1992, in In Re Joint Resolution of Apportionment, 17 FLW S228.

In a constitutional challenge to an apportionment plan, invidious discrimination may be found only where there is proof of a discriminatory purpose in either the formulation or maintenance of the plan, plus differential impact, such as the dilution of the voting strength of a minority. Rogers v. Lodge, 458 U.S. 613, 102 S.Ct. 3272, 73 L.Ed.2d 1012 (1982); NAACP v. Gadsden County School Board, 691 F.2d 978 (11th Cir. 1982).

In In Re Apportionment Law, 414 So.2d at 1052, this Court said the following with respect to such a constitutional challenge:

> To show invidious discrimination, the objector to the plan for apportionment must produce evidence which supports the finding that the political process in this

> apportionment plan was a "purposefully discriminatory denial or abridgement by government of the freedom to vote 'on account of race, color, or previous condition of servitude.'" City of Mobile v. Bolden, 446 U.S. 55, 65, 100 S.Ct. 1490, 64 L.Ed.2d 47 (1980); See also Milton v. Smathers, 389 So.2d 978 (Fla. 1980).
>
> The objectors have the burden to show this Court that the plan was motivated by an intent to discriminate. City of Mobile v. Bolden; McGowan v. Maryland, 366 U.S. 420, 81 S.Ct.1101, 6 L.Ed.2d 393, 393 (1961).

The Supreme Court has evolved the "political access" test for use in determining whether districting plans achieving substantial population equality nevertheless invidiously discriminate against minority groups. The test was first elucidated in Whitcomb v. Chavis, 403 U.S. 124, 91 S.Ct. 1858, 29 L.Ed.2d 363 (1971), a suit attacking Indiana's state legislative apportionment for its use of multi-member districts. While not holding that multi-member districts were per se invalid, the Court pointed out that the validity of any district "may be subject to challenge where the circumstances of a particular case may 'operate to minimize or cancel out the voting strength of racial or political elements of the voting population.'" 403 U.S. at 143 (emphasis added). The Court will look to see whether the plan was "conceived or operated as [a] purposeful device to further racial discrimination." 403 U.S. at 149.

Accordingly, only if there is purposeful discrimination can there be a violation of the Equal Protection

Clause of the Fourteenth Amendment. Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977). This principle applies to claims of racial discrimination affecting voting just as it does to other claims of racial discrimination. Washington v. Davis, 426 U.S. 229, 96 S.Ct. 2040, 48 L.Ed.2d 597 (1976). A plaintiff must prove that the disputed apportionment plan was "conceived or operated as [a] purposeful device to further racial discrimination." Whitcomb v. Chavis, 403 U.S. at 149.

Further, the Fifteenth Amendment was held by a plurality of the Supreme Court in City of Mobile v. Bolden, 446 U.S. 55, 64 L.Ed.2d 47, 100 S.Ct. 1490 (1980), to prohibit only "purposefully discriminatory denial or abridgment by government of the freedom to vote 'on account of race, color, or previous condition of servitude.'" 446 U.S. at 65. In Milton v. Smathers, 389 So.2d 978, 981 (1980), this Court interpreted City of Mobile to mean that a showing of discriminatory effect is insufficient to make out a violation of these amendments; rather, the plan has to have been motivated by the intent to discriminate.

Accordingly, a plaintiff must prove that the disputed apportionment plan was motivated by the intent to discriminate to establish a violation of either the Fourteenth or Fifteenth Amendments. Mobile v. Bolden, supra. Such proof must appear from evidence in the record. McGowan v. State of Maryland, 366 U.S. 420, 81 S.Ct. 1101 6 L.Ed.2d 393 (1961); In Re

Apportionment Law, 414 So.2d 1040 (Fla. 1982); In Re Apportionment Law, Senate Joint Resolution No. 1305, 263 So.2d 797, 804 (1972).

In In Re Apportionment Law, 414 So.2d at 1052, this Court, after describing the evidentiary test for a showing of invidious discrimination, said, with respect to the record before it:

> Not only does the record in this cause reflect no proof of purposeful discrimination, but, to the contrary, it affirmatively shows provisions which will substantially increase the opportunity for minority participation in the political process in this state. . .

As noted in the statement of the facts above, the plan includes nine (9) House districts with a Hispanic voting age population of 63.8% or higher, and eleven (11) House districts with a Black voting age population of 50.2% or higher. Two (2) Senate districts have a Black voting age population of 51.7% or higher and three (3) Senate districts have a Hispanic voting age population of 64.3% or higher. (See Exhibits B, C and D to Petition) In addition, two (2) House districts have a Black voting age population of 46% and 46.9%, respectively; one (1) Senate district has a Black voting age population of 45%; and two (2) House districts have a Hispanic voting age population of 38.4% and 46.4%, respectively. These districts were drawn so that these minority segments of the state's population would have a greater opportunity to participate in

the political process and to elect representatives of their choice. This factual record demonstrates no purposeful discrimination and underscores the facial constitutionality of Senate Joint Resolution 2G.

This "affirmative gerrymandering" does not violate the Constitution. As the court stated in Gaffney, supra:

> Neither we nor the district courts have a constitutional warrant to invalidate a state plan, otherwise within tolerable population limits, because it undertakes, not to minimize or eliminate the political strength of any group . . . but to recognize it and, through districting, provide a rough sort of proportional representation in the legislative halls of the State.

412 U.S. 754.

Further support is found for this affirmative action when one considers that there are five counties (Collier, Hardee, Hendry, Hillsborough and Monroe) in the State subject to the federal preclearance requirement of the Voting Rights Act, 42 U.S.C. Section 1973(b) [commonly referred to as Section 5 of the Voting Rights Act (VRA)], which requires a determination that a plan not have the purpose or effect of denying or abridging the right to vote of a racial or language minority group.

In United Jewish Organization v. Carey, 430 U.S. 144, 97 S.Ct. 996, 51 L.Ed.2d 229 (1977), certain members of a white Jewish community sued because when the State of New York constructed minority districts to achieve compliance with Section 5 of the VRA, their own voting strength had allegedly been unconstitutionally impaired. The Court said:

> [T]he Constitution does not prevent a State subject to the Voting Rights Act from deliberately creating or preserving (minority) majorities in particular districts in order to ensure that its reapportionment plan complies with Section 5.

430 U.S. at 161.

More importantly, the Court went on to say that:

> Whether or not the plan was authorized by or was in compliance with Section 5 of the Voting Rights Act, New York was free to do what it did as long as it did not violate the Constitution, particularly the Fourteenth and Fifteenth Amendments; and we are convinced that neither Amendment was infringed.
>
> There is no doubt that . . . the State deliberately used race in a purposeful manner. But its plan represented no racial slur or stigma with respect to whites or any other race, and we discern no discrimination violative of the Fourteenth Amendment nor any abridgement of the right to vote on account of race within the meaning of the Fifteenth Amendment.

430 U.S. at 165.

Furthermore, the plan provides for the use of single-member districts in both Houses of the Legislature.

These two factors, that is, the use of single-member districts and the affirmative creation of districts with substantial minority populations, demonstrate that the plan at issue was not "conceived or operated as [a] purposeful device to further racial discrimination," Whitcomb v. Chavis, 403 U.S. at 149, in violation of the Fourteenth or Fifteenth Amendments.

There is no evidence in the record to support a finding "that the political processes leading to nomination and election [is] not equally open to participation by the group in question - that its members [have] less opportunity . . . to participate in the political processes and to elect legislators of their choice." White v. Register, 412 U.S. 755, 766, 93 S.Ct. 2332, 37 L.Ed.2d 314 (1973).

This is so even though the plan does not provide proportional representation. It has been held that the failure to provide for representation proportional to minority population is not invidiously discriminatory. Whitcomb, 403 U.S. at 149.

Absent a showing of invidious discrimination, this Court's statement in In Re Apportionment Law, Senate Joint Res. No. 1305, supra, is controlling:

> Hence, this Court, in accordance with the doctrine of separation of powers, will not seek to substitute its judgment for that of another coordinate branch of the government, but will only measure acts done with the yardstick of the Constitution. The propriety and wisdom of legislation are exclusively matters for legislative determination.

263 So.2d at 806.

In conclusion, the plan as embodied in Senate Joint Resolution 2G achieves close to exact population equality. More effective representation has been achieved by creating districts where minority voters have greater opportunity to participate in the political process and to elect representatives of their choice.

Viewed in its entirety, it is apparent that the present plan does not invidiously discriminate against any racial or language minority for the purpose of minimizing or cancelling the voting strength of such minority in violation of either the Fourteenth or Fifteenth Amendments. The plan thus is facially valid.

POINT IV

A DISCRIMINATION CLAIM UNDER SECTION 2 OF THE VOTING RIGHTS ACT REQUIRES A DETAILED FACT-SPECIFIC EVIDENTIARY SHOWING, THEREBY PRECLUDING ANY FACIAL CHALLENGE TO SENATE JOINT RESOLUTION 2G.

Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. Section 1973 (a), (Section 2), prohibits any state or political subdivision from imposing any voting practice or procedure, including a redistricting plan, that results in the dilution of the voting strength of racial and ethnic minorities, regardless of any intent to discriminate. This requirement allows plaintiffs to prove a violation by presenting evidence that they do not have an equal opportunity to "participate in the political process and to elect representatives of their choice." 42 U.S.C. Section 1973 (b).

The 1982 amendments to Section 2 were first considered by the Supreme Court in Thornburg v. Gingles, 478 U.S. 30, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986), which challenged legislative redistricting plans in North Carolina involving one multi-member senate district, and five multi-member house districts.

The court held that plaintiffs challenging a redistricting plan must prove at least the following threshold conditions: (1) that the minority group is sufficiently large and geographically compact to constitute a majority in a single-

member district; (2) that the minority group is politically cohesive; and (3) that in the absence of special circumstances, bloc voting by the white majority usually defeats the minority's preferred candidate.

Once this threshold has been proven, certain objective factors must be considered by the court in determining whether, from "the totality of the circumstances," a Section 2 violation is shown. These totality factors include the following: (1) the extent of the history of official discrimination touching on the class participation in the democratic process; (2) the extent of racially polarized voting; (3) the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single-shot provisions, or other voting practices that tend to enhance the opportunity for discrimination; (4) denial of access to the candidate slating process for members of the class; (5) the extent to which the members of the minority group bear the effects of discrimination in areas such as education, employment, and health which hinder effective participation; (6) whether political campaigns have been characterized by racial appeals; (7) the extent to which members of the protected class have been elected to public office; (8) whether there is a significant lack of responsiveness by elected officials to the particularized needs of the minority group; and (9) whether the policy underlying the use of the voting qualification, standard, practice or procedure is tenuous.

From the above, it is self-evident that a Section 2 challenge requires a detailed, complex factual inquiry into the underlying application of the redistricting plan. The question of whether the political processes are equally open depends on a searching practical evaluation of the past and present reality and on a functional view of the political process. This determination is peculiarly dependent on the facts of such case. Gingles, 478 U.S. at 79. As such, a Section 2 claim for the purposes of this Court's jurisdiction is not a facial constitutional claim; therefore, any Section 2 implication is not properly before this Court in this proceeding.

However, to the extent this Court might consider the facial validity of Senate Joint Resolution 2G in light of Section 2, the unchallenged facts as to the number of minority districts created precludes any claim of facial constitutional invalidity premised on Section 2 of the Voting Rights Act.[2]

In light of the above, more specifically the complex evidentiary standard imposed on one who challenges a redistricting plan under Section 2 of the Voting Rights Act, this Court should find Senate Joint Resolution 2G facially

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[2] In this regard it must be borne in mind that the record-demonstrated percentages for minority voting age population do not take into account the well-settled voting practice of white crossover voting. See Thornburg v. Gingles, supra; Sanchez v. Bond, 875 F.2d 1488 (10th Cir. 1989); Armour v. State of Ohio, 775 F.Supp. 1044 (N.D. Ohio 1991). The combination of majority/minority voting age population plus white crossover voting further precludes any facial constitutional concern directed to the apportionment plan in a Section 2 context.

constitutionally valid. See In Re: Apportionment Law, 414 So.2d at 1052.[3]

[3]Unlike other state courts which have waded into the reapportionment thicket in order to evaluate Section 2 concerns in detail, this Court's constitutional mandate requires entry of a judgment within a mere 30 days from the filing of the petition, Art. III, Section 16, Florida Constitution. In Wilson v. Eu, 823 P. 2d 545 (Cal. 1992), the California Supreme Court, exercised general jurisdiction, see Exhibit C, and approved plans proposed by three special masters following five months of hearings and briefing. In Ater v. Keisling, the Oregon Supreme Court, constitutionally authorized to address only state law issues, at first ordered modification of a plan adopted by the Oregon Secretary of State, 819 P. 2d 296, and then approved a corrected plan after four months of litigation, 823 P. 2d 1089 (Ore. 1991). The time sequences and detailed fact analysis in California and Oregon preclude a similar type of scenario under Florida's constitutional mandate.

POINT V

A POLITICAL GERRYMANDERING CLAIM UNDER THE EQUAL PROTECTION CLAUSE REQUIRES A DETAILED FACT-SPECIFIC EVIDENTIARY SHOWING, THEREBY PRECLUDING ANY FACIAL CHALLENGE TO SENATE JOINT RESOLUTION 2G.

In Davis v. Bandemer, 478 U.S. 109, 106 S.Ct. 2797, 92 L.Ed.2d 85 (1986), the United States Supreme Court held that a claim of political gerrymandering is justiciable under the Equal Protection Clause. Thus, if a redistricting plan prevents a group or political party from improving its standing in elections, consigns a group or party to minority status throughout the life of the plan, or provides a group or party with little or no hope of improving its position in the next round of redistricting, then that plan is subject to legal challenge.

The Court recognized that politics and political considerations are an integral part of the redistricting process and that significant political consequences are inherent in redistricting. However, the Court said that a redistricting scheme is not constitutionally infirm by the mere fact that such a plan makes it more difficult for a particular group in a particular district to elect representatives of its choice. Similarly, a lack of proportionate results in one election cannot support an equal protection claim. As the Court said:

> Unconstitutional discrimination occurs only when the electoral system is arranged in a manner that will consistently degrade a voter's or a group of voters' influence on the political process as a whole.
>
> ***
>
> An equal protection violation may be found only where the electoral system substantially disadvantages certain voters in their opportunity to influence the political process effectively in this context. . . Such a finding of unconstitutionality must be supported by evidence of continued frustration of the will of a majority of the voters or effective denial to a minority of voters of a fair chance to influence the political process.
>
> ***
>
> Equal protection violations may be found only where a history (actual or projected) of disproportionate results appears in conjunction with indicia (of lack of political power and the denial of fair representation).

478 U.S. at 131, 133, and 140.

In Republican Party of Virginia v. Wilder, 774 F.Supp. 400 (W.D. Va. 1991), a three-judge federal court held that to establish an equal protection violation in a partisan gerrymandering case, the complainants must prove both intentional discrimination against an identifiable political group and the actual discriminatory effect on that group. Plaintiffs in Davis and Republican Party of Virginia were unable to make out a claim for partisan gerrymandering.

From these cases, it is self-evident that a political gerrymandering claim requires a detailed, complex factual inquiry into the underlying application of the redistricting plan. As such, a political gerrymandering claim for purposes of this Court's jurisdiction is not a facial constitutional claim and is not properly before this Court in this proceeding.

However, to the extent this court might consider the facial validity of Senate Joint Resolution 2G, the record shows that 13 of the 40 Senate districts have more registered Republican voters than Democrats (Districts 9, 12, 18, 19, 22, 24, 25, 26, 27, 31, 34, 37, 39). In the House plan, there are 42 districts in which the registered Republicans outnumber registered Democrats (Districts 4, 18, 19, 25, 30, 32, 33, 34, 35, 36, 37, 40, 41, 48, 49, 50, 51, 53, 54, 67, 68, 69, 70, 71, 74, 75, 76, 80, 81, 82, 83, 87, 91, 92, 102, 110, 111, 112, 113, 114, 115, and 117). There is one Senate district in which the number of registered Republican voters falls in the range of 45 to 49 percent of the total (Senate district 15). There are three House districts where the registered Republican voters constituting a minority have population figures ranging from 45% to 49% (House Districts 38, 46, 73). (Exhibits B, C and D to Petition).

Moreover, in four (4) Senate Districts (Districts 8, 11, 13 and 15), the combined number of registered Republican and independent voters exceeds that of the total number of registered Democrats. And in ten (10) House Districts (Districts 31, 38, 44, 45, 46, 47, 52, 73, 107 and 116), the combined number of registered Republican and independent voters exceeds that of the total number of registered Democrats. (See Exhibits B, C, and D to Petition).

Therefore, from the face of Senate Joint Resolution 2G, it cannot be concluded that the plan violates the Equal

Protection Clause by impermissible political gerrymandering. This Court should find Senate Joint Resolution 2G facially constitutionally valid.

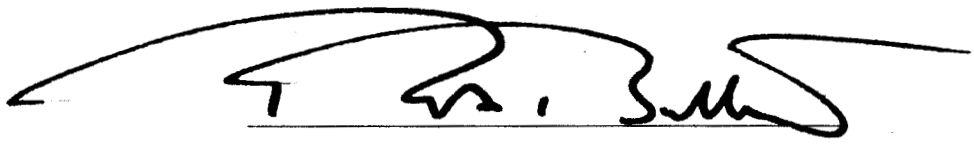
CONCLUSION

Senate Joint Resolution 2G redistricts the State Legislature in accordance with the Equal Protection Clause of the Fourteenth Amendment. The joint resolution further redistricts the Florida Legislature into consecutively numbered districts of either contiguous, overlapping, or identical territory, pursuant to Article III, Section 16(a), Florida Constitution. A facial analysis of Senate Joint Resolution 2G demonstrates no invidious discrimination against any racial or language minority for the purpose of minimizing or cancelling the voting strength of such minorities in violation of the Fourteenth or Fifteenth Amendment. Finally, the plan does not facially violate the rights of any minority political group or party.

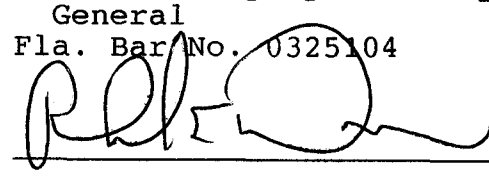
Accordingly, the Attorney General respectfully submits that this Court should enter judgment determining Senate Joint Resolution 2G to be facially constitutionally valid and binding upon all citizens of the state pursuant to Article III, Section 16(d), Florida Constitution.

Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General



RICHARD A. DORAN
Assistant Deputy Attorney
General
Fla. Bar No. 0325104



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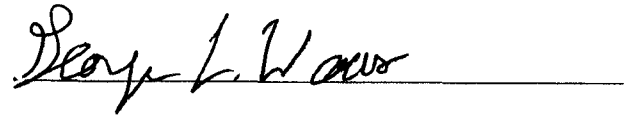
Assistant Attorney General
Fla. Bar No. 129967



GERALD A. CURINGTON
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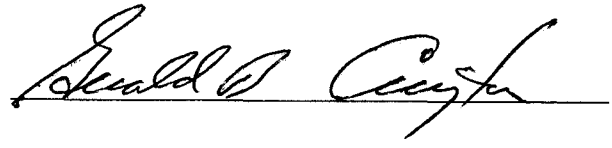


DEPARTMENT OF LEGAL AFFAIRS
Suite 1601 - The Capitol
Tallahassee, FL 32399-1050
904/488-8253

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by U. S. Mail to **President of the Florida Senate;** the **Speaker of the Florida House of Representatives; E. THOM RUMBERGER, Esq.,** Rumberger, Kirk & Caldwell, 11 E. Pine Street, P. O. Box 1873, Orlando, FL 32802; and to **PARKER D. THOMSON, Esq.,** Thomson, Muraro and Razook, 1700 Amerifirst Bldg., One S.E. Third Ave., Miami, FL 33131; this 20th day of April, 1992.

GEORGE L. WAAS

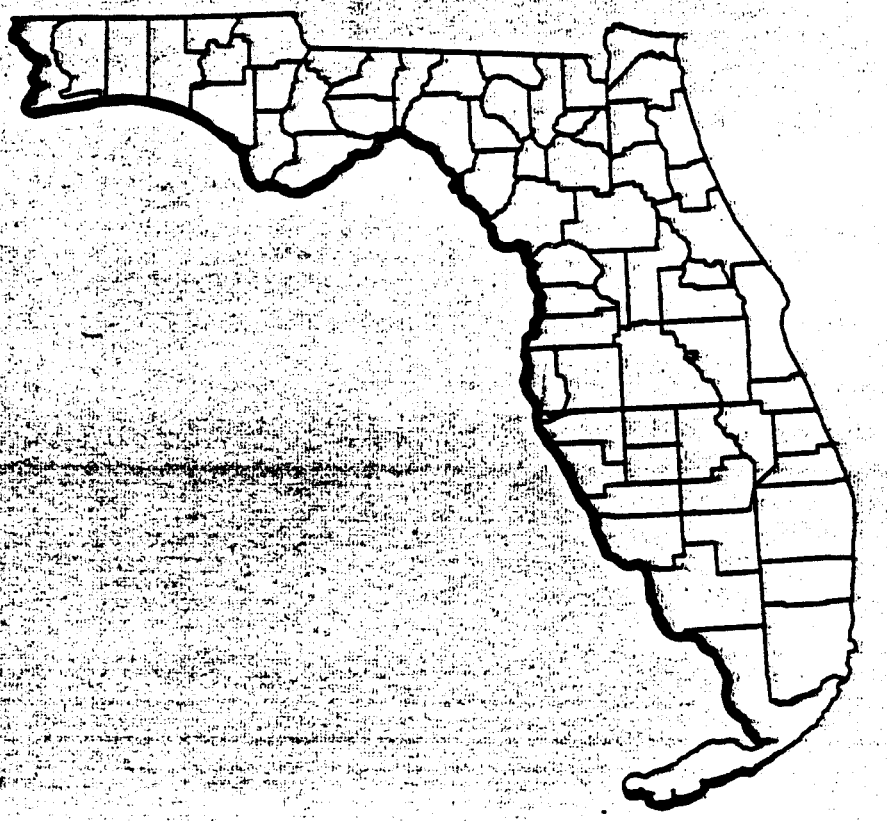
IN THE SUPREME COURT OF FLORIDA

CASE NO. 79,674

IN RE: Constitutionality of Senate
Joint Resolution 2G, Special Apportionment
Session 1992
_____/

APPENDIX

FLORIDA SENATE REDISTRICTING SYSTEM



EXHIBIT

A

INTRODUCTION

The Senate Committee on Reapportionment staff designed the Florida Senate Redistricting System (**FREDS**) to be a quick to learn and easy to use, yet powerful tool for redistricting. Decision makers need to consider a vast amount of data from a variety of sources when building and analyzing potential districts. **FREDS** makes that data easily accessible through a map-based, menu-driven software application. **FREDS** is composed mainly of procedure language programs running under the ESRI ARC/INFO Geographic Information System environment. In addition, there are a number of FORTRAN programs which handle numerical aggregation and reporting.

FREDS overlays population and elections data onto a digital map, with which the user may aggregate totals at various levels. Together with the sophisticated display and graphics capability of the ARC/INFO environment, **FREDS** enables real-time development and analysis of spacial demographic and elections information for decision makers.

Most commands in **FREDS** are fairly self explanatory and easy to use. This user's guide tracks through every available command in **FREDS**, explaining how and for what purposes commands are used. This guide will also serve as a deskside reference, and it is recommended you keep it on hand during system use.

The redistricting data base is composed of digital maps, population data, and voter registration and elections data. The digital maps have been developed from the Bureau of the Census TIGER/Line files, which served as the mapping base for the 1990 census. These digital maps were created beginning in the mid-1980's and, as a result, may be out of date in the more rapidly developing areas of the state. The population data were extracted from the P.L. 94-171 population data files distributed by the Bureau of the Census and were checked to ensure accuracy. Registration and elections data were developed using information supplied by the Supervisor of Elections in each county and by the Department of State, Division of Elections. All data from the supervisors was double-keyed and cross-checked against the Division of Elections summary tables.

For an idea of size of the Senate redistricting data base, Florida has 2,449 census tracts composed of 315,860 blocks, containing the 12,937,926 people. The size of the working data base is almost two gigabytes, or two billion characters, the equivalent of a 20-story stack of paper.

COMMITTEE PROCEDURES

The Florida Senate
Committee on Reapportionment

Public hearings

Thirty-two public hearings were conducted jointly with the Florida House of Representatives Committee on Reapportionment at locations throughout the state. The hearings were publicized with press releases and a public service announcement campaign. The purpose of the hearings was to obtain public testimony and to encourage public participation. Senate staff has made available to all members of the Committee on Reapportionment summaries of public testimony at the hearings.

Atlas and PC Program

To facilitate public participation, the Committee on Reapportionment produced and made available to the public at the cost of reproduction an atlas of tract-level maps and population counts and a personal computer program for assigning tracts to districts and calculating district statistics. These materials also have been provided to public libraries, university and college libraries, and supervisor of elections offices.

All workstations access the same data

A total of ten workstations are available in the Senate Committee on Reapportionment offices for building and analyzing redistricting plans. Each workstation will access the same redistricting data and programs.

Majority Office and Minority Office Workstations

Senators may schedule time to use the Majority Office Workstation or the Minority Office Workstation, in accordance with procedures established by the Majority Office and the Minority Office, respectively.

Public Access Workstation

Initially, reservations to use the Public Access Workstation will be for blocks of two hours, and a registrant will be permitted to hold only one reservation at a time. Reservation and use procedures may be modified so to best meet the expected heavy demand for the Public Access Workstation and to permit as broad a use as possible. The Public Access Workstation is intended to promote public participation in legislative apportionment and congressional redistricting by enabling public access to the Florida Senate Redistricting System software and database. The workstation shall be used for no other purpose.

EXHIBIT

B

Committee Workstations

Workstations will be available to the Committee Chairman, Legislative Subcommittee Chairman, and Congressional Subcommittee Chairman, (one workstation each) and to technical staff of the committee (four workstations).

Office hours

Committee office hours shall be 8:00 a.m. until 6:00 p.m., Monday through Friday. Beginning January 2, 1992, committee office hours shall be 8:00 a.m. until 10:00 p.m., Monday through Friday. Users are not permitted to work on the system or to occupy committee offices at times outside office hours when committee staff are not present.

Confidentiality of plans under development

Every Senator will be assigned a unique computer account. Other Senate employees, with permission of a Senator, may request user accounts. Members of the public also may request user accounts. Redistricting plans stored in a user account will be accessible only to the account holder.

Confidentiality of Senators' Work

All information pertaining to a Senator's plan formulation and analysis work is confidential and shall not be disclosed by Senate Committee on Reapportionment staff without express written consent of the Senator.

Legal Opinions

Senate Committee on Reapportionment legal staff shall assist Senators informally, in the manner set forth below. Analysis or other assistance provided by Committee staff is for informational purposes only, and is not binding on the Senate or the Committee. Committee staff is not, and does not act as, legal counsel for individual Senators. Before relying on analysis or other assistance provided by Committee staff, Senators are urged to consult with their own legal counsel. Staff may request that a Senator seeking a legal opinion submit the quesiton in writing, setting out all pertinent facts or premises. Committee staff shall not provide legal opinions as to ultimate issues of fact or law relating to any districting plan or part of a plan. Committee staff shall prepare uniform written responses for questions commonly asked and shall make them available to all Senators and to the public.

Public Directory

Joint Resolutions of Apportionment and Congressional Districting Bills which are placed on the agenda for consideration in Committee and which are reported by Committee shall

be made available to all Senate Redistricting System users through the Public Directory at least seven days prior to the meeting at which they are considered. Plans representing amendments to plans on the agenda must be made available to all Senate Redistricting System users through the Public Directory at least one day prior to the meeting at which they are considered. Senators are responsible for making requests in a timely fashion so plans can be processed and placed in the Public Directory in accordance with these deadlines. It behooves the Majority Leader and the Minority Leader to assist with limiting numbers of amendments so there will be time to process all plans and amendments in advance of committee and floor action (see "Submitting plans for standard analysis and inclusion in Public Directory, below). Plans may be submitted to the Public Directory by Senators. On request, the Chairman will submit complete statewide plans developed by citizens or organizations.

Plans in Public Directory accessible to all users

Once a Senator's plan is placed in the Public Directory, it may be viewed or analyzed by all users of the Senate Redistricting System. It also may be copied to any user's workspace and used as the basis (starting point) for another plan or amendment.

Distribution of reports for plans placed in Public Directory

At the time a plan is moved to the Public Directory, staff of the Committee on Reapportionment will produce five copies of the standard maps and statistical reports.

The copies will be distributed as follows:

- one copy will be posted in the reception area of the Senate Reapportionment Committee offices for use by the public.
- one copy each will be provided to the offices of the Senate Majority Leader and Senate Minority Leader.
- two copies will be retained by the Senate Committee on Reapportionment, one for use by committee staff in analyzing plans, and one for archival purposes.

Census geography to define districts

Census tracts and census Block Numbering Areas (BNAs) shall serve as the basic district building blocks for all plans. Where census tracts and BNAs cannot be followed, district lines must follow census block geography in order to maintain the integrity of the statistical analysis.

Plans must be complete

All units of census geography in Florida must be assigned to some district. Amendments which affect only a subset of districts in the plan on the committee agenda need reference only the affected districts, but a standard statistical analysis for the entire plan, as amended, will be required.

Amendments must be drafted to plan on agenda

Amendments shall be drafted to a joint resolution or bill which is on the agenda. Amendments to amendments shall satisfy the same criteria as amendments to the main question.

Maps and standard statistical analyses required

All amendments considered by committee shall be accompanied with a map and a standard analysis. Staff shall make every effort to publish these documents at least 24 hours prior to the meeting at which amendments will be heard (see "Submitting plans for standard analysis and inclusion in Public Directory, below).

Elements of standard statistical analysis

The standard analysis, which shall be performed by Committee staff on all plans and amendments to plans heard by the Committee, will include:

- Joint resolution or bill language.
- A 36-inch by 36-inch statewide map of the plan.
- A report indicating the source plan and user ID, the total deviation of the plan, the numbers of districts having concentrations of racial or language minorities, whether districts appear to be contiguous, and whether the plan has unassigned units of geography.
- A report indicating the following summary statistics for each district in the plan: total population (broken down by racial and Hispanic origin classifications), voting age population (broken down by racial and Hispanic origin classifications), 1990 registered voter counts (broken down by racial and partisan classifications), and the population deviation, stated as a percentage relative to the ideal district population. These statistics, excluding population deviation, shall also be reported for the component portions of each district in each county.

Submitting plans for standard analysis and for inclusion in Public Directory

Submitting a plan to the Public Directory involves a four-step process:

Step 1: Senator submits request to process plan for final review (mapping and reports).

Step 2: Subject to processing limitations (see below), within 24 hours the system administrator will copy the plan to the Archive Directory and provide to the user copies of the standard map and reports. Also a backup copy of the maps and reports will be made and filed in a secure location by the system administrator. Plans in the Archive Directory cannot be modified. Staff will not release any information on plans in the Archive Directory without written permission of the Senator who submitted the plan.

Step 3: The Senator will review these documents and will indicate whether the plan should be moved to the Public Directory or deleted from the Archive Directory. The user also may request that selected areas of the plan be plotted on detailed maps from the Grid Map Series. Grid maps take a great deal of time to produce, and first priority for use of the plotters will be given to producing statewide maps for plans being submitted to the Public Directory and the Archive Directory.

Step 4: If the Senator requests that the plan be moved to the Public Directory, the system administrator will make the transfer and will produce the required additional copies of maps and reports.

Staff will be able to process a total of nine plans into the ARCHIVE DIRECTORY or PUBLIC DIRECTORY per day.

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CONSTITUTIONS
of the
UNITED STATES
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(Revised and Updated)

Issued December 1991

Published for
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COLUMBIA UNIVERSITY

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Oceana Publications, Inc.
Dobbs Ferry, New York

EXHIBIT
C

State College System of California. [*New section adopted November 3, 1970.*]

SEC. 24. [*Renumbered Section 5 June 8, 1976.*]

SEC. 25. [*Renumbered Section 6 June 8, 1976.*]

ARTICLE XXI. [*Repealed November 7, 1972. See Article XXI below.*]

ARTICLE XXI *

REAPPORTIONMENT OF SENATE, ASSEMBLY, CONGRESSIONAL, AND BOARD OF EQUALIZATION DISTRICTS

[*Reapportionment Following National Census*]

SECTION 1. In the year following the year in which the national census is taken under the direction of Congress at the beginning of each decade, the Legislature shall adjust the boundary lines of the Senatorial, Assembly, Congressional, and Board of Equalization districts in conformance with the following standards:

[*Standards*]

(a) Each member of the Senate, Assembly, Congress, and the Board of Equalization shall be elected from a single-member district.

(b) The population of all districts of a particular type shall be reasonably equal.

(c) Every district shall be contiguous.

(d) Districts of each type shall be numbered consecutively commencing at the northern boundary of the state and ending at the southern boundary.

(e) The geographical integrity of any city, county, or city and county, or of any geographical region shall be respected to the extent possible without violating the requirements of any other subdivision of this section

ARTICLE XXII. [*Repealed June 6, 1972.*]

ARTICLE XXIII. [*Repealed June 8, 1976.*]

ARTICLE XXIV. [*Repealed June 8, 1976.*]

ARTICLE XXV. [*Repealed November 8, 1949. Initiative measure.*]

ARTICLE XXVI. [*Renumbered Article XIX June 8, 1976.*]

ARTICLE XXVII. [*Repealed November 3, 1970.*]

* New article adopted June 3, 1980

[(f) "State officer," as used in this section, means the Governor, Lieutenant Gover... Attorney General, Controller, Insurance Commissioner, Secretary of State, Su... tendent of Public Instruction, Treasurer, and member of the State Boa... Equalization.

SEC. 15. [*Repealed November 8, 1966.*]
SEC. 16. [*Repealed November 8, 1966.*]
SEC. 17. [*Repealed November 8, 1966.*]
SEC. 18. [*Repealed November 8, 1966.*]
SEC. 19. [*Repealed November 8, 1960.*]
SEC. 20. [*Repealed November 8, 1966.*]
SEC. 21. [*Repealed November 8, 1966.*]
SEC. 22. [*Repealed November 8, 1966.*]

ARTICLE VI. [*Repealed November 8, 1966. See Article VI, below.*]

ARTICLE VI *

JUDICIAL

SECTION 1. [*Repealed November 8, 1966. See Section 1, below.*]

* New Article VI adopted November 8, 1966

[*Judicial Power Vested in Courts*]

SEC. 1. The judicial power of this Stat... appeal, superior courts, municipal cour... of record.

SEC. 1a. [*Repealed November*
SEC. 1b. [*Repealed Novembe*
SEC. 1c. [*Repealed Novembe*
SEC. 2. [*Repealed November*

[*Supreme Court—Composition*]

SEC. 2. The Supreme Court... California and 6 associate justices... court at any time. Concurrence o... necessary for a judgment.

An acting Chief Justice shall per... when the Chief Justice is absent o... if the Chief Justice fails to do so, th... as acting Chief Justice. [*As amen*
SEC. 3. [*Repealed November*

[*Judicial Districts—Courts of Appeal*]

SEC. 3. The Legislature shall... containing a court of appeal with... consists of a presiding justice and... power of a court of appeal and s... Concurrence of 2 judges presen... judgment.

An acting presiding justice shall... justice when the presiding just... presiding justice or, if the presi... Justice shall select an associate jus... justice [*As amended November*
SEC. 4. [*Repealed November*

[*Superior Courts*]

SEC. 4. In each county there... judges. The Legislature shall p... provide for the officers and emp... governing body of each affected... provide that one or more judges...

The county clerk is ex officio cl...
[*As amended November 5, 1974.*
SEC. 4a. [*Repealed Novembe*
SEC. 4b. [*Repealed Novembe*
SEC. 4c. [*Repealed Novembe*
SEC. 4d. [*Repealed Novembe*
SEC. 4e. [*Repealed Novembe*
SEC. 4½. [*Repealed Novembe*
SEC. 4¾. [*Repealed Novembe*
SEC. 5. [*Repealed Novembe*

Lieutenant Governor, ...retary of State, Super... ...f the State Board of...

See Article VI,

...ee Section 1, below.]

[*Judicial Power Vested in Courts*]

SEC. 1. The judicial power of this State is vested in the Supreme Court, courts of appeal, superior courts, municipal courts, and justice courts. All courts are courts of record.

SEC. 1a. [*Repealed November 8, 1966.*]
SEC. 1b. [*Repealed November 8, 1966.*]
SEC. 1c. [*Repealed November 8, 1966.*]
SEC. 2. [*Repealed November 8, 1966. See Section 2, below.*]

[*Supreme Court—Composition*]

SEC. 2. The Supreme Court consists of the Chief Justice of California and 6 associate justices. The Chief Justice may convene the court at any time. Concurrence of 4 judges present at the argument is necessary for a judgment.

An acting Chief Justice shall perform all functions of the Chief Justice when the Chief Justice is absent or unable to act. The Chief Justice or, if the Chief Justice fails to do so, the court shall select an associate justice as acting Chief Justice. [*As amended November 5, 1974.*]

SEC. 3. [*Repealed November 8, 1966. See Section 3, below.*]

[*Judicial Districts—Courts of Appeal*]

SEC. 3. The Legislature shall divide the State into districts each containing a court of appeal with one or more divisions. Each division consists of a presiding justice and 2 or more associate justices. It has the power of a court of appeal and shall conduct itself as a 3-judge court. Concurrence of 2 judges present at the argument is necessary for a judgment.

An acting presiding justice shall perform all functions of the presiding justice when the presiding justice is absent or unable to act. The presiding justice or, if the presiding justice fails to do so, the Chief Justice shall select an associate justice of that division as acting presiding justice. [*As amended November 5, 1974.*]

SEC. 4. [*Repealed November 8, 1966. See Section 4, below.*]

[*Superior Courts*]

SEC. 4. In each county there is a superior court of one or more judges. The Legislature shall prescribe the number of judges and provide for the officers and employees of each superior court. If the governing body of each affected county concurs, the Legislature may provide that one or more judges serve more than one superior court.

The county clerk is ex officio clerk of the superior court in the county. [*As amended November 5, 1974.*]

SEC. 4a. [*Repealed November 8, 1966.*]
SEC. 4b. [*Repealed November 8, 1966.*]
SEC. 4c. [*Repealed November 8, 1966.*[
SEC. 4d. [*Repealed November 8, 1966.*]
SEC. 4e. [*Repealed November 8, 1966.*]
SEC. 4½. [*Repealed November 8, 1966.*]
SEC. 4¾. [*Repealed November 8, 1966.*]
SEC. 5. [*Repealed November 8, 1966. See Section 5, below.*]

[*Municipal and Justice Courts*]

SEC. 5. (a) Each county shall be divided into municipal court and justice court districts as provided by statute, but a city may not be divided into more than one district. Each municipal and justice court shall have one or more judges.

There shall be a municipal court in each district of more than 40,000 residents and a justice court in each district of 40,000 residents or less. The number of residents shall be ascertained as provided by statute.

The Legislature shall provide for the organization and prescribe the jurisdiction of municipal and justice courts. It shall prescribe for each municipal court and provide for each justice court the number, qualifications, and compensation of judges, officers, and employees.

(b) Notwithstanding the provisions of subdivision (a), any city in San Diego County may be divided into more than one municipal court or justice court district if the Legislature determines that unusual geographic conditions warrant such division. [*As amended June 8, 1976.*]

SEC. 5.5. [*Repealed June 8, 1976.*]

SEC. 6. [*Repealed November 8, 1966. See Section 6, below.*]

[*Judicial Council—Membership and Powers*]

SEC. 6. The Judicial Council consists of the Chief Justice and one other judge of the Supreme Court, 3 judges of courts of appeal, 5 judges of superior courts, 3 judges of municipal courts, and 2 judges of justice courts, each appointed by the Chief Justice for a 2-year term; 4 members of the State Bar appointed by its governing body for 2-year terms; and one member of each house of the Legislature appointed as provided by the house.

Council membership terminates if a member ceases to hold the position that qualified the member for appointment. A vacancy shall be filled by the appointing power for the remainder of the term.

The council may appoint an Administrative Director of the Courts, who serves at its pleasure and performs functions delegated by the council or the Chief Justice, other than adopting rules of court administration, practice and procedure.

To improve the administration of justice the council shall survey judicial business and make recommendations to the courts, make recommendations annually to the Governor and Legislature, adopt rules for court administration, practice and procedure, not inconsistent with statute, and perform other functions prescribed by statute.

The Chief Justice shall seek to expedite judicial business and to equalize the work of judges. The Chief Justice may provide for the assignment of any judge to another court but only with the judge's consent if the court is of lower jurisdiction. A retired judge who consents may be assigned to any court.

Judges shall report to the Judicial Council as the Chief Justice directs concerning the condition of judicial business in their courts. They shall cooperate with the council and hold court as assigned. [*As amended November 5, 1974.*]

SEC. 7. [*Repealed November 8, 1966. See Section 7, below.*]

[*Commission on Judicial Appointments—Membership*]

SEC. 7. The Commission on Judicial Appointments consists of the

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presiding justices, the
nomination or appointr
the presiding justice wl
[*New section adopted*
SEC. 8. [*Repealed*

[*Commission on Judicial Pe*

SEC. 8. The Comm
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SEC. 9. [*Repealed N*

[*State Bar*]

SEC. 9. The State Ba
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a court of record. [*New*
SEC. 10. [*Repealed*

[*Jurisdiction—Original*]

SEC. 10. The Suprem
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Chief Justice, the Attorney General, and the presiding justice of the court of appeal of the affected district or, if there are 2 or more presiding justices, the one who has presided longest or, when a nomination or appointment to the Supreme Court is to be considered, the presiding justice who has presided longest on any court of appeal. [*New section adopted November 8, 1966.*]

SEC. 8. [*Repealed November 8, 1966. See Section 8, below.*]

[*Commission on Judicial Performance—Membership*]

SEC. 8. The Commission on Judicial Performance consists of 2 judges of courts of appeal, 2 judges of superior courts, and one judge of a municipal court, each appointed by the Supreme Court; 2 members of the State Bar who have practiced law in this State for 10 years, appointed by its governing body; and 2 citizens who are not judges, retired judges, or members of the State Bar, appointed by the Governor and approved by the Senate, a majority of the membership concurring. All terms are 4 years.

Commission membership terminates if a member ceases to hold the position that qualified the member for appointment. A vacancy shall be filled by the appointing power for the remainder of the term. [*As amended November 2, 1976.*]

SEC. 8. (a) The Commission on Judicial Performance consists of 2 judges of courts of appeal, 2 judges of superior courts, and one judge of a municipal court, each appointed by the Supreme Court; 2 members of the State Bar of California who have practiced law in this State for 10 years, appointed by its governing body; and 2 citizens who are not judges, retired judges, or members of the State Bar of California,appointed by the Governor and approved by the Senate, a majority of the membership concurring. Except as provided in subdivision (b), all terms are 4 years. No member shall serve more that 2 4-year terms.

Commission membership terminates if a member ceases to hold the position that qualified the member for appointment. A vacancy shall be filled by the appointing power for the remainder of the term. A member whose term has expired may continue to serve until the vacancy has been filled by the appointing power.

(b) To create staggered terms among the members of the Commission on Judicial Performance, the following members shall be appointed, as follows:

(1) The court of appeal member appointed to immediately succeed the term that expires on November 8,1988, shall serve a 2-year term.

(2) Of the State Bar members appointed to immediately succeed terms that expire on December 31, 1988, one member shall serve for a 2-year term.

SEC. 9. [*Repealed November 8, 1966. See Section 9, below.*]

[*State Bar*]

SEC. 9. The State Bar of California is a public corporation. Every person admitted and licensed to practice law in this State is and shall be a member of the State Bar except while holding office as a judge of a court of record. [*New section adopted November 8, 1966.*]

SEC. 10. [*Repealed November 8, 1966. See Section 10, below.*]

[*Jurisdiction—Original*]

SEC. 10. 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.

Superior courts have original jurisdiction in all causes except those given by statute to other trial courts.

The court may make such comment on the evidence and the testimony and credibility of any witness as in its opinion is necessary to the proper determination of the cause. [*New section adopted November 8, 1966.*]

SEC. 10a. [*Repealed November 8, 1966.*]

SEC. 10b. [*Repealed November 8, 1966.*]

SEC. 11. [*Repealed November 8, 1966. See Section 11, below.*]

[*Jurisdiction—Appellate*]

SEC. 11. The Supreme Court has appellate jurisdiction when judgment of death has been pronounced. With that exception courts of appeal have appellate jurisdiction when superior courts have original jurisdiction and in other causes prescribed by statute.

Superior courts have appellate jurisdiction in causes prescribed by statute that arise in municipal and justice courts in their counties.

The Legislature may make findings of fact w
[*New section adopted*
SEC. 11a. [*Repealed*
SEC. 12. [*Repealed*

[*Transfer of Causes—Juris*

SEC. 12. (a) The S itself a cause in a cour cause from itself to a division to another. T jurisdiction.

(b) The Supreme C in any cause.

(c) The Judicial Cou and procedure for tra things, provisions for instructions, for review improvidently granted

(d) This section shal death. [*As amended N*

SEC. 13. [*Repealed N*

[*Judgment—When Set As*

SEC. 13. No judgm cause, on the ground admission or rejection pleading, or for any er an examination of the shall be of the opinion miscarriage of justice.

SEC. 14. [*Repealed*

[*Supreme Court and Appe*

SEC. 14. The Legisl such opinions of the Supreme Court deen available for publicatio

Decisions of the Supr causes shall be in writ *November 8, 1966.*]

SEC. 15. [*Repealed*

[*Judges—Eligibility*]

SEC. 15. A person is ineli immediately preceding sel diately preceding selectio State Bar or served as a ju municipal court service m

November 5, 1974.]

The Legislature may permit appellate courts to take evidence and make findings of fact when jury trial is waived or not a matter of right. [*New section adopted November 8, 1966.*]

SEC. 11a. [*Repealed November 7, 1950.*]

SEC. 12. [*Repealed November 8, 1966. See Section 12, below.*]

[*Transfer of Causes—Jurisdiction—Review of Decisions*]

SEC. 12. (a) The Supreme Court may, before decision, transfer to itself a cause in a court of appeal. It may, before decision, transfer a cause from itself to a court of appeal or from one court of appeal or division to another. The court to which a cause is transferred has jurisdiction.

(b) The Supreme Court may review the decision of a court of appeal in any cause.

(c) The Judicial Council shall provide, by rules of court, for the time and procedure for transfer and for review, including, among other things, provisions for the time and procedure for transfer with instructions, for review of all or part of a decision, and for remand as improvidently granted.

(d) This section shall not apply to an appeal involving a judgment of death. [*As amended November 6, 1984. Operative May 6, 1985.*]

SEC. 13. [*Repealed November 7, 1950. See Section 13, below.*]

[*Judgment—When Set Aside*]

SEC. 13. No judgment shall be set aside, or new trial granted, in any cause, on the ground of misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, or for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice. [*New section adopted November 8, 1966.*]

SEC. 14. [*Repealed November 8, 1966. See Section 14, below.*]

[*Supreme Court and Appellate Court—Published Opinions*]

SEC. 14. The Legislature shall provide for the prompt publication of such opinions of the Supreme Court and courts of appeal as the Supreme Court deems appropriate, and those opinions shall be available for publication by any person.

Decisions of the Supreme Court and courts of appeal that determine causes shall be in writing with reasons stated. [*New section adopted November 8, 1966.*]

SEC. 15. [*Repealed November 8, 1966. See Section 15, below.*]

[*Judges—Eligibility*]

SEC. 15. A person is ineligible to be a judge of a court of record unless for 5 years immediately preceding selection to a municipal *or justice* court or 10 years immediately preceding selection to other courts, the person has been a member of the State Bar or served as a judge of a court of record in this State. A judge eligible for municipal court service may be assigned by the Chief Justice to serve on any court.

[*Amended November 5, 1974.*]

SEC. 15.5. The 5-year membership or service requirement of Section
apply to justice court judges who held office on January 1, 1988.

This section shall be operative only until January 1, 1995, and as of
repealed.

Fourth. That the changes made by this measure shall be operative on
1990.

SEC. 16. [*Repealed November 8, 1966. See Section 16, below.*]

[*Judges—Elections—Terms—Vacancies*]

SEC. 16. (a) Judges of the Supreme Court shall be elected at large and judges of courts of appeal shall be elected in their districts at general elections at the same time and places as the Governor. Their terms are 12 years beginning the Monday after January 1 following their election, except that a judge elected to an unexpired term serves the remainder of the term. In creating a new court of appeal district or division the Legislature shall provide that the first elective terms are 4, 8, and 12 years.

(b) Judges of other courts shall be elected in their counties or districts at general elections. The Legislature may provide that an unopposed incumbent's name not appear on the ballot.

(c) Terms of judges of superior courts are 6 years beginning the Monday after January 1 following their election. A vacancy shall be filled by election to a full term at the next general election after the January 1 following the vacancy, but the Governor shall appoint a person to fill the vacancy temporarily until the elected judge's term begins.

(d) Within 30 days before August 16 preceding the expiration of the judge's term, a judge of the Supreme Court or a court of appeal may file a declaration of candidacy to succeed to the office presently held by the judge. If the declaration is not filed, the Governor before September 16 shall nominate a candidate. At the next general election, only the candidate so declared or nominated may appear on the ballot, which shall present the question whether the candidate shall be elected. The candidate shall be elected upon receiving a majority of the votes on the question. A candidate not elected may not be appointed to that court but later may be nominated and elected.

The Governor shall fill vacancies in those courts by appointment. An appointee holds office until the Monday after January 1 following the first general election at which the appointee had the right to become a candidate or until an elected judge qualifies. A nomination or appointment by the Governor is effective when confirmed by the Commission on Judicial Appointments.

Electors of a county, by majority of those voting and in a manner the Legislature shall provide, may make this system of selection applicable to judges of superior courts. [*As amended November 5, 1974.*]

SEC. 17. [*Repealed November 6, 1956. See Section 17, below.*]

[*Judges—Prohibitions re Law Practice—Public Employment or Office—Use of Fines or Fees*]

SEC. 17. A judge of a court of record may not practice law and during the term for which the judge was selected is ineligible for public employment or public office

except a judge of a court of record may accept a part-time teaching position that is outside the normal hours of his or her judicial position and that does not interfere with the regular performance of his or her judicial duties while holding office. A judge of *a trial court of record* may, however, become eligible for election to other public office by taking a leave of absence without pay prior to filing a declaration of candidacy. Acceptance of the public office is a resignation from the office of judge.

A judicial officer may not receive fines or fees for personal use.

A judicial officer may not earn retirement service credit from a public teaching position while holding judicial office.

SEC. 18. [*Repealed November 8, 1966. See Section 18, below.*]

[*Judges—Disqualification—Suspension—Removal—Retirement*]

SEC. 18. (a) A judge is disqualified from acting as a judge, without loss of salary, while there is pending (1) an indictment or an information charging the judge in the United States with a crime punishable as a felony under California or federal law, or (2) a recommendation to the Supreme Court by the Commission on Judicial Performance for removal or retirement of the judge.

(b) On recommendation of the Commission on Judicial Performance or on its own motion, the Supreme Court may suspend a judge from office without salary when in the United States the judge pleads guilty or no contest or is found guilty of a crime punishable as a felony under California or federal law or of any other crime that involves moral turpitude under that law. If the conviction is reversed suspension terminates, and the judge shall be paid the salary for the judicial office held by the judge for the period of suspension. If the judge is suspended and the conviction becomes final the Supreme Court shall remove the judge from office.

(c) On recommendation of the Commission on Judicial Performance the Supreme Court may (1) retire a judge for disability that seriously interferes with the performance of the judge's duties and is or is likely to become permanent, and (2) censure or remove a judge for action occurring not more than 6 years prior to the commencement of the judge's current term that constitutes wilful misconduct in office, persistent failure or inability to perform the judge's duties, habitual intemperance in the use of intoxicants or drugs, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The *Commission on Judicial Performance* may privately admonish a judge found to have engaged in an improper action or dereliction of duty, subject to review in the Supreme Court in the manner provided for review of causes decided by a court of appeal.

(d) A judge retired by the Supreme Court shall be considered to have retired voluntarily. A judge removed by the Supreme Court is ineligible for judicial office and pending further order of the court is suspended from practicing law in this State.

(e) A recommendation of the Commission on Judicial Performance for the censure, removal or retirement of a judge of the Supreme Court shall be determined by a tribunal of 7 court of appeal judges selected by lot.

(f) If, after conducting a preliminary investigation, the Commission on Judicial Performance by vote determines that formal proceedings should be instituted:

(1) The judge or judges charged may require that formal hearings be public, unless the Commission on Judicial Performance by vote finds good cause for confidential hearings.

(2) The Commission on Judicial Performance may, without [illegible] Supreme Court, issue a public reproval with the consent of the [illegible] warranting discipline. The public reproval shall include an [illegible] all formal charges brought against the judge which have not been [illegible] commission.

(3) The Commission on Judicial Performance may in the [illegible] confidence and the interests of justice, issue press statements or [illegible] event charges involve moral turpitude, dishonesty, or corruption, upon [illegible] the public.

(g) The Commission on Judicial Performance may issue explanatory [illegible] any investigatory stage when the subject matter is generally known to the [illegible]

(h) The Judicial Council shall make rules implementing this section and [illegible] for confidentiality of proceedings.

SEC. 19. [*Repealed November 5, 1966. See Section 19, below.*]

[*Judges—Compensation*]

SEC. 19. The Legislature shall prescribe compensation for judges of courts of record.

A judge of a court of record may not receive the salary for the judicial office held by the judge while any cause before the judge remains pending and undetermined for 90 days after it has been submitted for decision. [*As amended November 5, 1974.*]

SEC. 20. [*Repealed November 8, 1966. See Section 20, below.*]

[*Judges—Retirement—*

SEC. 20. The L[illegible] reasonable allowanc[illegible]
[*New section adopt*[illegible]

SEC. 21. [*Repea*[illegible]

[*Temporary Judges*]

SEC. 21. On stip[illegible] a cause to be tried b[illegible] Bar, sworn and empo[illegible]
[*New section adopt*[illegible]

SEC. 22. [*Repea*[illegible]

[*Appointment of Office*[illegible]

SEC. 22. The Le[illegible] courts of record [illegible] subordinate judicial [illegible]

SEC. 23. [*Repeal*[illegible]

SEC. 24. [*Repeal*[illegible]

SEC. 25. [*Repeal*[illegible]

SEC. 26. [*Repeal*[illegible]

SEC. 26a. [*Repea*[illegible]

ARTICLE VII.

[*Civil Service*]

SECTION 1. (a) T[illegible] employee of the state[illegible]

(b) In the civil ser[illegible] be made under a [illegible] competitive examina[illegible]

[*Personnel Board—Mem*[illegible]

SEC. 2. (a) There[illegible] the Governor and [illegible] membership concurri[illegible] appointed and quali[illegible] unexpired portion o[illegible] concurrent resolutio[illegible] membership of each [illegible]

(b) The board ann[illegible] officer.

(c) The board sha[illegible] executive officer who[illegible] member of the board[illegible]

*New Article VII adopted June 8, 1[illegible]

[*Judges—Retirement—Disability*]

SEC. 20. The Legislature shall provide for retirement, with reasonable allowance, of judges of courts of record for age or disability. [*New section adopted November 8, 1966.*]

SEC. 21. [*Repealed November 8, 1966. See Section 21, below.*]

[*Temporary Judges*]

SEC. 21. On stipulation of the parties litigant the court may order a cause to be tried by a temporary judge who is a member of the State Bar, sworn and empowered to act until final determination of the cause. [*New section adopted November 8, 1966.*]

SEC. 22. [*Repealed November 4, 1930. See Section 22, below.*]

[*Appointment of Officers—Subordinate Judicial Duties*]

SEC. 22. The Legislature may provide for the appointment by trial courts of record of officers such as commissioners to perform subordinate judicial duties. [*New section adopted November 8, 1966.*]

SEC. 23. [*Repealed November 8, 1966.*]

SEC. 24. [*Repealed November 8, 1966.*]

SEC. 25. [*Repealed November 6, 1956.*]

SEC. 26. [*Repealed November 8, 1966.*]

SEC. 26a. [*Repealed November 6, 1962.*]

ARTICLE VII. [*Repealed November 8, 1966. See Article VII, below.*]

ARTICLE VII *

PUBLIC OFFICERS AND EMPLOYEES

[*Civil Service*]

SECTION 1. (a) The civil service includes every officer and employee of the state except as otherwise provided in this Constitution.

(b) In the civil service permanent appointment and promotion shall be made under a general system based on merit ascertained by competitive examination. [*New section adopted June 8, 1976.*]

[*Personnel Board—Membership and Compensation*]

SEC. 2. (a) There is a Personnel Board of 5 members appointed by the Governor and approved by the Senate, a majority of the membership concurring, for 10-year terms and until their successors are appointed and qualified. Appointment to fill a vacancy is for the unexpired portion of the term. A member may be removed by concurrent resolution adopted by each house, two-thirds of the membership of each house concurring.

(b) The board annually shall elect one of its members as presiding officer.

(c) The board shall appoint and prescribe compensation for an executive officer who shall be a member of the civil service but not a member of the board. [*New section adopted June 8, 1976.*]

* Article VII adopted June 8, 1976