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Proposed amendment to article Sixth of the Constitution on the Judiciary

By Gen. Venable Smith

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Com on Jud & Jud dept

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Offered by Geo. V. Smith.
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Judicial Department
Article VI.

Section 1. The judicial power of this State shall be vested in a Supreme Court, in District Courts, in Municipal Courts, in Justices of the Peace, and in such other inferior Courts as the Legislature may establish in any incorporated city or town.

Sec. 2. The Supreme Court shall consist of a Chief Justice and Eight associate Justices. For appellate jurisdiction from the District Courts the Supreme Court shall be divided into three Sections of three Justices each, and for appellate jurisdiction from said Sections the said Justices to preside in banc. The presence of five Justices in banc, shall be necessary for the transaction of the business of the Supreme Court in banc, Except such business as may be done at Chambers, and the Concurrence of five Justices in banc shall be necessary to pronounce a judgment therein. The presence of two Justices sitting in each Section of the Supreme Court shall be necessary for the transaction of the business of a Section, Except such business as may be done at Chambers, and the concurrence of two Justices in a Section shall be necessary to pronounce a judgment therein. When only two Justices sit in the hearing of any case in a Section of the Court and they disagree and the case is not appealed to the Supreme Court in banc, the judgment below shall stand affirmed. Each Justice shall preside with the Section of the Court which is within the Supreme Judicial District in which he was elected, Except when presiding in banc and Except when called upon for temporary purpose to preside in another Section by the Justice of another Section. The powers and jurisdiction of Each of said Sections shall be equal and concurrent.

Sec 8 The Justices of the Supreme Court shall be elected by the qualified electors of the State by districts as hereinafter provided at the general State elections. The first election for Justices of the Supreme Court shall be held on the first Wednesday in September in the year eighteen hundred and seventy-nine. The Justices shall hold their offices for the term of twenty years, from the first Monday in January next after their election, except that three elected in each Supreme Judicial District at the first election who, at their first meeting, shall so classify themselves by lot, that one Justice in each section shall go out of office in the year eighteen hundred and eighty-four and every four years thereafter. The Justice having the shortest time to serve in the section to which he belongs shall be the Presiding Justice of that section of the Supreme Court.

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In case of a vacancy from any cause in the office of Justice of the Supreme Court, the Governor shall appoint some suitable person, resident of the same Supreme Judicial District to fill such vacancy, who shall hold the place made vacant, for the unexpired time, for which the former encumbent was elected or by lot was chosen. The Chief Justice shall be chosen by a majority of the Justices in banc from the Presiding Justices of the sections at the first meeting and organization of the Supreme Court in banc and thereafter at the expiration of the term of office of the Chief Justice, as a Justice of the Supreme Court and to fill any vacancy in the office of Chief Justice.

Sec 4. The Supreme Court in banc shall have appellate Jurisdiction from the third sections of the Supreme Court in the following cases:

First In cases where a construction of the Federal or State constitution was in dispute, or in which the constitutionality of any statute or municipal ordinance was necessarily in dispute and decided.

Second. In cases where one of the Justices of one of the sections of the Supreme Court dissents from the decision of the majority of that section and gives a written opinion stating the reasons of his dissent.

Third; In cases where either of said sections overrules a prior decision of the highest Court of the State not previously overruled by the same court.

Fourth: In cases where one of said sections decides a principal contrary to the decision of another of said sections.

Fifth: In all criminal cases determined in either section of the Supreme Court where the judgment is death or imprisonment for life.

Sixth: To such other cases of rare importance as the Legislature may by law prescribe. The Supreme Court in banc and in said sections shall also have power to issue writs of mandamus certiori, prohibition and habeas corpus and also all writs necessary and proper to the complete exercise of its appellate jurisdiction both in banc and in sections. Each of the Justices shall have the power to issue writs of habeas corpus to any part of the State upon petition by or on behalf of any person held in actual custody and may make such writs returnable before himself or in the Supreme Court either in banc or in any section, or before any District Court.

The Supreme Court in its several sections shall have appellate jurisdiction in all cases arising in the District Courts for the Counties within the respective supreme Judicial Districts to the sections within such supreme Judicial Districts, respectively; but cases may be transferred from one section or supreme Judicial District to another section or District whenever it may be deemed proper by a majority of the Justices of the section or by virtue of such further regula= tions as the Legislature may prescribe, or by the consent and written stipulation of the parties in the cause through their respective attorneys at law.

Sec 5. The State shall be divided as equally as practicable according to population, without dividing a County, except where a County may form more than one district, into three Judicial Districts, to be known as Supreme Judicial Districts and numbered from one to three, one of said Sections shall hold its sessions and transact its business at a locality in such of said Judicial District which as the Legislature shall prescribe shall be most accessible from all parts of each District, as may be and be nearest to the greatest population and amount of business in each District. Until the Legislature shall by law select other localities, the city of Sacramento, the City and County of San Francisco and the city of Los Angeles respectively shall be the localities where said Sections, shall hold their sessions and transact their business in their Judicial Districts

Sec. 5

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Until a reapportionment of the State and the Legislature shall reform the Supreme Judicial Districts upon said reapportionment, they shall be as follows. The first Supreme Judicial District shall be composed of the counties of ;

The second Supreme Judicial District shall be composed of the city and county of San Francisco, and the Third Supreme Judicial District shall be composed of the counties of

Sec 6. Each county is a Judicial District for District Courts for which District Judges shall be elected by the qualified electors of the County or city and County at the general state election next after the adoption of this Constitution; Provided, that in every county or city and county containing less than twenty thousand inhabitants shall elect one District Judge. Counties, ~~and~~ cities and counties containing more than twenty thousand inhabitants may elect such further number of District Judges as shall be prescribed by law, not exceeding one for every twenty thousand inhabitants and one for such fraction as shall exceed ten thousand which shall be the number for the purposes of the next election. Where there is more than one such courts in a county or city and county they shall be numbered as the Legislature shall direct.

Sec. 6 continued

The District Judges shall hold their offices for the term of ten years from the first Monday of January A.D. Eighteen hundred and seventy-nine. In Districts where there shall be more than one District Judge a Presiding Judge shall be elected by them who shall distribute the labor performed by each. Each District Court shall be held by one District Judge and the courts shall be separate but the judgments and orders of each shall be entered and enforced as of the District Court of each county or city and county.

Sec. 7. The District Court shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost assessment, toll or municipal fine and in all other cases, in which the demand, Exclusive of interest, amounts to three hundred and fifty dollars; and in all criminal cases not otherwise provided for; also in actions of forcible entry and detainer of proceedings in insolvency, of actions to prevent or abate a nuisance, and all such special cases and proceedings as are not otherwise provided for; also of all matters of probate, and said Courts shall have the powers of Naturalization and to issue papers therefor. Said Courts and their judges shall have the power to issue writs of habeas corpus, on petition by or on behalf of any person in actual custody, in their respective Counties. Said Courts shall be always open (legal holidays and non judicial days Excepted) and during such vacations as the Legislature may see proper to grant, never to Exceed fifteen days) and their original jurisdiction shall Extend to all parts of the State. They shall have appellate jurisdiction in all cases arising in Municipal Courts, in all Criminal Cases arising in Justices of the Peace and such other inferior Courts as the Legislature may Establish in incorporated Cities and Towns

and in all Civil Cases arising in such inferior Courts in which the demand Exclusive of interest Exceeds the sum of one hundred Dollars, all of said appeals to be taken only on questions of law and only to the District Court of the County in which the appeal is taken. The said District Courts shall also have power to issue writs of Mandamus, Injunction, Prohibition, Certiorari, Quo Warranto and all other writs necessary and proper to complete the Exercise of their jurisdiction. In case of sickness, absence or other incapacity of a District Judge his Court may be held by any other District Judge of the State.

Sec. 8. Each City, Town and Village in the State having over five hundred inhabitants shall have as many Municipal Courts, and there shall be Established in Towns and Villages having five hundred inhabitants and under and in townships and Districts outside of Towns Cities and Villages such Justices of the Peace as the Legislature shall prescribe.

The jurisdiction of Municipal Courts shall Extend to all cases where the amount in controversy, Exclusive of interest, does not Exceed three hundred and fifty dollars: to cases of forcible entry and detainer, to the foreclosure of Mechanic's liens and Mortgages, where the amount claimed Exclusive of interest, does not Exceed three hundred and fifty dollars; and to such cases of misdemeanor and special cases as shall be fixed by law. their jurisdiction shall be concurrent with that of the District Courts.

The Jurisdiction of Justices of the Peace shall Extend to all cases where the amount claimed does not Exceed one hundred dollars Exclusive of interest and to such cases of misdemeanor and special cases as may be provided by law. Judges of Municipal Courts shall hold their offices for four years and Justices of the Peace shall hold their offices for two years.

Sec. 9. The Supreme Court, the District Courts and such other Courts as the Legislature may declare shall be Courts of record. The Legislature shall fix by law the jurisdiction of such inferior Courts as it may Establish in incorporated Cities and Towns and shall fix by law, the powers duties and responsabilities of the judges thereof; provided: that the jurisdiction of such inferior Courts shall extend to the trial of misdemeanors and Cases arising under ordinances of such Cities and Towns. The times and places of holding the several Courts of record Except as herein provided, shall be provided by law. No judicial officer, Except Justices of the Peace. Justices or Judges of such inferior Courts as may be Established in incorporated Cities and Towns and Commissioners shall receive to his own use any fees or perquisites of office.

Sec. 10 The unfinished business remaining in the Probate Court of the City and County of San Francisco, shall be apportioned between the several District Courts therein established under this Constitution, in such manner as the Legislature shall direct.

Sec. 11. The Supreme Court and the District Courts now in existence are continued until the first Monday in January AD Eighteen hundred and seventy nine, but after said first Monday in January next, their powers shall only extend to the determination of such cases or proceedings pending therein, as may have been submitted for decision prior to that time and for that purpose the Justices and Judges of said Courts shall hold their offices until the first day of April AD Eighteen hundred and seventy — but said Justices and Judges shall not by reason of so holding over be ineligible to hold any office under this Constitution during said holding over.

Sec. 12. The Justices of the Supreme Court shall appoint a reporter of the decisions of the Supreme Court, rendered in each of the sections thereof and in banc, who shall receive an annual salary of two ~~or~~ thousand dollars. ~~The decisions of each of said sections and of said Court in banc shall be included together in one volume of the Reports at a time so as to prevent diverse sets of Supreme Court Reports.~~

Sec. 13. The Legislature shall provide for the speedy publication of such opinions of the Supreme Court as it may deem expedient; and all opinions shall be free for publication by any person.

Sec. 14. The Justices of the Supreme Court and the District Judges shall be ineligible to any other office than a Judicial office during the term for which they shall have been elected, Except in Case of resignation and then not until two years after such resignation. In addition to the oath of office, they shall before entering upon their offices take and subscribe an oath that they will not during such terms accept any Federal office other than a judicial office.

Sec. 15. The Justices of the Supreme Court and District Judges shall severally, at stated times during their continuance in office, receive for their services a compensation which shall not be increased or diminished during the term for which they shall be elected; provided, that District Judges shall be paid out of the County treasury of their respective Counties.

Sec. 16. The Justices of the Supreme Court and the District Judges and shall be ineligible to any other office than a judicial office during the term for which they shall have been elected.

Sec. 17. Judges shall not charge juries with respect to matters of fact, but may state the testimony and declare the law.

Sec. 18. The style of all process shall be: "The People of the State of California" and all prosecutions shall be conducted in their name and by their authority.

Sec. 19 The Legislature shall provide for the election of a clerk of the Supreme Court, County Clerks District attorneys, Sheriffs Assessors and other necessary officers and shall fix by law their duties and compensations. The Legislature may also provide for the appointment by the several Courts of record of one or more Commissioners, with authority to perform Chamber business connected with the administration of justice as may be prescribed by law. Until the Legislature provides different offices and their terms of office other than Judges, the same County offices and their terms as now exist shall continue as if this Constitution had not been adopted.

Sec. 20 The Justices of the Supreme Court, and the Judges of the District and Municipal Courts shall not practice law and shall not act as Counsel nor appear as attorney at law in any case or proceeding in any Court during their continuance in office.

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Geo Venable Smith