

Introduced by Senator Harman

February 11, 2010

Senate Constitutional Amendment No. 27—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 12 of Article VI thereof, relating to death penalty appeals.

LEGISLATIVE COUNSEL'S DIGEST

SCA 27, as introduced, Harman. Death penalty appeals: transfer.

Existing law provides that the Supreme Court has appellate jurisdiction when a judgment of death has been pronounced. Existing law authorizes the Supreme Court to, before decision, transfer a cause from itself to a court of appeal, and review the decision of a court of appeal in any cause, except that this transfer authorization does not apply to appeals involving a judgment of death.

This measure would amend the California Constitution to also authorize the Supreme Court to transfer a cause to a court of appeal when a judgment of death has been pronounced. The measure would require, if the Supreme Court transfers a cause concerning a judgment of death to a court of appeal, that the Supreme Court review the resulting decision of the court of appeal affirming or reversing that judgment. The measure would provide that if the Supreme Court concludes that the decision contains no error affecting the judgment, presents no need to secure uniformity of decision, and does not require resolution of an important question of law, the Supreme Court may summarily affirm the judgment of the court of appeal in an order published in the official reports. The measure would also require that, if the Supreme Court determines that summary affirmance is not appropriate, the Supreme Court is required to hold oral argument and issue a decision in writing

with reasons stated, addressing all or part of the court of appeal's decision.

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

1 WHEREAS, This measure shall be known, and may be cited,
2 as "The Fair Administration of Justice Act of 2010"; and

3 WHEREAS, The Legislature finds and declares all of the
4 following:

5 (a) The California capital punishment appellate system is
6 severely dysfunctional, resulting in an unacceptable delay of justice
7 for both victims and prisoners and an inefficient use of scarce
8 public resources during a budgetary crisis;

9 (b) A major obstacle in the death penalty appeals process is the
10 burdensome requirement of the California Constitution that all
11 capital appeals, regardless of merit, must be reviewed exclusively
12 by the California Supreme Court;

13 (c) Granting California's courts of appeal certain jurisdiction
14 to hear capital appeals, with discretionary review by the California
15 Supreme Court, would streamline the capital appellate process to
16 the ultimate benefit of victims, taxpayers, and prisoners; now,
17 therefore, be it

18 *Resolved by the Senate, the Assembly concurring,* That the
19 Legislature of the State of California at its 2009–10 Regular
20 Session commencing on the first day of December 2008, two-thirds
21 of the membership of each house concurring, hereby proposes to
22 the people of the State of California, that the Constitution of the
23 State be amended as follows:

24 That Section 12 of Article VI thereof is amended to read:

25 SEC. 12. (a) The Supreme Court may, before decision, transfer
26 to itself a cause in a court of appeal. It may, before decision,
27 transfer a cause from itself to a court of appeal, *including when a*
28 *judgment of death has been pronounced,* or from one court of
29 appeal or division to another. The court to which a cause is
30 transferred has jurisdiction.

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

33 (c) *If the Supreme Court transfers to a court of appeal a cause*
34 *when a judgment of death has been pronounced, it shall review*

1 *the resulting decision of the court of appeal affirming or reversing*
2 *that judgment.*

3 *If the Supreme Court concludes that the decision: (1) contains*
4 *no error affecting the judgment, (2) presents no need to secure*
5 *uniformity of decision, and (3) does not require resolution of an*
6 *important question of law, the Supreme Court may summarily*
7 *affirm the judgment of the court of appeal in an order published*
8 *in the official reports.*

9 *If the Supreme Court determines that summary affirmance is not*
10 *appropriate, the Supreme Court shall hold oral argument and*
11 *issue a decision in writing with reasons stated, addressing all or*
12 *part of the decision of the court of appeal.*

13 (e)

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

19 ~~(d) This section shall not apply to an appeal involving a~~
20 ~~judgment of death.~~