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## California's constitution needs some changes

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Several provisions in California's constitution are dead letters, having been quashed by judicial decisions or otherwise rendered moot. Yet they remain in the state charter's text — dormant but not dead — where they serve little purpose other than as a reminder of past errors. The state Legislature should place a measure on the ballot to remove these provisions.

Under Article XVIII, section 1, the Legislature may place measures on the ballot for the electorate's consideration. These measures are subject to some substantive restrictions, such as the amendment–revision distinction and the single subject rule. To remove any risk of invoking those restrictions, the Legislature should describe this proposed measure as a revision, not an amendment. Doing so imposes no additional burden on the Legislature: Under Article XVIII, section 1 the voting rules for proposing amendments and revisions is the same (two-thirds of both houses). Nor is there any additional burden on the electorate, which may enact both amendments and revisions with a simple majority vote under Article XVIII, section 4. And describing this proposal as a revision will make a reviewing court's task far easier should the measure be challenged. A revision is not subject to the single subject rule, nor is it limited by the subject matter scope limit that applies to amendments, so this measure making several significant changes across different subject matters will not undermine its validity.

Working together, the Legislature and the electorate should delete the following inoperative provisions from the California constitution.

A federal court struck down Article I, section 7.5 (Proposition 8, November 2008) in *Perry v. Schwarzenegger* (N.D. Cal. 2010) 704 F.Supp.2d 921, appeal dismissed *Perry v. Brown* (9th Cir. 2012) 725 F.3d 1140. And of course the U.S. Supreme Court held that the right of same-sex couples to marry is protected by the Due Process and Equal Protection Clauses of the U.S. Constitution's Fourteenth Amendment in *Obergefell v. Hodges* (2015) 135 S. Ct. 2584. The constitutional debate on same sex marriage is over, and leaving a provision banning it in the state constitution is anachronistic.

In *Raven v. Deukmejian* (1990) 52 Cal. 3d 336 the California Supreme Court overturned the portion of Article I, section 24 (Proposition 115, June 1986) that purported to require that California courts construe certain rights “in a manner consistent with the Constitution of the United States.” The court held that lockstepping California judicial decisions to federal law exceeded the electorate's initiative amendment power. This text is not operative — we should remove it.

Article XX, section 2 (Stanford and Huntington Library), and Article XIII, section 4(c) (California School of Mechanical Arts, California Academy of Sciences, and Cogswell Polytechnic Institute) give tax exemptions to specific institutions. We should eliminate these provisions because they are redundant to the provision that exempts all

non-profit education institutions, Article XIII, section 3(e) (enacted by Proposition 43, November 1914 as Article XIII, section 1(a)). In 1970, the Constitution Revision Commission recommended deleting the Stanford and Huntington exemptions because they were “obsolete.” And these special acts violate the constitutional command in Article I, section 7(b) barring special privileges and immunities. These special tax exemptions are redundant, inequitable, and unnecessary.

Finally, Article XII, section 7 states that a public official who accepts free or discounted travel automatically forfeits their office. Judicial decisions, attorney general opinions, and scholars all agree that an automatic forfeiture is unlawful, and the 1879 constitution debates show strong evidence that the framers intended officials facing forfeiture of office to have due process. The ambiguous phrase “shall work a forfeiture” is unlikely to ever be applied literally because any ambiguity in a forfeiture

provision must be “resolved in favor of continued eligibility” for the important right to hold public office. Former California Supreme Court Justice Joseph R. Grodin has called Article XII, section 7 “a quaint anachronism.” Regardless whether public officials should travel at less than full fare, they are entitled to due process. This provision for automatic forfeiture of office is unenforceable, redundant to effective statutes in the Political Reform Act, and should be omitted.

The Legislature should act to repeal these defunct provisions by proposing a revision that erases them from the state constitution. The counterargument that it's not worth editing out things that are plainly inoperative contains a faulty premise: those seemingly valid provisions lurk in the state constitution's text, ready to mislead. And maybe when preparing this measure the Legislature will find other, similarly low-hanging fruit. Regularly examining California's charter to remove superseded provisions is always worthwhile. ■

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