SJR

27

(11)

HOUSE COMMITTEE REPORT

Date Referred to Committee: April 12, 2000 FURTHER REFERRALS:

Date of Committee Action: 4/17/00

The FINANCE Committee considered: SJR 27 am

SENATE JOINT RESOLUTION NO. 27 am CONST. AM: REVISIONS OF CONSTITUTION

Proposing amendments to the Constitution of the State of Alaska relating to revisions of the state constitution and providing that a court may not change language of a proposed constitutional amendment or revision.

recommends it be replaced with the following committee substitute HCS SJR 27(FIN) [ ] the same title [ ] a new title

[ ] additional referral to _____ Committee
[ ] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal note(s) _____

[ ] zero fiscal note(s) _____

APPROVES PREVIOUS: (Dept/Date)

[X] fiscal note(s) Senate Gov 1-24-00

[ ] zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
Therriault	X			
Bunde			✓	
Austerman			X	
Davies		X		
Grussendorf		X		
Moses			X	
Davis	X			
Williams			X	
Phillips	✓			
Mulder	✓			
Foster	X			

CHAIR'S SIGNATURE Therriault Donaldson

FISCAL NOTE

No. 1

STATE OF ALASKA
2000 LEGISLATIVE SESSION

Bill Version: SJR 27
(S) Publish Date: 1-24-00

Revision Date/Time (Note if correction) _____ Dept. Affected Office of the Governor
Title Constitutional Amendment: Revisions to the state constitution BRU Elective Operations
Component Elections
Sponsor Senator Donley
Requester Senate Judiciary Committee Component No. 21

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual	1.5					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	1.5	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	1.5					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	1.5	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58. However, only six measures can be printed on an 8-1/2 by 14 inch ballot. If this measure requires printing an 8-1/2 by 18 inch ballot, the cost will increase by $22.0.

Prepared by: Gail Fenumiai Phone 465-3935
Division Division of Elections Date/Time 1/13/00 12:46 PM
Approved by: Lt. Governor Fran Ulmer Date 01/13/2000
Agency Office of the Lieutenant Governor

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1-LS0087\N
Cook
4/11/00

Adopted
4/17/00

HOUSE CS FOR SENATE JOINT RESOLUTION NO. 27( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS DONLEY, Pearce, Tim Kelly, Green, Pete Kelly, Leman, Miller, Phillips, Taylor, Ward, Wilken

A RESOLUTION

Proposing amendments to the Constitution of the State of Alaska relating to revisions of the state constitution and providing that a court may not change language of a proposed constitutional amendment or revision.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** Article XIII, sec. 1, Constitution of the State of Alaska, is amended to read:

Section 1. Amendments and Revisions. Amendments to **or revisions of** this constitution may be proposed by a two-thirds vote of each house of the legislature. The lieutenant governor shall prepare a ballot title and proposition summarizing each proposed amendment **or revision**, and shall place them on the ballot for the next general election. If a majority of the votes cast on the proposition favor the amendment **or revision**, it shall be adopted. Unless otherwise provided in the amendment **or revision**, it becomes effective thirty days after the certification of the election returns by the lieutenant governor. **A revision proposed under this section shall be confined to one subject.**

*** Sec. 2.** Article XIII, Constitution of the State of Alaska, is amended by adding a new section to read:

Section 5. Changing Constitutional Proposal Prohibited. A court may not alter or change the language of an amendment or revision to this constitution proposed by the legislature or by a constitutional convention.

* **Sec. 3.** The amendments proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

SENATOR DAVE DONLEY
ALASKA STATE LEGISLATURE

SJR 27 PACKET OF INFORMATION

Updated April 12, 2000

1. HOUSE CS FOR SENATE JOINT RESOLUTION 27 (JUD)
2. HOUSE CS FOR SJR 27 ( ) –PROPOSED BLANK CS
3. SENATE JOINT RESOLUTION 27 am – VERSION THAT PASSED THE SENATE
4. SJR 27 SPONSOR STATEMENT
5. ALASKA STATE CONSTITUTION – ARTICLE XIII
6. ANALYSIS OF BESS V. ULMER – REVISIONS VS. AMENDMENTS, BY COUNSEL TO THE LEGISLATURE (APRIL 11, 2000).
7. SEVERABILITY OF RESOLUTIONS MEMO PREPARED BY TAMARA COOK (MARCH 20, 2000).
8. BESS V. ULMER – BRIEF ANALYSIS BY KEVIN CLARKSON (THE ATTORNEY THAT REPRESENTED THE LEGISLATURE IN BESS V. ULMER).
9. HOUSE CS FOR CS FOR SJR 42 (RLS) – LEGISLATIVELY PROPOSED CONSTITUTIONAL AMENDMENT THAT HAD LANGUAGE REMOVED FROM IT BY THE COURT (HIGHLIGHTED TEXT).
10. HOUSE CS FOR CS SJR 3 (FIN) – LEGISLATIVELY PROPOSED CONSTITUTIONAL AMENDMENT THAT WAS STRUCK FROM THE BALLOT BY THE COURT.
11. CALIFORNIA'S PROPOSITION 115 – CITED BY THE COURT AS AN EXAMPLE OF A REVISION.

Vice-Chair, Senate Finance Committee • Chair, Capital Budget Subcommittee • Co-Chair, Anchorage Caucus
Member: Senate Judiciary Committee • Senate Labor & Commerce Committee • Legislative Council

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HOUSE CS FOR SENATE JOINT RESOLUTION NO. 27(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/12/00
Referred: Finance

Sponsor(s): SENATORS DONLEY, Pearce, Tim Kelly, Green, Pete Kelly, Leman, Miller, Phillips, Taylor, Ward, Wilken

A RESOLUTION

Proposing an amendment to the Constitution of the State of Alaska providing that a court may not change language of a proposed constitutional amendment or revision.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** Article XIII, Constitution of the State of Alaska, is amended by adding a new section to read:

Section 5. Changing Constitutional Proposal Prohibited. A court may not alter or change the language of an amendment or revision to this constitution proposed by the legislature or by a constitutional convention.

*** Sec. 2.** The amendment proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

SENATE JOINT RESOLUTION NO. 27 am

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY SENATORS DONLEY, Pearce, Tim Kelly, Green, Pete Kelly, Leman, Miller, Phillips, Taylor, Ward, Wilken

Amended: 2/22/00
Introduced: 5/14/99

A RESOLUTION

Proposing amendments to the Constitution of the State of Alaska relating to revisions of the state constitution and providing that a court may not change language of a proposed constitutional amendment or revision.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** Article XIII, sec. 1, Constitution of the State of Alaska, is amended to read:

Section 1. Amendments and Revisions. Amendments to **or revisions of** this constitution may be proposed by a two-thirds vote of each house of the legislature. The lieutenant governor shall prepare a ballot title and proposition summarizing each proposed amendment **or revision**, and shall place them on the ballot for the next general election. If a majority of the votes cast on the proposition favor the amendment **or revision**, it shall be adopted. Unless otherwise provided in the amendment **or revision**, it becomes effective thirty days after the certification of the election returns by the lieutenant governor.

*** Sec. 2.** Article XIII, Constitution of the State of Alaska, is amended by adding a new section to read:

Section 5. Changing Constitutional Proposal Prohibited. A court may not

alter or change the language of an amendment or revision to this constitution proposed by the legislature or by a constitutional convention.

* **Sec. 3.** The amendments proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

ARTICLE XIII.
AMENDMENT AND REVISION.

SECTION 1. AMENDMENTS. Amendments to this constitution may be proposed by a two–thirds vote of each house of the legislature. The lieutenant governor shall prepare a ballot title and proposition summarizing each proposed amendment, and shall place them on the ballot for the next general election. If a majority of the votes cast on the proposition favor the amendment, it shall be adopted. Unless otherwise provided in the amendment, it becomes effective thirty days after the certification of the election returns by the lieutenant governor.

SECTION 2. CONVENTION. The legislature may call constitutional conventions at any time.

SECTION 3. CALL BY REFERENDUM. If during any ten–year period a constitutional convention has not been held, the lieutenant governor shall place on the ballot for the next general election the question: "Shall there be a Constitutional Convention?" If a majority of the votes cast on the question are in the negative, the question need not be placed on the ballot until the end of the next ten–year period. If a majority of the votes cast on the question are in the affirmative, delegates to the convention shall be chosen at the next regular statewide election, unless the legislature provides for the election of the delegates at a special election. The lieutenant governor shall issue the call for the convention. Unless other provisions have been made by law, the call shall conform as nearly as possible to the act calling the Alaska Constitutional Convention of 1955, including, but not limited to, number of members, districts, election and certification of delegates, and submission and ratification of revisions and ordinances. The appropriation provisions of the call shall be self–executing and shall constitute a first claim on the state treasury.

SECTION 4. POWERS. Constitutional conventions shall have plenary power to amend or revise the constitution, subject only to ratification by the people. No call for a constitutional convention shall limit these powers of the convention.

MEMORANDUM

TO: Senator Dave Donley

FROM: Counsel to the Legislature

DATE: April 11, 2000

RE: Analysis of Bess v. Ulmer – Revisions vs. Amendments

I. QUESTIONS PRESENTED

A. ***What legal arguments can be raised against using California's Raven test to distinguish between revisions and amendments under Alaska's Constitution?***

B. ***What legal authority supports the argument that under the Alaska Constitution, a change to the Constitution proposed by the Legislature is an amendment if it only involves a single subject?***

II. ANALYSIS

A. What Legal Arguments Can Be Raised Against Applying California's Test for Distinguishing Between Revisions and Amendments in Future Alaska Cases

1. Bess Correctly Held That the Alaska Constitution Distinguishes Between Revisions and Amendments.

In Bess v. Ulmer, 985 P.2d 979 (Alaska 1999), the Court held that there is a substantive distinction between an amendment and a revision to the Constitution. It interpreted Article XIII to allow the legislature to amend the Constitution, but not to revise it. Section 1 of Article XIII allows the legislature to propose amendments, while section 4 allows Constitutional Conventions to revise or amend the Constitution. Thus the distinction has a basis in the language of the Constitution.

The minutes of the Alaska Constitutional Convention contain discussions regarding the distinction between an amendment and a revision. As originally drafted, the Constitution would have allowed the Legislature to make revisions to the Constitution if two succeeding Legislatures both pass the proposed revision by a two-thirds majority vote. However, as finally adopted, the Constitution did not allow the Legislature to revise the Constitution. See Minutes of Alaska Constitutional Convention, January 5, 1956.

In discussing this issue, Delegate V. Fisher, stated:

> There is a big difference between revisions, which imply rewriting the Constitution, and making amendments to specific articles or sections of the Constitution. In talking to a few members of the Committee during this short recess, it appears that the Committee has in mind that revisions be undertaken by Constitutional Conventions and be adopted by a vote of the people, rather than by the Legislature itself...

Later, Mr. V. Rivers stated:

> I feel that [the Constitution] being supreme, the charter or law, should be an instrument of the people and they, and they alone, delegate power to the governing bodies. I do not feel that the Legislative power should extend to the ability to change the Constitution, no matter how many successive legislators it may go to... I don't think that we should delegate the supreme power to the Legislature to alter the document by which they themselves are constituted and they themselves are governed.

Such comments amply support the Supreme Court's holding in Bess that the legislature's power to change the Constitution is limited to amendments, and that the delegates to Alaska's Constitutional Convention intended to draw a distinction between revisions and amendments.

2. Neither the Constitution nor the Convention Minutes Define the Terms "Revision" or "Amendment."

The January 5, 1956 Convention minutes also contain discussion on the difference between a revision and an amendment. However, delegates were not in clear agreement regarding the meaning of a revision versus an amendment, and no effort was made, as a group, to define these terms. In Bess, the Court conceded that the delegates had not clearly defined what they meant by a revision or an amendment. See Bess, 985 P.2d at 984.

Thus, while the Convention Minutes draw a distinction between revisions and amendments, they provide scant guidance in distinguishing between the two. There is certainly nothing in the Convention Minutes that refers to, supports, or undermines the test adopted in Bess. Since the Constitution does not define or distinguish between revisions and amendments, and the Convention Minutes provide no guidance, the Court in Bess resorted to decisions from other states that have addressed this issue.

3. The Matter May Not Have Been Properly Briefed In Bess.

Unfortunately, the issue may not have been clearly framed in the briefing. Neither the State nor the Legislature set out their views on how an amendment differs from a revision. In Bess, the Court stated:

> Appellant Bess challenged legislative resolve no. 59 in briefs to the Superior Court and to this Court. The State and Legislative defendants did not respond to the argument that the resolve, considered individually, constituted a revision. Appellant Bess challenged Legislative Resolve no. 74 in briefs to the Superior Court and to this Court. The State and Legislative defendants again failed to respond to the challenge.

See Bess, 958 P.2d 979 at 981 at n. 1.

Reportedly, the Appellants in Bess did not raise the revision/amendment distinction in their opening briefs, and devoted no more than a paragraph to the issue in their reply brief. Ordinarily, an appellant is not allowed to raise an issue on appeal for the first time in his reply brief, and a court will not consider issues raised for the first time in a reply brief. If a court intends to disregard this rule, it should provide Appellees the opportunity to address the issue in supplemental briefing. Apparently, because of the expedited nature of the review in Bess, the Court did not provide Appellees with such an opportunity.

The process followed in Bess was clearly defective. It is unfortunate that the supreme court undertook to announce the formation of a new constitutional test in Bess, given the poor state of the briefing on the issue and the expedited nature of the review it was undertaking. As a result, the Court articulated an important

constitutional test without the benefit of the views of the executive or legislative branches.

Ordinarily, Bess would be binding precedent with respect to the test adopted for distinguishing between a revision and an amendment. Technically, the test adopted in Bess is not *dicta* because the court applied the test to resolve the issue before it on appeal. However, because the issue was not properly briefed, and involves a matter of constitutional significance, the Court may give less precedential weight to Bess than it ordinarily accords its precedents. Even if the Court will not expressly disavow the test it adopted in Bess, it may be willing to modify the test. Moreover, because the test articulated in Bess is vague, there is still opportunity to define its contours in future litigation.

B. Legal Authority Supporting Argument that an Amendment is a Change to the Constitution Limited to a Single Purpose

In future cases, the Legislature may wish to argue that a proposed change to the Constitution is an amendment if it has a narrow "single purpose." Many states use the "single purpose" test to limit the scope and breadth of amendments to their constitutions. See In Re Title, Ballot Title, Submission Clause, and Summary for 1999-2000 No. 37, 977 P.2d 845 (Colo. 1999); Armatta v. Kitzhaber, 959 P.2d 49 (Or. 1998); Wall v. Board of Electors, 250 S.E.2d 408 (Ga. 1978); Buchanan v. Kirkpatrick, 615

S.W.2d 6 (Mo. 1981); O'Grady v. Brown, 354 N.E.2d 690 (Ohio 1976); Carter v. Burson, 198 S.E.2d 151 (Ga. 1973); contra, Marshall v. State, 925 P2d 325 (Mont. 1999).

In Carter, the Court stated:

> The test of whether . . . a constitutional amendment violates the multiple subject matter rule is whether all of the parts of the . . . constitutional amendment are germane to the accomplishment of a single objective. If so, it does not violate the rule; otherwise, it does.

This test is a more practical test than the Bess test for distinguishing between an amendment and a revision. First, it is easier to understand and apply than the vague, subjective standard articulated in Bess. Second, it allows the Legislature to amend the constitution to achieve a single narrow purpose, but prevents it from making sweeping revisions to the Constitution. Third, it allows voters to meaningfully understand the purpose of a proposed amendment. Fourth, it allows more than one section of the Constitution to be changed, so long as the changes are all designed to achieve the limited, narrow, articulated purpose of the amendment.

The qualitative/quantitative test adopted in Bess is too vague and runs the risk of being too inflexible. The test in Bess, prohibited the Legislature from proposing an amendment designed to achieve a narrow goal (i.e. limiting a prisoner's rights to those guaranteed under the U.S. Constitution) simply because achieving that

narrow purpose affected several sections of the Alaska Constitution. If Alaska's Legislature and voters wish to limit a prisoner's rights to those guaranteed under the U.S. Constitution, there is no principled reason why they cannot achieve this through a single amendment, rather than requiring a Constitutional Convention to revise the entire Constitution.

This inflexibility could potentially stymie the ability of the Legislature and the people to address significant problems through the amendment process, which is a far easier process for changing the Constitution than a convention. For example, if the Legislature wished to amend Alaska's Constitution to settle the subsistence dispute, it is not certain that such an amendment would survive the Bess test. Even though voters would understand that the purpose was to make it permissible to grant a rural preference for subsistence hunters, the amendment might be stricken because it affected several sections of Alaska's Constitution. Such inflexibility makes it too difficult for Alaskans to make changes to their Constitution.

The Bess test also suffers from being too unpredictable. The test adopted should allow the Legislature to know whether changes to the Constitution that it wishes to propose are amendments or revisions.

Finally, the subjectivity of the Bess test undermines the democratic nature of our government. If the Court were to use the Bess test to strike down

proposed amendments that it deems unwise, the Court would be substituting its judgment for that of the Legislature and the electorate who must approve constitutional amendments.

The delegates to the Constitutional Convention were aware of the fine line between making a constitution too easy to amend and making it too difficult to change. A constitution that is too easy to amend runs the risk of being changed for every political vagary or fad notion. On the other hand, a constitution that is too difficult to change, runs the risk of becoming too rigid and inflexible and thwarts the ability of the legislature and the people to make changes which are both warranted and necessary.

Delegates to Alaska's Constitutional Convention understood this problem. Delegate Davis, during discussions regarding Article XIII of the proposed Alaska Constitution, stated:

> As we all know from the studies we have made, you have to tread a middle ground on amending constitutions. You must not make it so hard that they cannot be amended when amendment is necessary. You must not make it so easy that they can be amended at the whim at any particular segment of the population.

January 5, 1956 Conventional Minutes.

The single purpose test is far superior to the Bess test in achieving this objective. It is easier to understand, and therefore will allow the Legislature to propose amendments which will pass judicial scrutiny. It allows amendments to be made to the Constitution which are designed to address a single problem, even if it requires amending several sections of the Constitution to address that problem. And at the same time, it preserves the distinction between amendments and revisions by preventing the Legislature from making widespread changes to the Constitution.

Because the Court has already articulated the Bess test, and is unlikely to simply jettison this test in future decisions, the Legislature should consider arguing that the single purpose test is a refinement of the test adopted in Bess, or a clearer statement of that test. Given the problems with the process followed in Bess, the Court may be receptive to this approach.

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MEMORANDUM March 20, 2000

SUBJECT: Severability of resolutions (Work Order No. 21-LS1562)

TO: Senator Dave Donley

FROM: Tamara Brandt Cook
Director

You ask whether AS 01.10.030 applies to resolutions. It does not. That statute provides

> Sec. 01.10.030. Constitutionality and severability. Any law heretofore or hereafter enacted by the Alaska legislature which lacks a severability clause shall be construed as though it contained the clause in the following language, "If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application to other persons or circumstances shall not be affected thereby."

The statute applies to only to laws enacted by the legislature, and therefore cannot include resolutions which are not law. While the Supreme Court has not, so far as I know, considered the application of AS 01.10.030 to resolutions, it has recognized that this statute has limited application. It has acknowledged that the statute does not give courts authority to invalidate portions of proposed initiatives, while also concluding that the courts have the inherent duty to do. (McAlpine v. University of Alaska, 762 P.2d 81 (Alaska 1988); see also Bonjour v. Bonjour, 592 P.2d 1233 (Alaska 1979))

TBC:glc
00-138.glc

BRIEF ANALYSIS OF BESSV. ULMER

BY KEVIN G. CLARKSON

Bess v. Ulmer: This is the case regarding the Alaska Marriage Amendment. Wagstaff and the ACLU attacked the then proposed marriage amendment as a "revision" of the constitution rather than an amendment and argued that the Legislature had no power to present the issue to the people for ratification. In furtherance of this argument against the Marriage Amendment, Wagstaff pointed to two other amendments which the Legislature proposed at the same time (the Prisoners Rights and Apportionment Amendments) and argued that taken together the three constituted a revision. No one ever briefed whether the Prisoners Rights Amendment standing alone was a revision and it was only addressed as an aside from the perspective of whether the Marriage Amendment should be removed from the ballot because the three amendments taken together were impermissible. Nonetheless, the Alaska Supreme Court struck the Prisoners Rights Amendment as a revision which could not be proposed by the Legislature. The Court also decided to edit the Marriage Amendment by deleting the last sentence. The Court was told at argument that if it found that the second sentence of the Marriage Amendment rose to the level of being a "revision" then it should sever that sentence from the remainder of the Amendment, but instead the Court simply asserted some unheard of "editing" right to eliminate what it viewed as "surplusage." The Courts (both the Alaska Supreme Court and Judge Sen Tan in the Superior Court) then actually ruled that Wagstaff had prevailed in his litigation and awarded him attorney's fees and costs on the premise that he had eliminated the Prisoners Rights Amendment and the second sentence of the Marriage Amendment – even though the entire focus of his litigation had been the first senetence of the Marriage Amendment and he had completely lost on that score.

CA LEGIS Prop. 115 (1990)
1990 Cal. Legis. Serv. Prop. 115 (West)

CALIFORNIA LEGISLATIVE SERVICE 1989-90
1990 PROPOSITIONS -- ELECTION RESULTS

Additions are indicated by <<+ Text of addition +>>; Deletions by <<- *** ->>. Changes in tables are made but not highlighted. Vetoed provisions within tabular material are not displayed.

PROPOSITION 115

CRIMINAL LAW--INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE

Approved by the electors June 5, 1990

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

This initiative measure expressly amends the Constitution by amending and adding sections thereto, repeals and adds sections to the Code of Civil Procedure, adds a section to the Evidence Code, amends, repeals, and adds sections to the Penal Code.

PROPOSED LAW

SECTION 1. (a) We the people of the State of California hereby find that the rights of crime victims are too often ignored by our courts and by our State Legislature, that the death penalty is a deterrent to murder, and that comprehensive reforms are needed in order to restore balance and fairness to our criminal justice system.

(b) In order to address these concerns and to accomplish these goals, we the people further find that it is necessary to reform the law as developed in numerous California Supreme Court decisions and as set forth in the statutes of this state. These decisions and statutes have unnecessarily expanded the rights of accused criminals far beyond that which is required by the United States Constitution, thereby unnecessarily adding to the costs of criminal cases, and diverting the judicial process from its function as a quest for truth.

(c) The goals of the people in enacting this measure are to restore balance to our criminal justice system, to create a system in which justice is swift and fair, and to create a system in which violent criminals receive just punishment, in which crime victims and witnesses are treated with care and respect, and in which society as a whole can be free from the fear of crime in our homes, neighborhoods, and schools.

(d) With these goals in mind, we the people do hereby enact the Crime Victims Justice Reform Act.

CA CONST Art. 1, s 14.1

SEC. 2. Section 14.1 is added to Article I of the California Constitution, to read:

<<+SEC. 14.1. If a felony is prosecuted by indictment, there shall be no postindictment preliminary hearing.+>>

CA CONST Art. 1, s 24

SEC. 3. Section 24 of Article I of the California Constitution is amended to read:

SEC. 24. Rights guaranteed by this Constitution are not dependent on those

guaranteed by the United States Constitution.

<<+In criminal cases the rights of a defendant to equal protection of the law, to due process of law, to the assistance of counsel, to be personally present with counsel, to a speedy and public trial, to compel the attendance of witnesses, to confront the witnesses against him or her, to be free from unreasonable searches and seizures, to privacy, to not be compelled to be a witness against himself or herself, to not be placed twice in jeopardy for the same offense, and to not suffer the imposition of cruel or unusual punishment, shall be construed by the courts of this state in a manner consistent with the Constitution of the United States. This Constitution shall not be construed by the courts to afford greater rights to criminal defendants than those afforded by the Constitution of the United States, nor shall it be construed to afford greater rights to minors in juvenile proceedings on criminal causes than those afforded by the Constitution of the United States.+>>

This declaration of rights may not be construed to impair or deny others retained by the people.

CA CONST Art. 1, s 29

SEC. 4. Section 29 is added to Article I of the California Constitution, to read:

SEC. 29. In a criminal case, the people of the State of California have the right to due process of law and to a speedy and public trial.

CA CONST Art. 1, s 30

SEC. 5. Section 30 is added to Article I of the California Constitution, to read:

SEC. 30. (a) This Constitution shall not be construed by the courts to prohibit the joining of criminal cases as prescribed by the Legislature or by the people through the initiative process.

(b) In order to protect victims and witnesses in criminal cases, hearsay evidence shall be admissible at preliminary hearings, as prescribed by the Legislature or by the people through the initiative process.

(c) In order to provide for fair and speedy trials, discovery in criminal cases shall be reciprocal in nature, as prescribed by the Legislature or by the people through the initiative process.

CA CIV PRO s 223 Repealed

SECTION 6. Section 223 of the Code of Civil Procedure is repealed.
<<-* * *->>

CA CIV PRO s 223

SEC. 7. Section 223 is added to the Code of Civil Procedure, to read:

223. In a criminal case, the court shall conduct the examination of prospective jurors. However, the court may permit the parties, upon a showing of good cause, to supplement the examination by such further inquiry as it deems proper, or shall itself submit to the prospective jurors upon such a showing, such additional questions by the parties as it deems proper. Voir dire of any prospective jurors shall, where practicable, occur in the presence of the other jurors in all criminal cases, including death penalty cases.

Examination of prospective jurors shall be conducted only in aid of the exercise of challenges for cause.

The trial court's exercise of its discretion in the manner in which voir dire is conducted shall not cause any conviction to be reversed unless the exercise of that discretion has resulted in a miscarriage of justice, as specified in Section

13 of Article VI of the California Constitution.

CA CIV PRO s 223.5 Repealed

SEC. 7.5. Section 223.5 of the Code of Civil Procedure is repealed.
<<-* * *->>

CA EVID s 1203.1

SEC. 8. Section 1203.1 is added to the Evidence Code, to read:
1203.1. Section 1203 is not applicable if the hearsay statement is offered at preliminary examination, as provided in Section 872 of the Penal Code.

CA PENAL s 189

SEC. 9. Section 189 of the Penal Code is amended to read:
189. All murder which is perpetrated by means of a destructive device or explosive, knowing use of ammunition designed primarily to penetrate metal or armor, poison, lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or which is committed in the perpetration of, or attempt to perpetrate, arson, rape, robbery, burglary, mayhem, <<+ kidnapping, train wrecking,+>> or any act punishable under <<-* * *->> <<+Section 286, 288, 288a, or 289,+>> is murder of the first degree; and all other kinds of murders are of the second degree.
As used in this section, "destructive device" shall mean any destructive device as defined in Section 12301, and "explosive" shall mean any explosive as defined in Section 12000 of the Health and Safety Code.
To prove the killing was "deliberate and premeditated," it shall not be necessary to prove the defendant maturely and meaningfully reflected upon the gravity of his or act.

CA PENAL s 190.2

SEC. 10. Section 190.2 of the Penal Code is amended to read:
190.2. (a) The penalty for a defendant found guilty of murder in the first degree shall be death or confinement in state prison for a term of life without the possibility of parole in any case in which one or more of the following special circumstances has been <<-* * *->> found under Section 190.4, to be true:
(1) The murder was intentional and carried out for financial gain.
(2) The defendant was previously convicted of murder in the first degree or second degree. For the purpose of this paragraph an offense committed in another jurisdiction which if committed in California would be punishable as first or second degree murder shall be deemed murder in the first or second degree.
(3) The defendant has in this proceeding been convicted of more than one offense of murder in the first or second degree.
(4) The murder was committed by means of a destructive device, bomb, or explosive planted, hidden or concealed in any place, area, dwelling, building or structure, and the defendant knew or reasonably should have known that his <<+or her+>> act or acts would create a great risk of death to a human being or human beings.
(5) The murder was committed for the purpose of avoiding or preventing a lawful arrest or to perfect, or attempt to perfect an escape from lawful custody.
(6) The murder was committed by means of a destructive device, bomb, or explosive that the defendant mailed or delivered, attempted to mail or deliver, or cause to be mailed or delivered and the defendant knew or reasonably should have known that his <<+or her+>> act or acts would create a great risk of death to a human being or human beings.
(7) The victim was a peace officer as defined in Section 830.1, 830.2, 830.3, 830.31, 830.35, 830.36, 830.4, 830.5, 830.5a, 830.6, 830.10, 830.11 or 830.12,

who, while engaged in the course of the performance of his <<+or her+>> duties was intentionally killed, and such defendant knew or reasonably should have kno that such victim was a peace officer engaged in the performance of his <<+or her+>> duties; or the victim was a peace officer as defined in the above enumerated sections of the Penal Code, or a former peace officer under any of such sections, and was intentionally killed in retaliation for the performance his <<+or her+>> official duties.

(8) The victim was a federal law enforcement officer or agent, who, while engaged in the course of the performance of his <<+or her+>> duties was intentionally killed, and such defendant knew or reasonably should have known that such victim was a federal law enforcement officer or agent, engaged in the performance of his <<+or her+>> duties; or the victim was a federal law enforcement officer or agent, and was intentionally killed in retaliation for th performance of his <<+or her+>> official duties.

(9) The victim was a fireman as defined in Section 245.1, who while engaged in the course of the performance of his <<+or her+>> duties was intentionally killed, and such defendant knew or reasonably should have known that such victim was a fireman engaged in the performance of his <<+or her+>> duties.

(10) The victim was a witness to a crime who was intentionally killed for the purpose of preventing his <<+or her+>> testimony in any criminal <<+or juvenile+>> proceeding, and the killing was not committed during the commission, or attempted commission <<-* * *->> <<+of+>> the crime to which he <<+or she+>> was a witness; or the victim was a witness to a crime and was intentionally killed in retaliation for his <<+or her+>> testimony in any criminal <<+or juvenile+>> proceeding. <<+As used in this paragraph, "juvenile proceeding" means a proceeding brought pursuant to Section 602 or 707 of the Welfare and Institutions Code.+>>

(11) The victim was a prosecutor or assistant prosecutor or a former prosecuto or assistant prosecutor of any local or state prosecutor's office in this state or any other state, or a federal prosecutor's office and the murder was <<+intentionally+>> carried out in retaliation for or to prevent the performance of the victim's official duties.

(12) The victim was a judge or former judge of any court of record in the local, state or federal system in the State of California or in any other state of the United States and the murder was <<+intentionally+>> carried out in retaliation for or to prevent the performance of the victim's officia_ duties.

(13) The victim was an elected or appointed official or former official of the <<-* * *->> <<+federal government+>>, a local or <<-* * *->> <<+state+>> government of California, or of any local or state government of any other state in the United States and the killing was intentionally carried out in retaliation for or to prevent the performance of the victim's official duties.

(14) The murder was especially heinous, atrocious, or cruel, manifesting exceptional depravity <<-* * *->><<+. As+>> utilized in this section, the phrase especially heinous, atrocious or cruel manifesting exceptional depravity means a conscienceless, or pitiless crime which is unnecessarily torturous to the victim.

(15) The defendant intentionally killed the victim while lying in wait.

(16) The victim was intentionally killed because of his <<+or her+>> race, color, religion, nationality or country of origin.

(17) The murder was committed while the defendant was engaged in or was an accomplice in the commission of, attempted commission of, or the immediate flight after committing or attempting to commit the following felonies:

(i) Robbery in violation of Section 211 or 212.5.

(ii) Kidnapping in violation of <<-* * *->> <<+Section+>> 207 <<-* * *->> <<+or+>> 209.

(iii) Rape in violation of Section 261.

(iv) Sodomy in violation of Section 286.

(v) The performance of a lewd or lascivious act upon person of a child under the age of 14 in violation of Section 288.

(vi) Oral copulation in violation of Section 288a.

(vii) Burglary in the first or second degree in violation of Section 460.

(viii) Arson in violation of <<+subdivision (b) of+>> Section <<-* * *->> <<+451+>>.

(ix) Train wrecking in violation of Section 219.

<<+(x) Mayhem in violation of Section 203.+>>

<<+(xi) Rape by instrument in violation of Section 289.+>>

(18) The murder was intentional and involved the infliction of torture. <<-* *->>

(19) The defendant intentionally killed the victim by the administration of poison.

(b) <<-* * *->> <<+Unless an intent to kill is specifically required under subdivision (a) for a special circumstance enumerated therein, an actual killer as to whom such special circumstance has been found to be true under Section 190.4 need not have had any intent to kill at the time of the commission of the offense which is the basis of the special circumstance in order to suffer death or confinement in state prison for a term of life without the possibility of parole.+>>

<<+(c) Every person not the actual killer who, with the intent to kill, aids, abets, counsels, commands, induces, solicits, requests, or assists any actor in the commission of murder in the first degree shall suffer death or confinement i state prison for a term of life without the possibility of parole, in any case i which one or more of the special circumstances enumerated in subdivision (a) of this section has been found to be true under Section 190.4.+>>

<<+(d) Notwithstanding subdivision (c), every person not the actual killer, who, with reckless indifference to human life and as a major participant, aids, abets, counsels, commands, induces, solicits, requests, or assists in the commission of a felony enumerated in paragraph (17) of subdivision (a), which felony results in the death of some person or persons, who is found guilty of murder in the first degree therefor, shall suffer death or confinement in state prison for life without the possibility of parole, in any case in which a specia. circumstance enumerated in paragraph (17) of subdivision (a) of this section has been found to be true under Section 190.4.+>>

<<+(e)+>> The penalty shall be determined as provided in Sections 190.1, 190.2 190.3, 190.4, and 190.5.

CA PENAL s 190.41

SEC. 11. Section 190.41 is added to the Penal Code, to read:

190.41. Notwithstanding Section 190.4 or any other provision of law, the corpus delicti of a felony-based special circumstance enumerated in paragraph (17) of subdivision (a) of Section 190.2 need not be proved independently of a defendant's extrajudicial statement.

CA PENAL s 190.5

SEC. 12. Section 190.5 of the Penal Code is amended to read:

190.5. <<+(a)+>> Notwithstanding any other provision of law, the death penalty shall not be imposed upon any person who is under the age of 18 at the time of the commission of the crime. The burden of proof as to the age of such person shall be upon the defendant.

<<+(b) The penalty for a defendant found guilty of murder in the first degree, in any case in which one or more special circumstances enumerated in Section 190.2 or 190.25 has been found to be true under Section 190.4, who was 16 years of age or older and under the age of 18 years at the time of the commission of the crime, shall be confinement in the state prison for life without the possibility of parole or, at the discretion of the court, 25 years to life.+>>

<<+(c) The trier of fact shall determine the existence of any special

circumstance pursuant to the procedure set forth in Section 190.4.+>>

CA PENAL s 206

SEC. 13. Section 206 is added to the Penal Code, to read:

206. Every person who, with the intent to cause cruel or extreme pain and suffering for the purpose of revenge, extortion, persuasion, or for any sadisti purpose, inflicts great bodily injury as defined in Section 12022.7 upon the person of another, is guilty of torture.

The crime of torture does not require any proof that the victim suffered pain

CA PENAL s 206.1

SEC. 14. Section 206.1 is added to Penal Code, to read:

206.1. Torture is punishable by imprisonment in the state prison for a term of life.

CA PENAL s 859

SEC. 15. Section 859 of the Penal Code is amended to read:

859. When the defendant is charged with the commission of a public offense over which the superior court has original jurisdiction, by a written complaint subscribed under oath and on file in a court within the county in which the public offense is triable, he or she shall, without unnecessary delay, be taken before a magistrate of the court in which the complaint is on file. The magistrate shall immediately deliver to the defendant a copy of the complaint, inform the defendant that he or she has the right to have the assistance of counsel, ask the defendant if he or she desires the assistance of counsel, and allow the defendant reasonable time to send for counsel. However, in a capital case, the court shall inform the defendant that the defendant must be represente in court by counsel at all stages of the preliminary and trial proceedings and that the representation will be at the defendant's expense if the defendant is able to employ counsel or at public expense if he or she is unable to employ counsel, inquire of him or her whether he or she is able to employ counsel and, if so, whether the defendant desires to employ counsel of the defendant's choice or to have counsel assigned for him or her, and allow the defendant a reasonable time to send for his or her chosen or assigned counsel. The magistrate must, upon the request of the defendant, require a peace officer to take a message to any counsel whom the defendant may name, in the judicial district in which the court is situated. The officer shall, without delay and without a fee, perform that duty. If the defendant desires and is unable to employ counsel, the court shall assign counsel to defend him or her; in a capital case, if the defendant is able to employ counsel and either refuses to employ counsel or appears without counsel after having had a reasonable time to employ counsel, the court shall assign counsel to defend him or her. If it appears that the defendant may be a minor, the magistrate shall ascertain whether that is the case, and if the magistrate concludes that it is probable that the defendant is a minor, he or she shall immediately either notify the parent or guardian of the minor, by telephone or messenger, of the arrest, or appoint counsel to represent the minor. <<-* * *->>

CA PENAL s 866

SEC. 16. Section 866 of the Penal Code is amended to read:

866. <<+(a)+>> When the examination of witnesses on the part of the people is closed, any <<-* * *->> <<+witness+>> the defendant may produce <<-* * *->> <<+shall+>> be sworn and examined.

<<+Upon the request of the prosecuting attorney, the magistrate shall require an offer of proof from the defense as to the testimony expected from the witness.

The magistrate shall not permit the testimony of any defense witness unless the offer of proof discloses to the satisfaction of the magistrate, in his or her sound discretion, that the testimony of that witness, if believed, would be reasonably likely to establish an affirmative defense, negate an element of a crime charged, or impeach the testimony of a prosecution witness or the statement of a declarant testified to by a prosecution witness.+>>

<<+(b) It is the purpose of a preliminary examination to establish whether there exists probable cause to believe that the defendant has committed a felony. The examination shall not be used for purposes of discovery.+>>

<<+(c) This section shall not be construed to compel or authorize the taking of depositions of witnesses.+>>

CA PENAL s 871.6

SEC. 17. Section 871.6 is added to the Penal Code, to read:

871.6. If in a felony case the magistrate sets the preliminary examination beyond the time specified in Section 859b, in violation of Section 859b, or continues the preliminary hearing without good cause and good cause is required by law for such a continuance, the people or the defendant may file a petition for writ of mandate or prohibition in the superior court seeking immediate appellate review of the ruling setting the hearing or granting the continuance. Such a petition shall have precedence over all other cases in the court to which the petition is assigned. If the superior court grants a peremptory writ, it shall issue the writ and a remittitur three court days after its decision becomes final as to the court if this action is necessary to prevent mootness or to prevent frustration of the relief granted, notwithstanding the rights of the parties to seek review in a court of appeal. When the superior court issues the writ and remittitur as provided in this section, the writ shall command the magistrate to proceed with the preliminary hearing without further delay, other than that reasonably necessary for the parties to obtain the attendance of their witnesses.

The court of appeal may stay or recall the issuance of the writ and remittitur. The failure of the court of appeal to stay or recall the issuance of the writ and remittitur shall not deprive the parties of any right they would otherwise have to appellate review or extraordinary relief.

CA PENAL s 872

SEC. 18. Section 872 of the Penal Code is amended to read:

872. (a) If, however, it appears from the examination that a public offense has been committed, and there is sufficient cause to believe <<+that+>> the defendant <<+is+>> guilty <<-* * *->>, the magistrate <<-* * *->> <<+shall+>> make or indorse on the complaint an order, signed by him <<+or her+>>, to the following effect: "It appearing to me that the offense in the within complaint mentioned (or any offense, according to the fact, stating generally the nature thereof), has been committed, and that there is sufficient cause to believe <<+that+>> the within named A.B. <<+is+>> guilty <<-* * *->>, I order that he <<-or she+>> be held to answer to the same."

<<-* * *->>

(b) Notwithstanding Section 1200 of the Evidence Code, the finding of probable cause may be based in whole or in part upon the sworn testimony of a law enforcement officer relating the statements of declarants made out of court offered for the truth of the matter asserted. Any law enforcement officer testifying as to hearsay statements shall either have five years of law enforcement experience or have completed a training course certified by the Commission on Peace Officer Standards and Training which includes training in the investigation and reporting of cases and testifying at preliminary hearings.

CA PENAL s 954.1

SEC. 19. Section 954.1 is added to the Penal Code, to read:

954.1. In cases in which two or more different offenses of the same class of crimes or offenses have been charged together in the same accusatory pleading, where two or more accusatory pleadings charging offenses of the same class of crimes or offenses have been consolidated, evidence concerning one offense or offenses need not be admissible as to the other offense or offenses before the jointly charged offenses may be tried together before the same trier of fact.

CA PENAL s 987.05

SEC. 20. Section 987.05 is added to the Penal Code, to read:

987.05. In assigning defense counsel in felony cases, whether it is the public defender or private counsel, the court shall only assign counsel who represents, on the record, that he or she will be ready to proceed with the preliminary hearing or trial, as the case may be, within the time provisions prescribed in this code for preliminary hearings and trials, except in those unusual cases where the court finds that, due to the nature of the case, counsel cannot reasonably be expected to be ready within the prescribed period if he or she were to begin preparing the case forthwith and continue to make diligent and constant efforts to be ready. In the case where the time of preparation for preliminary hearing or trial is deemed greater than the statutory time, the court shall set a reasonable time period for preparation. In making this determination, the court shall not consider counsel's convenience, counsel's calendar conflicts, or counsel's other business. The court may allow counsel a reasonable time to become familiar with the case in order to determine whether he or she can be ready. In cases where counsel, after making representations that he or she will be ready for preliminary examination or trial, and without good cause is not ready on the date set, the court may relieve counsel from the case and may impose sanctions upon counsel, including, but not limited to, finding the assigned counsel in contempt of court, imposing a fine, or denying any public funds as compensation for counsel's services. Both the prosecuting attorney and defense counsel shall have a right to present evidence and argument as to a reasonable length of time for preparation and on any reasons why counsel could not be prepared in the set time.

CA PENAL s 1049.5

SEC. 21. Section 1049.5 is added to the Penal Code, to read:

1049.5. In felony cases, the court shall set a date for trial which is within 60 days of the defendant's arraignment in the superior court unless, upon a showing of good cause as prescribed in Section 1050, the court lengthens the time. If the court, after a hearing as prescribed in Section 1050, finds that there is good cause to set the date for trial beyond the 60 days, it shall state on the record the facts proved that justify its finding. A statement of facts proved shall be entered in the minutes.

CA PENAL s 1050.1

SEC. 22. Section 1050.1 is added to the Penal Code, to read:

1050.1. In any case in which two or more defendants are jointly charged in the same complaint, indictment, or information, and the court or magistrate, for good cause shown, continues the arraignment, preliminary hearing, or trial of one or more defendants, the continuance shall, upon motion of the prosecuting attorney, constitute good cause to continue the remaining defendants' cases so as to maintain joinder. The court or magistrate shall not cause jointly charged cases to be severed due to the unavailability or unpreparedness of one or more

defendants unless it appears to the court or magistrate that it will be impossible for all defendants to be available and prepared within a reasonable period of time.

CA PENAL Prec. s 1054

SEC. 23. Chapter 10 (commencing with Section 1054) is added to Title 6 of Part 2 of the Penal Code, to read:

CHAPTER 10. DISCOVERY

CA PENAL s 1054

1054. This chapter shall be interpreted to give effect to all of the following purposes:

(a) To promote the ascertainment of truth in trials by requiring timely pretrial discovery.

(b) To save court time by requiring that discovery be conducted informally between and among the parties before judicial enforcement is requested.

(c) To save court time in trial and avoid the necessity for frequent interruptions and postponements.

(d) To protect victims and witnesses from danger, harassment, and undue delay of the proceedings.

(e) To provide that no discovery shall occur in criminal cases except as provided by this chapter, other express statutory provisions, or as mandated by the Constitution of the United States.

CA PENAL s 1054.1

1054.1. The prosecuting attorney shall disclose to the defendant or his or her attorney all of the following materials and information, if it is in the possession of the prosecuting attorney or if the prosecuting attorney knows it to be in the possession of the investigating agencies:

(a) The names and addresses of persons the prosecutor intends to call as witnesses at trial.

(b) Statements of all defendants.

(c) All relevant real evidence seized or obtained as a part of the investigation of the offenses charged.

(d) The existence of a felony conviction of any material witness whose credibility is likely to be critical to the outcome of the trial.

(e) Any exculpatory evidence.

(f) Relevant written or recorded statements of witnesses or reports of the statements of witnesses whom the prosecutor intends to call at the trial, including any reports or statements of experts made in conjunction with the case, including the results of physical or mental examinations, scientific tests, experiments, or comparisons which the prosecutor intends to offer in evidence at the trial.

CA PENAL s 1054.2

1054.2. No attorney may disclose or permit to be disclosed to a defendant the address or telephone number of a victim or witness whose name is disclosed to the attorney pursuant to subdivision (a) of Section 1054.1 unless specifically permitted to do so by the court after a hearing and a showing of good cause.

CA PENAL s 1054.3

1054.3. The defendant and his or her attorney shall disclose to the prosecuting attorney:

(a) The names and addresses of persons, other than the defendant, he or she intends to call as witnesses at trial, together with any relevant written or

recorded statements of those persons, or reports of the statements of those persons, including any reports or statements of experts made in connection with the case, and including the results of physical or mental examinations, scientific tests, experiments, or comparisons which the defendant intends to offer in evidence at the trial.

(b) Any real evidence which the defendant intends to offer in evidence at the trial.

CA PENAL s 1054.4

1054.4. Nothing in this chapter shall be construed as limiting any law enforcement or prosecuting agency from obtaining nontestimonial evidence to the extent permitted by law on the effective date of this section.

CA PENAL s 1054.5

1054.5. (a) No order requiring discovery shall be made in criminal cases except as provided in this chapter. This chapter shall be the only means by which the defendant may compel the disclosure or production of information from prosecuting attorneys, law enforcement agencies which investigated or prepared the case against the defendant, or any other persons or agencies which the prosecuting attorney or investigating agency may have employed to assist them in performing their duties.

(b) Before a party may seek court enforcement of any of the disclosures required by this chapter, the party shall make an informal request of opposing counsel for the desired materials and information. If within 15 days the opposing counsel fails to provide the materials and information requested, the party may seek a court order. Upon a showing that a party has not complied with Section 1054.1 or 1054.3 and upon a showing that the moving party complied with the informal discovery procedure provided in this subdivision, a court may make any order necessary to enforce the provisions of this chapter, including, but not limited to, immediate disclosure, contempt proceedings, delaying or prohibiting the testimony of a witness or the presentation of real evidence, continuance of the matter, or any other lawful order. Further, the court may advise the jury of any failure or refusal to disclose and of any untimely disclosure.

(c) The court may prohibit the testimony of a witness pursuant to subdivision (b) only if all other sanctions have been exhausted. The court shall not dismiss a charge pursuant to subdivision (b) unless required to do so by the Constitution of the United States.

CA PENAL s 1054.6

1054.6. Neither the defendant nor the prosecuting attorney is required to disclose any materials or information which are work product as defined in subdivision (c) of Section 2018 of the Code of Civil Procedure, or which are privileged pursuant to an express statutory provision, or are privileged as provided by the Constitution of the United States.

CA PENAL s 1054.7

1054.7. The disclosures required under this chapter shall be made at least 30 days prior to the trial, unless good cause is shown why a disclosure should be denied, restricted, or deferred. If the material and information becomes known to, or comes into the possession of, a party within 30 days of trial, disclosure shall be made immediately, unless good cause is shown why a disclosure should be denied, restricted, or deferred. "Good cause" is limited to threats or possible danger to the safety of a victim or witness, possible loss or destruction of evidence, or possible compromise of other investigations by law enforcement.

Upon the request of any party, the court may permit a showing of good cause for the denial or regulation of disclosures, or any portion of that showing, to be made in camera. A verbatim record shall be made of any such proceeding. If the court enters an order granting relief following a showing in camera, the entire record of the showing shall be sealed and preserved in the records of the court and shall be made available to an appellate court in the event of an appeal or writ. In its discretion, the trial court may after trial and conviction, unseal any previously sealed matter.

CA PENAL s 1102.5 Repealed

SEC. 24. Section 1102.5 of the Penal Code is repealed.
<<-* * *->>

CA PENAL s 1102.7 Repealed

SEC. 25. Section 1102.7 of the Penal Code is repealed.
<<-* * *->>

CA PENAL s 1385.1

SEC. 26. Section 1385.1 is added to the Penal Code, to read:

1385.1. Notwithstanding Section 1385 or any other provision of law, a judge shall not strike or dismiss any special circumstance which is admitted by a plea of guilty or nolo contendere or is found by a jury or court as provided in Sections 190.1 to 190.5, inclusive.

CA PENAL s 1430 Repealed

SEC. 27. Section 1430 of the Penal Code is repealed.
<<-* * *->>

CA PENAL s 1511

SEC. 28. Section 1511 is added to the Penal Code, to read:

1511. If in a felony case the superior court sets the trial beyond the period of time specified in Section 1049.5, in violation of Section 1049.5, or continues the hearing of any matter without good cause, and good cause is required by law for such a continuance, either party may file a petition for writ of mandate or prohibition in the court of appeal seeking immediate appellate review of the ruling setting the trial or granting the continuance. Such a petition shall have precedence over all other cases in the court to which the petition is assigned, including, but not limited to, cases that originated in the juvenile court. If the court of appeal grants a peremptory writ, it shall issue the writ and a remittitur three court days after its decision becomes final as to that court if such action is necessary to prevent mootness or to prevent frustration of the relief granted, notwithstanding the right of the parties to file a petition for review in the Supreme Court. When the court of appeal issues the writ and remittitur as provided herein, the writ shall command the superior court to proceed with the criminal case without further delay, other than that reasonably necessary for the parties to obtain the attendance of their witnesses.

The Supreme Court may stay or recall the issuance of the writ and remittitur. The Supreme Court's failure to stay or recall the issuance of the writ and remittitur shall not deprive the respondent or the real party in interest of its right to file a petition for review in the Supreme Court.

SEC. 29. If any provision of this measure or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the measure which can be given effect without the

invalid provision or application, and to this end the provisions of this measure are severable.

SEC. 30. The statutory provisions contained in this measure may not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

CA LEGIS Prop. 115 (1990)

END OF DOCUMENT

SENATOR DAVE DONLEY
ALASKA STATE LEGISLATURE

SPONSOR STATEMENT
FOR SJR 27
AMENDING THE STATE CONSTITUTION
TO PROTECT ALASKAN'S RIGHT TO AMEND THEIR CONSTITUTION

Senate Joint Resolution 27 amends Article XIII, sec. 1 of the Alaska State Constitution by making it possible for the legislature to place constitutional *revisions* as well as *amendments* before Alaskans for a vote. SJR 27 also adds a new section to Article XIII which would prohibit a court from changing the wording of constitutional amendments or revisions proposed by the legislature or constitutional convention.

The Alaska Supreme Court's August 17, 1999 final decision in Bess v. Ulmer, Case No. 5167, severely weakened the rights of the people of Alaska to amend Alaska's State Constitution. In Bess v. Ulmer the members of the court, for the first time in our state history, removed a legislatively proposed constitutional amendment from the ballot (the Amendment to Limit Prisoners' Rights) and changed the wording of another amendment (the Definition of Marriage Amendment). This decision badly unbalances the constitutional separation of powers in Alaska and destroys a fundamental element in the success of American democracy—the right of the people to amend their constitution. The Bess v. Ulmer decision sets up the members of the Alaska Supreme Court as an elitist oligarchy of lawyers who can dictate to the Alaskan public what constitutional issues they can and cannot vote on.

The Bess v. Ulmer decision, for the first time in Alaska, created a distinction between amendments to the state constitution and revisions to the constitution. An amendment may be proposed by vote of two-thirds of the legislature and take effect after approval by a majority of voters (Art. XIII, sec. 1). An amendment may also be proposed at a constitutional convention and take effect after voter ratification (Art. XIII, sec. 4). A revision may only be proposed by a constitutional convention and take effect after ratification by the voters (Art. XIII, sec. 4). The court, in Bess v. Ulmer, dictated that amendments can only consist of changes that are 'few and simple and independent', whereas revisions are apparently whatever else the members of the court say they are.

The ambiguous nature of these definitions allows the members of the court tremendous latitude as to what constitutional issues Alaskans can and cannot vote on. By usurping the elected legislators' constitutionally granted power to decide whether an amendment is appropriate for the ballot, they actually can and have removed amendments from the ballot, thus taking the power away from the people to amend the people's constitution.

Vice-Chair, Senate Finance Committee • Chair, Capital Budget Subcommittee • Co-Chair, Anchorage Caucus
Member: Senate Judiciary Committee • Senate Labor & Commerce Committee • Legislative Council

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Since statehood, Alaskans have understandably been reluctant to call a constitutional convention due to the uncertainty of what would result. But Alaskans have voted in favor of 24 amendments since statehood. Several of these amendments, such as those concerning the right to privacy and limited entry, arguably do not meet the vague test the court adopted in Bess v. Ulmer. To now force Alaskans to call constitutional conventions to make even single subject changes to their constitution is terrible public policy and bad government. The court action forces Alaskans into an undemocratic, take it or leave it risk of a constitutional convention to make future improvements to our constitution.

The Bess v. Ulmer decision was an outrageous abuse of judicial process. The ultimately decided issues of revision and the court's power to change the wording of a proposed amendment were not noticed as points on appeal or even briefed. The court allowed plaintiffs to raise new arguments/issues in their reply briefs that the defendants were never given the opportunity to respond to. This violates basic due process requirements of both the Alaska and United States Constitutions. The failure of the members of the court to ensure such fundamental and basic fairness in their decision process is truly an outrage.

Additionally, the California case the members of the court primarily relied on as a justification of their revision versus amendment analysis is clearly distinguishable from the facts of the case that was before the court. That California case dealt with a state constitutional amendment proposed by initiative **not** a legislature and consisted of sweeping wholesale changes to many sections of the California Constitution. This is very different from the legislatively proposed single subject amendment on prisoners' rights the members of our court removed from the ballot.

Even more shocking is that the members of the Alaska Supreme Court have also now assumed the power to actually change the wording of constitutional proposals. In Bess v. Ulmer, the court deleted an entire sentence from the proposed definition of marriage amendment. This is an incredibly dangerous and terrible public policy and the worst kind of political power grab. Under the Alaska State Constitution, the unelected and unconfirmed judges of Alaska do not have the power to make policy that is constitutionally reserved for the elected Governor and Legislature; however, by altering the wording of ballot propositions, that is exactly what the members of the court now claim the power to do.

This creates a situation where a small group of elitist lawyers, who are not elected by the people or confirmed by the people's elected representatives, are dictating whether the people may vote on constitutional amendments and even deciding what ballot propositions say and mean. This is undemocratic and un-American. To our knowledge, in the entire history of the United States no other court has ever before manipulated the wording of a constitutional amendment proposed by a legislature before submitting it to a vote of the people.

Senate Joint Resolution 27 addresses this undemocratic, un-American situation by putting *revisions* in Article XIII, sec. 1 alongside *amendments* and making it impossible for the courts to alter or change the language of constitutional amendments or revisions proposed by the legislature or constitutional convention. This would restore the true meaning of these sections of Alaska's State Constitution and return this power to the people of Alaska.