Proposed Amendments to the Constitution of the State of California, with Legislativ

TO BE VOTED UPON AT A SPECIAL ELECTION TO BE HELD ON TUESDAY, THE TENTH DAY OF OCTOBE

AS CERTIFIED TO THE COUNTY CLERKS OF THE SEVERAL COUNTIES OF THE STATE OF CALIFORNIA, AND TO THE REGISTRAR OF VOTERS OF THE CITY AND COUNTY OF SAN FR

STATE OF CALIFORNIA, }
Department of State. } **SACRAMENTO, CALIFORNIA, September 1, 1911.**

To the Qualified Electors of the State of California:

WHEREAS, The Legislature of the State of California, at its thirty-ninth session, beginning on the 2d day of January, A. D. 1911, and ending on the 27th day of March, A. D. 1911, two thirds of all the members elected to each of the houses of said Legislature voting in favor thereof, proposed the following several amendments to the Constitution of the State of California, prepared and distinguished by numbers, to wit: Senate Constitutional Amendment No. 2; Committee Substitute for Senate Constitutional Amendment No. 5; Senate Constitutional Amendment No. 6; Senate Constitutional Amendment No. 8; Senate Constitutional Amendment No. 17; Senate Constitutional Amendment No. 20; Senate Constitutional Amendment No. 22; Senate Constitutional Amendment No. 23; Senate Constitutional Amendment No. 26; Senate Constitutional Amendment No. 32; Senate Constitutional Amendment No. 45; Senate Constitutional Amendment No. 47; Senate Constitutional Amendment No. 46; Senate Constitutional Amendment No. 49; Assembly Constitutional Amendment No. 2; Assembly Constitutional Amendment No. 6; Assembly Constitutional Amendment No. 25; Assembly Constitutional Amendment No. 26; Assembly Constitutional Amendment No. 28; Assembly Constitutional Amendment No. 33; Assembly Constitutional Amendment No. 46; Assembly Constitutional Amendment No. 48; Assembly Constitutional Amendment No. 50—all of which said constitutional amendments were duly passed by the Senate and Assembly of the State of California, in the manner required by section one of article eighteen of the Constitution of the State of California.

NOW, THEREFORE, pursuant to the provisions of an act of the Legislature of the State of California, entitled "An act providing for the calling of a special election to be held on Tuesday, October 10, 1911, and for the submission thereat to the qualified electors of the State all amendments to the Constitution of the State of California, proposed by the Legislature at its thirty-ninth session, commencing on the second day of January, 1911, prescribing and providing for the publication of said proposed amendments, and providing for the manner of holding and conducting such election, and for the canvassing and return of the votes cast thereat," approved March 28, 1911, I have caused to be printed and transmitted, in the manner provided by said act, to each of the County Clerks in this State, and to the Registrar of voters of the City and County of San Francisco, for distribution to said qualified electors, copies of the said proposed amendments to the Constitution of the State of California (and accompanying statements), to be voted upon at the special election to be held on Tuesday, the 10th day of October, A. D. 1911.

Respectfully submitted,

SEAL.

Frank C. Jordan
Secretary of State.

NOTICE TO VOTERS.

In the matter following, the provisions of the constitution as they now exist are printed in the ordinary faced type; the proposed changes in the constitution and new provisions thereof are shown in black-faced type. The reasons given by the legislature for the adoption or rejection of such proposed constitutional amendments are shown enclosed in border.
FRANK C. JORDAN, Secretary of State.

1. SENATE CONSTITUTIONAL AMENDMENT NO. 2.

CHAPTER 37.—*Senate Constitutional Amendment No. 2, a resolution proposing to the people of the State of California an amendment to section 14 article XI of the constitution of the State of California.*

The legislature of the State of California at its regular session, commencing on the second day of January, in the year nineteen hundred and eleven, two thirds of the members elected to the senate and assembly voting therefor, hereby proposes to the people of the State of California that section fourteen (14) of article eleven (XI) of the constitution of the State of California, be amended to read as follows:

Section 14. The legislature may by general and uniform laws provide for the inspection, measurement and graduation of merchandise, manufactured articles and commodities, and may provide for the appointment of such officers as may be necessary for such inspection, measurement and graduation.

Section 14 of article XI, proposed to be amended as above, now reads as follows:

Sec. 14. No state office shall be continued or created in any county, city, town, or other municipality, for the inspection, measurement, or graduation of any merchandise, manufacture, or commodity; but such county, city, town, or municipality may, when authorized by general law, appoint such officers.

REASONS WHY SENATE CONSTITUTIONAL AMENDMENT NO. 2 SHOULD BE ADOPTED.

I. The purpose of this amendment is to give the legislature power to provide general and uniform laws for the matters set forth in the amendment, and for the appointment of necessary officers thereunder. Such officers may be state officers and probably will be appointed by the governor, to have jurisdiction throughout the state.

II. The present section of the constitution now prohibits the legislature from creating or continuing a state office for such purposes, but permits the legislature to pass general laws authorizing the appointment of such officers by a county, city, town, or municipality. The design of the constitution, as it now stands without said amendment, is to have matters of local interest regulated and controlled by officers selected by the people of the particular locality, rather than by state at large.

III. The reasons advanced by the majority for the adoption of this amendment are:

1. That the state at large is interested in such inspection, measurement and graduation, and that, therefore, officers representing the people of the whole state should have control of same.

2. That a system under direct state supervision would be more effective.

H. G. LARKINS, Senator, 33d District.

STATEMENT OF AUTHOR OF SENATE CONSTITUTIONAL AMENDMENT NO. 2.

…ered to submit the question of the surrender and annulment of such charter to the qualified electors of such county, and, in the event of the surrender and annulment of any such charter, such county shall thereafter be governed under general laws in force for the government of counties.

The provisions of this section shall not be applicable to any county that is consolidated with any city.

REASONS IN FAVOR OF COMMITTEE SUBSTITUTE FOR SENATE CONSTITUTIONAL AMENDMENT NO. 5.

This proposal is to amend the organic law occupying the second place on the official ballot for the ensuing special election on constitutional amendments, known as the "County Home Rule Amendment," is a logical growth from the successful administration of "charter cities" formed under the "home rule" provisions of our constitution relating to municipalities.

When the constitution of 1879 was framed it was with the knowledge that the one adopted in 1849 permitted special legislation for county and local governments and for many other purposes. This privilege had been abused to such an extent as to create a widespread demand for uniformity in county government as well as for the regulation of many other matters of state concern. As a result the uniform system of county and township government, since in force, was inserted therein. It was supposed to be impregnable to the assault of those demanding special laws, as to county and township officers, their salaries, and the number and compensation of deputies when such are allowed; but a way was devised, by classifying counties so as to put each county in a class by itself, to obtain on these subjects in the guise of uniformity what formerly was openly secured under special legislation. Thus the old system is still in control and is generally supreme.

Under the constitution of 1849, the officers of a county and of townships in connection with legislative representatives therefrom, practically determined the character and scope of local laws and fixed salaries. While by that system, as under the present, the legislature was, and is now, supposed to pass on county government laws, in more than three fourths of them where they relate to salaries and the creation of sinecures, it was and still is, a fiction to say that it did, or does, do so on their merits. Each county delegation has always been allowed to shoulder the responsibility for two reasons: first, because the measures involved purely local questions; and, secondly, for the reason that every delegation has "an axe" of the same kind "to grind" and thus aids the others in turning the legislative "grindstone."

If the people had a voice in their county government: if they could by vote select freeholders to frame a charter subject to their approval at the polls and also subject to amendment by direct action of the people when it proved insufficient to meet their wants, these special favors and "political plums"—and such they are in most cases, as changes in salaries seldom follow any other than the "rising scale"—would not be parceled out as is now done. The test would then be, does necessity and the benefit of the public service require either new ordinances, more help or more pay? Over half a century of experience has not succeeded in remedying under present methods what would under people's management be accomplished with rapidity.

A county should be governed by the same rule that a discreet business man conducts his affairs. The present county system does not work on such a plan. Home rule in county, township and road government will approximately, if not wholly, secure such a condition. It will have the merit of being a people's government, with the immediate power of correcting abuses in the possession of the electorate, through amendments, the initiative, referendum and recall—all powers that the people can and will reserve for themselves in the preparation of county charters under this amendment to the constitution. Under such auspices, public opinion can be readily harnessed for action when wrongs exist and has proved efficacious, not only as a corrective, but also as a deterrent influence, in holding in check evil practices in local government.

What is true of county and township officers and their regulation and compensation, is also true with relation to the administration of the road affairs of a county or district. Justly, or unjustly, there have been many complaints from this source. All road laws affecting counties and districts are the result of compromises in endeavors to make a general law meet the requirements of communities, wealthy and populous, and of those having little property and a less number of people. Experience indicates that the road question, as this amendment aims to do, as far as counties and districts are concerned, should be placed under the care and direction of the people, and let them as taxpayers and the parties immediately affected, determine in their charters what they want in relation to roads, how they want them constructed, or repaired, by what plan and by whom. It will be entirely in their power to select the county or district plan, in whole, or in part; to permit the supervisors to have complete, or limited authority over the same; to reserve to themselves authority concerning the action of supervisors thereon, and to wholly manage district roads in any manner that they may provide in the charter.

It will be noted that these subjects, viz.:

(a) All matters of a local nature, affecting county administration and county and township officers and deputies, their employment, method of selection, amount of compensation, etc.; and

(b) Road administration, including construction, repair and maintenance of all except state highways, are the two with which it will be competent, under this proposed amendment, for the people of a county to deal. These subjects generally require in the detail of their administration more of the people's taxes than all the balance of the business affairs of the county; hence it is considered proper that they should form the nucleus for the proposed charter county governments.

It was deemed advisable by those who gave this question a great deal of attention during the last session of the legislature, to begin "County Home Rule" on the same lines that "City Home Rule" was initiated in California, trusting to results sure of attainment to broaden the scheme. Under county charters, as was experienced under city charters, there will be evolved a system that for its simplicity, efficiency, adaptability to local necessities and celerity with which the will of the people can be put into execution—protecting them against evils and safeguarding their rights—will not be excelled by any other so far devised.

This amendment was carefully drawn following, as far as applicable, the safe and tried path pursued in the "City Home Rule" movement in reaching its present advantageous position. All [illegible] of the people [illegible] the initiative, referendum and recall, on the subjects committed to their care, are conserved, notwithstanding the contrary statement made in opposition to this amendment. City charters reserve these rights to the people in municipalities, and with these powers conferred in the same terms by this amendment to the people of a county, how can it reasonably be said that they can not be exercised under charter county government?

The further objections urged that the number of supervisors is not fixed and that the supervisors and persons allied with them, might combine to secure control of the county government, dictate a charter and monopolize appointments of all officers, presuppose that the people will be idle and will vote to chain themselves to the yoke thus prepared. This can not be assumed in the face of the increasing interest taken by citizens in public matters, wherever people's rule is established. Besides it must be borne in mind that under identical authority, city charters have avoided these pitfalls, because the people nominate and elect their freeholders and officers under primary election laws and vote on the charters and amendments thereto. The day has passed in California when "ring county governments" can outwit the people if armed as proposed with the ballot and with the powers of the initiative, referendum and recall.

…in the second session and on final adjournment, when usually over five hundred are submitted. Particularly beneficial would it be, for a new governor, who is inaugurated at the beginning of a session, without that intimate knowledge of the state's business so necessary to the proper discharge of his duties. As it is impossible for him to secure this information in a continuous session, and as any material change in the administrative conditions must be with the approval of the legislature, two years of his term pass by before he can really get into full action. This is an unnecessary loss to the state.

Those who have followed in detail the proceedings of a legislature, must confess that, even when members are actuated by the purest of motives, the congestion of business in committees as well as in the two houses caused by debates and adjournments, is such as to make it impossible, at all times, to deliberate and treat the important questions presented according to their merits and for the best interests of the commonwealth. About one sixth, some times more, of the session is lost by adjournments from Friday until Monday following, during which committees seldom meet, as their quorums are broken by absentees who have wandered to San Francisco and other points. When it is considered that during the last session approximately three thousand bills and resolutions were filed—the average for years being over two thousand—it can be realized why comparatively a small number of them, receive adequate attention. The "hit or miss" game settles the fate of most of the bills, accordingly as the author is powerful or weak. For the reasons cited, legislative hearings and investigations have become in a measure really jokes. Of course there are exceptions when good results have been achieved. Hearings and investigations are a necessity. No great business enterprise could get along without them, and the state is as great as any from a business standpoint, and far greater in value in a political sense. A divided session would enable hearings and investigations, when necessary, to take place during recess, when they can be as complete as the subjects involved require, and the benefits flowing therefrom could be quickly secured for the state during the second session.

An instance, for illustration, will suffice to prove that this is another advantage of the divided session over the continuous. During the session of 1909, a general demand arose for the investigation of the ten per cent raise in certain transcontinental freight rates that, it was alleged, approximately taxed California producers and shippers ten millions of dollars annually. Resolutions setting forth the complaints in relation thereto, and also to the outrageous express rates of the time, were introduced in the senate. Their adoption followed, and the investigation ordered thereby commenced before a committee of that body ending as many others have in a continuous session in delay and disappointment.

In a divided session a full investigation would have been forced during recess, even by a minority of the members, and the second session could have granted relief. It will not do to say we now have a reform legislature, and that such things will not happen again. It is to be wished that such legislatures will hereafter be the rule, but lest "history repeat itself" let us be on guard.

We can not do without a law-making body, but we can, and ought to provide one that will in fact deliberate or be forced to do so through the power of public opinion, for without deliberation there can not be wholesome legislation. We should not for many reasons, following in the light of experience, extend the continuous session, nor limit the same more than we have. A path is marked out, however, one that has been used by congress as the only method enabling it to meet its great responsibilities ever since its establishment, and upon which the republic has been led to a marvelous growth and prosperity. This way was found by the use of adjourned sessions and recesses. Outside of bills, local in their nature and effect, and matters of minor interest, all congressional legislation of importance is the result of vacation, or recess, activity by committees. The important committees are in sessions at fixed dates, some almost continuously, investigating, mapping out their labors, receiving the reports of subcommittees appointed to act during the recess of general committees, and hearing the appeals and requests of individuals, of organizations, and of states that present and ever urge action on many questions of national concern.

Thus tried, it appears a solution on sane and progressive lines for our legislative ills; and possesses elements that will enlist the support of powerful agencies in struggles for right and justice to all. A constant sentinel will be publicity, proving harmful only to the unworthy cause, a victory-bearer to the just.

The potent power of the press—without which there could be no effective publicity—would attend in season and out of season and during the sessions, especially in the recess thereof, aiding materially in the labor involved in the examination and discussion of measures pending in the legislature and in the dissemination throughout the state of comments thereon growing out of individual or organized effort. The people would have no better equipped and no abler corps of men in its service than will be found in the ranks of the experienced editors and correspondents who have made a study of statesmanship, and a specialty of reviewing legislative proceedings. As in the reform fights of the past, so in those to come, the pen in the hands of these champions will indeed "be mightier than the sword."

Some objections that have been advanced are as follows:

(a) That bills will be held back until the second session to avoid publicity.

It is a matter of record that the two-thirds vote now required can not be secured after the fiftieth day of the session upon [illegible] local measures, or such as meet with general approval; objectionable ones can [illegible] obtain such support.

(b) That members would not work and [illegible]rests opposed to the people would get more time and a better chance to influence [illegible]lators.

These objections are untenable.

The member who would be influenced a[illegible] during a recess would lend as willing an ear to the "siren voice" of the boodler [illegible] the "rush and bustle" of a session.

Painstaking members who have accepte[illegible] office "as a public trust" would do better work, and an abundance of it; wh[illegible]islative drones," or agents of private interests would be weeded out, or forced o[illegible] open, by the unfavorable comparison presented between the two classes. Time [illegible]licity would prove efficient means of destroying the power that has been wielded [illegible]nal, by the unprincipled apologist or servant of corporate greed.

(c) That a false public sentiment, thro[illegible] medium of certain newspapers, could be created during recess on any pending [illegible]

The attempt to do so would react, pro[illegible] the conditions sought to be brought about, viz: Publicity and discussion, which [illegible]mitable scope, will overcome error.

(d) That members will be pursued and [illegible]d by those desiring to be heard on bills.

It is a right of the people to consult with their legislative representatives, and any of the latter who are unwilling to do so should be made subject to the "recall." Valuable aid, rather than trouble, will follow such consultation; it should be invited, not discouraged. There need be no fear on this score.

In conclusion, I respectfully urge that this proposal be given a trial. It can not do harm; it is certain to lead to improved conditions, for the benefit of legislators, of their constituents, and of the state.

No other plan has been suggested that will retain all that is useful of the continuous session; make more effective present safeguards; and by the simple device of a recess invite the cooperation of all our citizens and taxpayers in the endeavor to legislate in a manner to answer the needs of a state of unsurpassed opportunities; to aid in the development of her unequaled resources, and to assist the mental and moral progress of her people.

A. CAMINETTI (author).

…record of the last two sessions there are in excess of 1,300 measures

…course, would be done were the experiment
as is evidenced by the number of criminals
penitentiaries in California we have about th
and the cases tried before the police court
must, therefore, admit that women would be
and morality if given the ballot.

It is argued that all women do not wish to
for it has become a common practice on el
per cent of the male voters, and many wh
Women, being more faithful to duty, will
cheerfully; besides, their presence on such o
enjoyable, as well as a guaranty that everyth
who are in touch with public affairs are not
they are better and more companionable wi
have a common interest with their sons.

The time was when it was thought that to
ruin her morals, destroy her religion, impair
take away her desire to be a good wife a
exploded, and, as we have progressed in the
suffrage; let us show the saloon element, the
these are the opponents of woman suffrage),
a progressive state in every way.

H. G.

REASONS WHY SENATE CONSTITUTIO
BE ADO

Suffrage is not a right. It is a privilege
no place for a woman, consequently the pri
mother's influence is needed in the home. S
and neglecting her children. Let her teach
gentleness are the charms of woman. Let h
is every man's first political law; that no sp
surrender of the simplest right of a free an
country can shape the destinies of the natio
to those duties that God Almighty intended
the mother in the home and the dignified in
outweigh all the influence of all the mannish

The courageous, chivalrous, and manly me
and home builders of the country, are oppo
life. There was a bill (the Sanford bill) to
leave the equal suffrage question to the wo
vote on it. This bill was defeated by the suf
would vote down the amendment by a vote
government and take care of the women.
the protection of men? Why, men have gon
itself in defense of woman. To man, woman
is no extreme to which he would not go for
her exalted position men can be induced to d
mix up in affairs that will cause him to lose
not have to vote to secure her rights. M
elevate her now. As long as woman is wo
protection and more consideration than man
throws down the scepter of her power and

Woman suffrage has proven a failure in
California should profit by the mistakes of
suffrage effected. On the contrary, statisti
states, Colorado particularly, that divorces h
the equal suffrage amendment, showing that
also increased among the children, and more
due to the lack of the mother's influence i

Woman is woman. She can not unsex her
tent with her lot and perform those high du
and she will accomplish far more in govern
by mixing up in the dirty pool of politics. K
the republic. Let not the sanctity of the ho
may be running up and down the highway
women defeat this amendment and keep w
may retain the respect of all mankind.

5. SENATE CONSTITUTIO

CHAPTER 9.—*Senate Constitutional Amendmen of the State of California an amendment to amending section fourteen of article I there and to the law of eminent domain.*

The legislature of the State of California, a
day of January, in the year one thousand ni
members elected to each of the houses of sai
proposes that section fourteen of article I of
is amended so as to read as follows:

Section 14. Private property shall not be t
compensation having first been made to, or
of way shall be appropriated to the use of an
compensation therefor be first made in mone
owner, irrespective of any benefits from any
which compensation shall be ascertained by
civil cases in a court of record, as shall be pre
erty for a railroad run by steam or electric p
be deemed a taking for a public use, and any
private property under the law of eminent do
thereby become a common carrier.

Section fourteen of article I, proposed to be

Sec. 14. Private property shall not be take
pensation having been first made to, or paid i
shall be appropriated to the use of any corpor
sation therefor be first made in money or as
irrespective of any benefit from any improvem
pensation shall be ascertained by a jury, unl
in a court of record, as shall be prescribed b

REASONS WHY SENATE CONSTITUTIO
ADOP

The proposed amendment makes slight ch
tution. It will, if adopted, merely add to th
ing of private property for a railroad run
lumbering purposes, shall be deemed a tak

eternal vigilance is required to avoid being led into error by designing persons as well as by those who profess to know when they do not.

(g) Every law before being enacted should be submitted to some forum in which it is subject to deliberation and amendment. Under the proposed initiative and referendum no amendment is possible, even though a law should be proposed containing a provision which is palpably unjust and vicious.

(h) The voter can much more readily and discriminately select honest representatives to make the laws than he can determine what laws are honest and beneficial to the whole commonwealth.

(i) The initiative and referendum are yet in the experimental stages. It takes many years, and often many decades, to determine whether an organic law is wise or unwise. The constitutionality of the initiative and referendum has not yet been adjudged or its wisdom established.

The supreme court of the United States may yet hold that this amendment is in conflict with that provision of the federal constitution which guarantees to each state a republican form of government. California might do well to watch and wait while Oregon, Oklahoma, and other states are experimenting with this radical departure from the government established by our fathers.

(j) The voter should remember that though the initiative and referendum may work satisfactorily in small communities, or in cities where the population is compact, it does not necessarily follow that it will be a success when applied to a commonwealth in which the interests are as varied and the population as large and the needs of the people as multifarious as they are in California.

Finally, inasmuch as the electors within the last few years have experienced a newly awakened interest in selecting their representatives in all matters of public trust, and inasmuch as a direct primary law has brought it within their power to absolutely select officers of their own choosing, is it not wiser to leave further experimentation alone until the results in those states which have adopted the initiative and referendum can be carefully studied?

LEROY A. WRIGHT, Senator, 40th District.

8. SENATE CONSTITUTIONAL AMENDMENT NO. 23.

CHAPTER 17.—*Senate Constitutional Amendment No. 23. A resolution to propose to the people of the State of California an amendment to the constitution of the state by adding a new article thereto to be numbered article XXIII, providing for the recall by the electors, of public officials.*

The legislature of the State of California, at its regular session commencing on the second day of January, 1911, two thirds of all the members elected to each of the two houses of said legislature voting in favor thereof, hereby proposes that a new article be added to the constitution of the State of California to be numbered article XXIII thereof, to read as follows:

ARTICLE XXIII.

Section 1. Every elective public officer of the State of California may be removed from office at any time by the electors entitled to vote for a successor of such incumbent, through the procedure and in the manner herein provided for, which procedure shall be known as the recall, and is in addition to any other method of removal provided by law.

The procedure hereunder to effect the removal of an incumbent of an elective public office shall be as follows: A petition signed by electors entitled to vote for a successor of the incumbent sought to be removed, equal in number to at least twelve per cent of the entire vote cast at the last preceding election for all candidates for the office which the incumbent sought to be removed occupies (provided that if the officer sought to be removed is a state officer who is elected in any political subdivision of the state, said petition shall be signed by electors entitled to vote for a successor to the incumbent sought to be removed, equal in number to at least twenty per cent of the entire vote cast at the last preceding election for all candidates for the office which the incumbent sought to be removed occupies) demanding an election of a successor to the officer named in said petition, shall be addressed to the secretary of state and filed with the clerk, or registrar of voters, of the county or city and county in which the petition was circulated; provided that if the officer sought to be removed was elected in the state at large such petition shall be circulated in not less than five counties of the state, and shall be signed in each of such counties by electors equal in number to not less than one per cent of the entire vote cast, in each of said counties, at said election, as above estimated. Such petition shall contain a general statement of the grounds on which the removal is sought, which statement is intended solely for the information of the electors, and the sufficiency of which shall not be open to review.

When such petition is certified as is herein provided to the secretary of state, he shall forthwith submit the said petition, together with a certificate of its sufficiency, to the governor, who shall thereupon order and fix a date for holding the election, not less than sixty days nor more than eighty days from the date of such certificate of the secretary of state.

The governor shall make or cause to be made publication of notice for the holding of such election, and officers charged by law with duties concerning elections shall make all arrangements for such election and the same shall be conducted, returned, and the result thereof declared, in all respects as are other state elections. On the official ballot at such election shall be printed, in not more than two hundred words, the reasons set forth in the petition for demanding his recall. And in not more than three hundred words there shall also be printed, if desired by him, the officer's justification of his course in office. Proceedings for the recall of any officer shall be deemed to be pending from the date of the filing with any county, or city and county clerk, or registrar of voters, of any recall petition against such officer; and if such officer shall resign at any time subsequent to the filing thereof, the recall election shall be held notwithstanding such resignation, and the vacancy caused by such resignation, or from any other cause, shall be filled as provided by law, but the person appointed to fill such vacancy shall hold his office only until the person elected at the said recall election shall qualify.

Any person may be nominated for the office which is to be filled at any recall election by a petition signed by electors, qualified to vote at such recall election, equal in number to at least one per cent of the total number of votes cast at the last preceding election for all candidates for the office which the incumbent sought to be removed occupies. Each such nominating petition shall be filed with the secretary of state not less than twenty-five days before such recall election.

There shall be printed on the recall ballot, as to every officer whose recall is to be voted on thereat, the following question: "Shall [name of person against whom the recall petition is filed] be recalled from the office of [title of the office]?", following which question shall be the words "Yes" and "No" on separate lines, with a blank space at the right of each, in which the voter shall indicate, by stamping a cross (X), his vote for or against such recall. On such ballots, under each such question, there shall also be printed the names of those persons who have been nominated as candidates to succeed the person recalled, in case he shall be removed from office by said recall election; but no vote cast shall be counted for any candidate for said office unless the voter also voted on said question of the recall of the person sought to be recalled from said office. The name of the person against whom the petition is filed shall not appear on the ballot as a candidate for the office. If a majority of those voting on said question of the recall of any incumbent from office shall vote "No," said incumbent shall continue in said office. If a majority shall vote "Yes," said incumbent shall thereupon be deemed removed from such office, upon the qualification of his successor. The canvassers shall canvass all votes for candidates for said office and declare the result in like manner as in a regular election. If the vote at any such recall election shall recall the officer, then the candidate who has received the highest number of votes for the office shall be thereby declared elected for the remainder of the term. In case the person who received the highest number of votes shall fail to qualify within ten days after receiving the certificate of election, the office shall be deemed vacant and shall be filled according to law.

Any recall petition may be presented in sections, but each section shall contain a full and accurate copy of the title and text of the petition. Each signer shall add to his signature his place of residence, giving the street and number, if such exist. His election precinct shall also appear on the paper after his name. The number of signatures appended to each section shall be at the pleasure of the person soliciting signatures to the same. Any qualified elector of the state shall be competent to solicit such signatures within the county, or city and county, of which he is an elector. Each section of the petition shall bear the name of the county, or city and county in which it is circulated, and only qualified electors of such county or city and county shall be competent to sign such section. Each section shall have attached thereto the affidavit of the person soliciting signatures to the same, [illegible]

"It is obviously possible that such decision may be erroneous in any given case, still the evil effects following it, being limited to that particular case, with the chance that it may be overruled and never become a precedent for other cases, can better be borne than could the evils of a different practice. * * * It is a duty from which they may not shrink to decide cases properly brought before them, and it is *no fault of theirs if others seek to turn their decisions to political purposes*."

In 1874 Mr. Justice McKinstry of our supreme court decided the case of *Houghton vs. Austin*, which declared unconstitutional the acts of the legislature of California providing for the collection of state taxes, and that decision led to the calling of the convention which framed our present constitution, and in the decision he states:

"It was suggested that a decision adverse to the respondent would be followed by widespread confusion and alarm, if not by an outburst of popular indignation.

"There may be those who assume that the judges of this court are utterly ignorant of the spirit of the times in which we live; but we are willing to believe we have reached the condition of 'progress,' when it is supposed by persons, however influential, that judges are to be driven from carrying into judgment their conscientious convictions of what the law demands, by suggestions of public hostility, encouraged, perhaps, by those who affect to regret that the courts should place themselves in opposition to the prevailing sentiment.

"We should be sorry if our sense of duty should compel us to join in a decision which was not sustained by an enlightened public opinion. In such case, whatever personal sacrifice it might involve, we should feel that we could not transfer the responsibility of our official action to others, however numerous or worthy of respect, without personal degradation; for, beyond every other consideration, is our obligation to serve the people, in this place, even against the wish of the people themselves."

Now if the "recall" was then an effective method for removing judges who render unpopular decisions, Mr. Justice McKinstry would surely have been "recalled," for that decision was very unpopular, but it was right and has been followed with approval by all the courts that have had occasion to refer to it.

The writer doubts if such expressions as quoted from that opinion would have been given by any judge elected at a "recall election." If this "recall" provision be adopted, would it not be in the teeth of human nature to expect a judge to render an unpopular decision, no matter how right it might be, if he is to be dragged from the bench by a "recall election?" What man worthy of the name would submit himself to the alternative of deciding a cause contrary to his conscience or suffer the disgrace of a recall by his fellow citizens. Who wants to be a judge under these conditions? Let us not ever adopt the principle that the judges are the agents and servants of the majority. Give not the majority the power to say that might is right, for the rule of might is tyranny; whether it is in the form of a ruler or a democracy. The unrestrained rule of the majority is as objectionable as that of the individual because it has all the evils of the former and has none of the virtue of the latter. This country should not be ruled by either, because there are limits beyond which neither the majority nor the individual may go. Abraham Lincoln in his first inaugural address said: "If by mere force of numbers a majority should deprive a minority of any clearly written constitutional right, it might in a moral point of view justify revolution; certainly would if such a right were a vital one."

A judge should be governed by law and decide accordingly, and he should be as independent of majorities as he is of individuals. It will be well for us to follow the advice of the master minds on this subject. Chief Justice Marshall, "the greatest judge with which Almighty God had ever adorned a bench or blessed a country," said in the Virginia convention in 1829, with reference to the tenure of the judiciary: "Is it not to the last degree important that he should be rendered perfectly and completely independent, with nothing to control him but God and his conscience? * * * I have always thought from my earliest youth until now that the greatest scourge an angry heaven ever inflicted upon an ungrateful and sinning people was an ignorant, corrupt or a *dependent judiciary*."

Alexander Hamilton said: "The complete independence of the courts of justice is peculiarly essential in a limited constitution. * * *

"This *independence of the judges* is equally requisite to guard the constitution and the rights of individuals from the effects of those ill humors which the arts of designing men, or the influence of particular conjunctures, sometimes disseminate among the people themselves, and which, though they speedily give place to better information and more deliberate reflection, have a tendency in the meantime to occasion dangerous innovations in the government and *serious oppressions of the minor party in the community*."

George Washington in his farewell address said: "Toward the preservation of your government and the permanency of your present happy state it is requisite, not only that you steadily discountenance irregular opposition to its acknowledged authority, but also that you resist with care the spirit of innovations upon its principles, however specious the pretexts. One method of assault may be to effect in the forms of the constitution alterations which will impair the energy of the system, and thus to undermine what can not be directly overthrown. In all the changes to which you may be invited, remember that time and habit are at least as necessary to fix the true character of governments as of other human institutions; that experience is the surest standard by which to test the real tendency of the existing constitutions of a country; that facility in changes upon the credit of mere hypothesis and opinion exposes to perpetual change from the endless variety of hypothesis and opinion; and remember especially that from the efficient management of your common interests in a country so extensive as ours, a *government of as much vigor as is consistent with the perfect security of liberty is indispensable*."

Abraham Lincoln said: "I do not mean to say we are bound to follow implicitly in whatever our fathers did. To do so would be to discard all the lights of current experience—to reject all progress, all improvement. *What I do say is, that if we would supplant the opinions and policy of our fathers in any case, we should do so upon evidence so conclusive and argument so clear that even their great authority, fairly considered and weighed, can not stand.*"

We have followed a path blazed by able men. The constitution we live under is the greatest document ever drawn by the hand of man. Under it we have enjoyed unparalleled prosperity, and its crowning virtue is the check and balance system—the protection of the minority against popular clamor. The constitution acts the barrier, and before we depart from that path so well protected by settled principles and try a new route we ought to first have more and better reasons than have been so far advanced in favor of the "recall."

J. B. CURTIN, Senator, 13th District.
Member appointed to write the argument against S. C. A. No. 23.

9. SENATE CONSTITUTIONAL AMENDMENT NO. 26.

CHAPTER 35.—*Senate Constitutional Amendment No. 26, a resolution to propose to the people of the State of California an amendment to the constitution of the State of California, by adding a new section to article VI thereof, to be numbered section 4½, relating to appeals in criminal cases.*

The legislature of the State of California, at its regular session commencing on the 2nd day of January, in the year one thousand nine hundred and eleven, two thirds of all the members elected to each of the two houses of said legislature voting in favor thereof, hereby proposes to the qualified electors of the State of California the following amendment to the constitution of the State of California by adding a new section to article VI thereof, to be numbered section 4½, to read as follows:

Section 4½. No judgment shall be set aside, or new trial granted in any criminal case on the ground of misdirection of the jury or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless, after an examination of the entire cause including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.

REASONS WHY SENATE CONSTITUTIONAL AMENDMENT NO. 26 SHOULD BE ADOPTED.

The object of this amendment is to enable our courts of last resort to sustain verdicts in criminal cases unless there has been a miscarriage of justice, or, putting it in another way, its purpose is to render it unnecessary for the higher courts to grant the defendant in a criminal case a new trial for unimportant errors. It is designed to meet the ground of common complaint that criminals escape justice through technicalities. It will be noticed that the amendment provides that no new trial shall be granted in a criminal case unless on an examination of the entire case (including the evidence) the

twelve of the constitution of the State of California be amended so as to read as follows:

Section 23. Every private corporation, and every individual or association of individuals, owning, operating, managing, or controlling any commercial railroad, interurban railroad, street railroad, canal, pipe line, plant, or equipment, or any part of such railroad, canal, pipe line, plant or equipment within this state, for the transportation or conveyance of passengers, or express matter, or freight of any kind, including crude oil, or for the transmission of telephone or telegraph messages, or for the production, generation, transmission, delivery or furnishing of heat, light, water or power or for the furnishing of storage or wharfage facilities, either directly or indirectly, to or for the public, and every common carrier, is hereby declared to be a public utility subject to such control and regulation by the railroad commission as may be provided by the legislature, and every class of private corporations, individuals, or associations of individuals hereafter declared by the legislature to be public utilities shall likewise be subject to such control and regulation. The railroad commission shall have and exercise such power and jurisdiction to supervise and regulate public utilities, in the State of California, and to fix the rates to be charged for commodities furnished, or services rendered by public utilities as shall be conferred upon it by the legislature, and the right of the legislature to confer powers upon the railroad commission respecting public utilities is hereby declared to be plenary and to be unlimited by any provision of this constitution.

From and after the passage by the legislature of laws conferring powers upon the railroad commission respecting public utilities, all powers respecting such public utilities vested in boards of supervisors, or municipal councils, or other governing bodies of the several counties, cities and counties, cities and towns, in this state, or in any commission created by law and existing at the time of the passage of such laws, shall cease so far as such powers shall conflict with the powers so conferred upon the railroad commission; provided, however, that this section shall not affect such powers of control over any public utility vested in any city and county, or incorporated city or town as, at an election to be held pursuant to laws to be passed hereafter by the legislature, a majority of the qualified electors voting thereon of such city and county, or incorporated city or town, shall vote to retain, and until such election such powers shall continue unimpaired; but if the vote so taken shall not favor the continuation of such powers they shall thereafter vest in the railroad commission as provided by law; and provided, further that where any such city and county or incorporated city or town shall have elected to continue any powers respecting public utilities, it may, by vote of a majority of its qualified electors voting thereon, thereafter surrender such powers to the railroad commission in the manner to be prescribed by the legislature; or if such municipal corporation shall have surrendered any powers to the railroad commission, it may, by like vote, thereafter reinvest itself with such power. Nothing in this section shall be construed as a limitation upon any power conferred upon the railroad commission by any provision of this constitution now existing or adopted concurrently herewith.

Section 22 of article XII, proposed to be amended as above, now reads as follows:

Sec. 22. Until the legislature shall district the state, the following shall be the railroad districts: The First District shall be composed of the counties of Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Humboldt, Lake, Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba, from which one railroad commissioner shall be elected. The Second District shall be composed of the counties of Marin, San Francisco, and San Mateo, from which one railroad commissioner shall be elected. The Third District shall be composed of the counties of Alameda, Contra Costa, Fresno, Inyo, Kern, Los Angeles, Mariposa, Merced, Mono, Monterey, San Benito, San Bernardino, San Diego, San Joaquin, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, Stanislaus, Tulare, Tuolumne, and Ventura, from which one railroad commissioner shall be elected.

THE REASONS WHY SENATE CONSTITUTIONAL AMENDMENT NO. 47 SHOULD BE ADOPTED.

This amendment is designed to authorize the legislature to confer upon the railroad commission power to supervise and regulate public utilities and to fix the rates to be charged for commodities furnished and services rendered by public utilities. The term public utilities is so defined as to embrace every conceivable kind of public service, specifying the transportation or conveyance of passengers and express matter and freight of any kind, including crude oil, the transmission of telephone and telegraph messages, the production, generation, transmission, delivery or furnishing of heat, light, water and power, and the furnishing of storage or wharfage facilities. Briefly, the amendment proposes to extend the jurisdiction of the railroad commission to every kind of public service, excepting that furnished by municipally owned plants. As to the necessity and propriety of public regulation of public service corporations there can be no argument. The only question which can be presented in considering this amendment is whether regulation should be state-wide or local. The time has come when the state, for the protection of the public at large, must undertake the regulation of stock and bond issues by public service corporations. This is a function which can be exercised by the state alone, and since it is inseparably connected with the matter of rate regulation it should follow absolutely as a logical proposition that the matter of rate regulation should be the subject of state control as well.

Experience in other states in which public utilities have been subjected to state control has shown that the engineering force and the corps of experts required to ascertain the facts necessary for intelligent action on the part of the regulating body, are more efficient if they have to deal with every public utility in the state regardless of its size or the size of the city in which it operates. There is also economy in the system proposed since the same experts which serve one city will serve every city in the state, and the cities will thus be relieved of the necessity of employing high salaried experts and assistants. Furthermore, the system will remove public utilities from the sphere of local politics, and their influence will cease to be a source of public corruption. The action of an impartial central body is more intelligent and just than the actions of the governing bodies of the cities concerned. Courts are inclined to look upon the findings of such central bodies on questions of fact as binding in the premises. Public service corporations themselves are reluctant to challenge the orders of such boards because the findings of [illegible] upon which such orders are based are the result of careful and painstaking in[illegible]ations by technical experts. The uniform accounting systems provided for by [illegible] of many of the states requiring the accounts and records of every public [illegible] corporation to be kept and rendered in a particular manner and to be approv[illegible] the commission, and providing that such accounts and reports shall be public r[illegible] have enabled the corporations to compare the results of their operations with o[illegible]her and many economies in expense have resulted, beneficial alike to the corp[illegible] and the public. Such a system will be established in California if the amen[illegible] is adopted.

By the terms of the amendment pr[illegible] the right of the legislature to confer powers upon the railroad commission regar[illegible]blic utilities is expressly made unlimited. Upon the passage of laws by the leg[illegible] conferring powers upon the commission all similar powers theretofore vested i[illegible]ral counties of the state shall cease. As to incorporated cities it is provided [illegible] power to regulate and fix rates shall also cease, unless by a majority vote of [illegible] cast at an election to be held in the manner to be prescribed by the legislat[illegible]y shall express its desire to retain those powers now vested in it. This provi[illegible] deemed advisable since our cities are now possessed of certain constitutional [illegible] the arbitrary revocation of which they might be reluctant to submit. Cities [illegible] more or less efficient boards for the regulation of public service corporations may [illegible] to be educated to the advantages of central regulation over local regulation, but results attained in other states make it certain, in the judgment of persons prominently identified with local regulation boards, that within two years from the adoption of the amendment every city in the state will have relinquished its powers to the state board.

The further provision that a city having relinquished its powers may thereafter reclaim them by popular vote, was inserted in the excess of caution, lest the people of a city might fear that in favoring state control they were giving away powers which they could not reclaim in the event that state control proved ineffectual. The system of state control has, however, justified itself in every state where it has been tested, notably in New York and Wisconsin, and as California conditions do not differ materially from those obtaining elsewhere it will inevitably justify itself here.

As a measure of economic reform we deem this to be one of the most important amendments to be voted upon by the people, and we believe that it will be ratified.

[illegible], State Senator, [illegible] District.
W. A. [illegible], Assemblyman, [illegible] District.
[illegible]

electric light and water companies, e
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cities may make regulations for dama
satisfactory, for the collection of dam
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and how it shall be done, and to regu
public inconvenience. If this amendm
companies will be required to observe
by the municipality before and while
poles or stringing wires, and any other
be a failure.

Considering now the proposed amend
own merits, we urge the following in
question whether municipalities may
tence of the amended section is a co
Under the authority granted by this
plying their inhabitants with light, w
ity or other means of communication,
of existing plants. The right of indi
utilities will not be taken away, but s
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important provision authorizes any cit
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This amendment is offered for the
acquiring and operating those utilitie
and for the purpose of placing indivi
services under reasonable control by
the evils that have been referred to.

[illegible]
[illegible]

12. ASSEMBLY CONST

CHAPTER [illegible].—*Assembly Constitutional*
people of the State of California an
lution of the State of California, in r
books in the common schools through

Resolved by the assembly, the senat
California, at its regular session, comm
dred and eleven, two thirds of the me
favor thereof, hereby propose that sect
of California shall be amended to read

Section 7. The governor, the superi
University of California, and the profe
state normal schools, shall constitute t
cause to be compiled, and adopt a un
schools throughout the state. The sta
to be printed, and published by the su
office; and when so printed and publi
printing, publishing and distributing th
in use not less than four years, witho
require or necessitate the purchase o
shall perform such other duties as ma
vide for a board of education in each
and the county boards of education an
the granting of teachers' certificates w

Section 7 of article IX, proposed to b

Sec. 7. The governor, the superin
University of California, and the profe
state normal schools shall constitute t
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within their respective jurisdictions.

REASONS WHY ASSEMBLY CONS

Amendments to the constitution of
must be approved or rejected by the
referendum, which means a more re
laws or acts of the legislature.

Assembly Constitutional Amendme
adopted by the state board of educati
The advisability of approving this p
every parent of school children who
necessary. It means the protection
royalty trusts. History and geogra
teachers can not give proper tuition,
in the other lines of study. Eliminat
and a careful preparation of the text-
to our people. The adoption of this
free text-books to all children. The
The payment of $[illegible] in annual
cost of manufacture to the state print

California can rightly boast of the
universities are among the best in th
states in one most important point,
the elementary grades by furnishin
wisdom of making it possible, at all
the more expensive educational syste
schools California among them. Te
pupils, as do many of our other pro
free school which does not furnish
true that the state does furnish boo
[illegible]
[illegible]
[illegible]
[illegible]
[illegible] amendment, to

...continuance in office.

"Brief, L. Art. VIII. In order to prevent those who are vested with authority from becoming oppressors, the people have the right, at such periods and in such manner as they shall establish by their frame of government, to cause their public officers to return to private life, and to fill up vacant places by certain and regular elections and appointments."

Recall to be made direct. By the present amendment it is now proposed to substitute this direct recall, in lieu of the indirect recall already provided for in our constitution, as the people of this state have substituted the direct nomination of candidates for office in lieu of the indirect method formerly in vogue. Having the right "to hire," the people should also have the right "to fire."

Recall will be sparingly used. Experience has shown that the recall will not be lightly sought nor triflingly applied. The sense of fair play, and the fear of offending a judge, who if not recalled would be all-powerful to punish lawyer and layman appearing in his court, will effectually deter men except in most flagrant cases, from instituting recall proceedings against judges. In the city of Los Angeles it has been used but twice since its adoption in 1903, [illegible]. In Oregon it has been in operation since 1908, but no judge has been recalled. In Washington it has been used only in case of flagrant abuse of power and when as a last resort it became necessary to protect the people against the most willful violation of decency and good government.

Laws enacted and construed, how. Laws henceforth under the enlarging powers of the people will embody the will and spirit of the people; in fact, will be what laws should always be—a transcription of the will, wisdom, and spirit of the people and of their times. Enacted in this spirit they must be interpreted, construed, applied and enforced in like spirit or self-government is wholly lost or gone widely astray. The recall will quicken the judiciary with the spirit of the law and instill the same wholesome respect for the rights of persons as for the rights of property and to a determination of the questions presented, in the light of to-day rather than in a slavish adherence to the precedents created under conditions now obsolete and outworn.

Shall the people govern? All objections to the amendment may be summed up in the charge, "The people can not be trusted." This is an insult to the California electorate. The people can be trusted. They are just, patient, and long suffering, and in the end wise. Infuriated egotism may cry out against the "Rule of the Mob," and the "Tyranny of Majorities," but if self-government is to continue it is to do so by upholding the rule of the people. Are the people capable of self-government? If so, the recall must be theirs to enable them to enjoy self-government.

Without recall judiciary is supreme. No branch of the government should be greater than the government itself. The creature should not be superior to the creator. Without the recall the judiciary has supreme, arbitrary power. From its final decree there is neither recall nor appeal, and our boasted republican government has become a judicial oligarchy—a judicial despotism.

LEE C. GATES, Senator, 34th District.
WM. C. CLARK, Assemblyman, 85th District.

REASONS WHY SENATE CONSTITUTIONAL AMENDMENT NO. 23 SHOULD NOT BE ADOPTED.

The proponents of this new idea of "recalling" an elected officer before his term expires, base the right so to do upon the proposition, that as the majority elects the officer, the majority can remove him after election if his actions fail to meet with the approbation of the majority. If the grounds for the "recall" were those of misconduct, malfeasance or corruption, the remedy of accomplishing the desired result would have more to commend it to the rational mind, but the proposed amendment requires *no charges* of misconduct, malfeasance or corruption on the part of the officer, but just because he fails to perform some act, the performance of which would be popular, a movement to "recall" him can be started, and he is required in self-protection to defend against any attack made against him, and in so doing he must of necessity neglect the duties of his office, or else he may be "recalled," and on the official ballot that the voter will receive and to be voted in the election, the officer is allowed to have printed only *three hundred words in his behalf.*

Such a proceeding ought to find but little favor in the public estimation. While there is no property right in an office which the incumbent can claim protection for, yet to concede that the majority can remove an officer just because he is not suitable to them is to concede that the constitution and laws of the land do not bind the majority, and to illustrate: Suppose a bill is introduced in the legislature, and it is very popular, but it is believed by a minority to be in violation of the constitution, and on that ground some member declines to vote for it, he is at once the victim of the "recall" just because he observed his constitutional oath, and if he be "recalled" and a successor is elected, that successor is elected on a pledge to vote for that law whether it be constitutional or not because he has seen the fate of the man who dared to vote against it, and if that law comes before the judiciary for endorsement what fate awaits the judge who dares to declare the law unconstitutional? He, too, would be "recalled." We, therefore, to favor the "recall" must agree that the constitution is not to be observed by the majority, and if any officer, executive, legislative or judicial, dares to uphold the constitution and enforce its provisions he will be "recalled." Can a government so conceived and so constructed long endure?

If the majority are to control and can control the actions of an elected officer this then is tyranny—[illegible]. Then the constitution which guarantees that the law that operates upon one man shall operate equally upon all, affords no protection and it no longer remains "an ark of covenant, wherein no man may lay rash hands." Now while the "recall"—this newborn expedient has little to commend itself when applied to executive, administrative or legislative offices, the idea of applying its provisions to the judiciary is to my mind but little short of anarchy, for it means the turning over of the judiciary to the agitator and the mob. If the judge is to be "recalled" for rendering a decision, who is to decide the case? The judge elected at the "recall election" or the people themselves? Who is to write the decision? The people can not write the decision. The decision written by the "recalled" judge must stand until reversed. What then is to be gained by this new idea? Any person who has ever read the proceedings of the convention which framed the federal constitution must admit that the independence of the judiciary was the one thing which nearly every delegate agreed upon. When it was proposed that all laws passed by congress should first be passed upon by the supreme court, the proposition was almost unanimously rejected, because the court should be free to pass upon the law when the test was applied and not before. When the tenure of the judiciary was under consideration, it was proposed that the judges hold at the pleasure of the appointing power, and this was rejected because it was likely to subject them to the domination or influence of the appointing power, and this could not be tolerated. Such tenure of office places the officer in the relation of master and servant. When such a relationship exists the servant is without independence. He can not act as his conscience dictates, but do as the appointing power directs, under the penalty of dismissal. It was finally agreed that the judges should hold office during good behavior, thereby giving them more independence than they would have if given a fixed term. The independence of the judiciary has been the corner stone upon which the superstructure of this government has been reared to its present splendid eminence, and the independence of the judiciary ought to be forever maintained.

The history of our country is replete with instances where courts have rendered unpopular decisions, but those decisions were according to the constitution and laws as the courts understood them, and those decisions have stood the test of reason. In December, 1856, Chief Justice Taney of the United States Supreme Court, decided the Dred Scott case, in which he held that the constitution would permit slavery to exist in the free states, and it was a most unpopular decision and did much toward bringing about the war with the south, yet it has stood the test of reason and the principle of law there declared—that a man who owned property in one state did not lose it if he brought it into another state—has never been departed from. Had the "recall" of the judiciary been in vogue then, there is little doubt but what some "progressive" citizens would have started the "ball a-rolling" and Chief Justice Taney would have been "recalled," and that great principle of law, which to-day protects the man who takes his trunk, his horse, his automobile or any other personal property from one state into any other state to which he may desire to go, would not now be the rule. Our "progressive" friends did not have Abraham Lincoln advocating the "recall" of Chief Justice Taney, for in his inaugural address delivered March 4, 1861, with reference to that very decision, he said:

add a new section 21 to article XX of the state constitution, to read as follows:

"The legislature may by appropriate legislation create and enforce a liability on the part of all employers to compensate their employees for any injury incurred by the said employees in the course of their employment, irrespective of the fault of either party. The legislature may provide for the settlement of any disputes arising under the legislation contemplated by this section by arbitration or by an industrial accident board, by the courts, or by either, any or all of these agencies, anything in this constitution to the contrary notwithstanding."

The object of this amendment is twofold:

First—To permit the legislature, so far as it is possible for a state to do, to increase the liability of all employers for accidental injuries to their employees so as to cover all accidents, irrespective of the fault of either party. This part obviates all objections with respect to due process of law and the taking away of the property of one person for the benefit of another person where the former at common law owes no duty to the latter.

Second—To permit the legislature to delegate judicial power to an administrative board [illegible] tion it will be possible for the legislature to enact compulsory compensation laws, and administer them without the interference of the courts, and dispose of all cases quickly and economically to the advantage of all parties concerned.

RICHARD J. WELCH (author), State Senator, 19th District.

11. SENATE CONSTITUTIONAL AMENDMENT NO. 46.

Chapter 41.—*Senate Constitutional Amendment No. 46. A resolution proposing to the people of the State of California an amendment to the constitution of the state amending section 16 of article XX relating to term of office.*

Resolved by the senate, the assembly concurring, That the legislature of the State of California, at its regular session commencing on the second day of January, A. D. 1911, two thirds of all the members elected to each house of said legislature voting in favor thereof, hereby proposes to the people of the State of California that section 16 of article XX of the constitution of said state be amended so as to read as follows:

Sec. 16. When the term of any officer or commissioner is not provided for in this constitution, the term of such officer or commissioner may be declared by law; and, if not so declared, such officer or commissioner shall hold his position as such officer or commissioner during the pleasure of the authority making the appointment; but in no case shall such term exceed four years; provided, however, that in the case of any officer or employee of any municipality governed under a legally adopted charter, the provisions of such charter with reference to the tenure of office or the dismissal from office of any such officer or employee shall control; and provided further, that the term of office of any person heretofore or hereafter appointed to hold office or employment during good behavior under civil service laws of the state or of any political division thereof shall not be limited by this section.

Section 16 of article XX, proposed to be amended as above, now reads as follows:

Sec. 16. When the term of any officer or commissioner is not provided for in this constitution, the term of such officer or commissioner may be declared by law; and, if not so declared, such officer or commissioner shall hold his position as such officer or commissioner during the pleasure of the authority making the appointment; but in no case shall such term exceed four years; provided, however, that in the case of any officer or employee of any municipality governed under a legally adopted charter, the provisions of such charter with reference to the tenure of office or the dismissal from office of any such officer or employee shall control.

ARGUMENT IN FAVOR OF SENATE CONSTITUTIONAL AMENDMENT NO. 46.

The proposed amendment seeks to amend article 20, section 16 of the constitution by empowering the legislature to pass laws governing the civil service of the state and the political subdivisions thereof. Under the existing form of this section of the constitution, the legislature is prohibited from creating a term of office in excess of four years. This, of course, would forbid any civil service regulation extending the term of any public office beyond four years, and during good behavior. The proposed constitutional amendment is intended to remove this restriction and to permit of a civil service law governing all public civil employments under the state or any political division thereof. Of course the main object sought to be accomplished by a civil service law is the abolition of the spoil system and the institution of the merit system in public offices.

The purposes of a civil service law and the results which have followed its adoption elsewhere are as follows:

1. It will secure a higher class of employees who are experts in their various departments.
2. It will exclude the unfit employee.
3. It will stop the creation of useless additional offices for patronage purposes.
4. It gives every qualified citizen an equal chance to enter public service.
5. It will stop political influence affecting the work of public servants, and thereby conserve public property and rights.
6. It will greatly reduce the cost of administration.
7. It will materially raise the efficiency of public service.
8. It frees public officers from the annoying demands of their party and political friends.

The operation of a civil service law had its first results under the federal government. This measure was passed in 1883, covering at the time some sixteen thousand positions. Now over one hundred and fifty thousand offices are under civil service regulations. [illegible]

Without a single exception the operation of civil service laws governing public employments has resulted in saving the states and counties many thousands of dollars in the administration of public affairs, built up a corps of public servants honest, capable, trained to their vocation, and free from political or personal influence in the discharge of their duties, [illegible] the expensive, slovenly spoil system by which public service is demoralized by the construction of expensive political machinery by those in power. If this constitutional amendment is adopted it will mean the eradication of most of the present evils in public service, and the substitution of all of the benefits to be derived by a rational civil service law as above set forth. It is, therefore, urged that the above constitutional amendment be adopted by an overwhelming majority.

LOUIS H. ROSEBERRY (author), 33d Senatorial District.
NEWTON W. THOMPSON, 35th Senatorial District.

12. SENATE CONSTITUTIONAL AMENDMENT NO. 47.

Chapter 43.—*Senate Constitutional Amendment No. 47. A resolution proposing to the people of the State of California an amendment to section twenty-three of article twelve of the constitution of the State of California, to confer upon the railroad commission power and jurisdiction to regulate and control the business of furnishing certain commodities and performing certain services to or for the public.*

The legislature of the State of California, at its regular session, commencing on the second day of January, one thousand nine hundred and eleven, two thirds of all the members elected to each of the two houses of said legislature voting in favor thereof, hereby proposes to the people of the State of California that section twenty-three of article

other means of communication. Such works may be acquired by original construction or by the purchase of existing works, including their franchises, or both. Persons or corporations may establish and operate works for supplying the inhabitants with such services upon such conditions and under such regulations as the municipality may prescribe under its organic law, on condition that the municipal government shall have the right to regulate the charges thereof. A municipal corporation may furnish such services to inhabitants outside its boundaries; provided that it shall not furnish any service to the inhabitants of any other municipality owning or operating works supplying the same service to such inhabitants, without the consent of such other municipality, expressed by ordinance.

Section 19 of article XI, proposed to be amended as above, now reads as follows:

Sec. 19. In any city where there are no public works owned and controlled by the municipality for supplying the same with water or artificial light, any individual, or any company duly incorporated for such purpose, under and by authority of the laws of this state, shall, under the direction of the superintendent of streets, or other officer in control thereof, and under such general regulations as the municipality may prescribe, for damages and indemnity for damages, have the privilege of using the public streets and thoroughfares thereof, and of laying down pipes and conduits therein, and connections therewith, so far as may be necessary for introducing into and supplying such city and its inhabitants either with gaslight, or other illuminating light, or with fresh water for domestic and all other purposes, upon the conditions that the municipal government shall have the right to regulate the charges thereof.

STATEMENT IN FAVOR OF ADOPTION OF SENATE CONSTITUTIONAL AMENDMENT NO. 49.

Senate Constitutional Amendment No. 49 amends section 19 of article XI of the constitution. The proposed section is radically different from the one it is designed to replace, and the broad ground upon which the amendment rests should be stated at the outset. The original section was designed to meet conditions which prevailed in this state with regard to the operation of public utilities in cities at the time of the adoption of the new constitution, in 1879. But such conditions have changed in the thirty-two years elapsing since then, and an entirely new situation now exists regarding the subject to which this section relates. The proposed amendment is designed to provide for conditions as they now are, and as they will doubtless continue to be in the future.

In effect, section 19 of article XI, as it stands, provides that in any city which does not own and control its own waterworks or lighting plant, any individual or private corporation shall have the privilege of using the streets and thoroughfares of such city, and to construct pipes and conduits therein for the purpose of operating water and lighting systems. The only conditions attached to this constitutional grant are: (1) that the work of laying pipes or conduits, or installing appliances in the city streets, shall be under the direction of the superintendent of streets; (2) that such work shall be subject to such regulations as the city may prescribe for damages and indemnity for damages; and (3), that the municipal government shall have the right to regulate the charges for water or light furnished by such person or company.

An examination of the proceedings of the convention which framed the constitution of 1879 will show that the purpose of this section was to remedy a most vexatious condition which then existed in all the larger cities of the state. It was notorious that the supplying of water and light were private monopolies in all such cities, and that, owing to the absolute control over municipal councils by the persons operating these monopolies, it was impossible for any other persons to get franchises to conduct competing systems. This situation was a public scandal and the water and gas companies of that day simply used their power to prevent, and they did prevent, any franchise being granted that would break their monopoly, or enable others to enter into competition with them. The people were so desirous of ending this odious system that they were willing to place in the constitution this section, which gave to any one the absolute right, without compensation and without conditions other than as above stated, to operate water and lighting systems in cities. It was then confidently hoped that these public utilities would be placed upon a competitive basis, that burdensome gas and water monopolies would be broken, and that great benefit would thereby inure to the people.

The result, however, has been a distinct disappointment, like many other attempts to remedy economic conditions by force of statute. The sequel has shown that to give the right to establish competing water or gas systems by law, is one thing; to actually establish and maintain them, as against already intrenched monopolies, is quite a different thing. The fact is that the supplying of gas, water, electric light, and any other like public service, is by its very nature monopolistic, and the true remedy, so far as any substantial benefit to the people is concerned, is to encourage the furnishing of these public necessities by municipal corporations themselves. This fact was not realized as clearly thirty years ago as it is to-day. In spite of this free and direct gift of franchises for water and lighting systems, the cities are still in the hands of water and lighting companies that are private monopolies in fact, if not in name, except in those cases where cities have established their own systems. Even where there are several private lighting or water companies operating in the same city, the companies are not rivals in any real sense. If a serious competitor appears, it is hampered or crushed by the superior commercial or political influence of the water, gas or electric companies that have already occupied the city streets and established their connections; or, if such rival be strong enough financially to hold its ground, the water, gas or electric companies speedily admit it to their circle, and make an amicable division of the city territory between themselves, by which they agree not to invade each other's preserve. Therefore, unless a more effective remedy is devised than is afforded by section 19, article XI, in its present form, the monopolistic conditions that were so unpopular thirty years ago will still remain, although slightly in a different shape. So much for the general purposes which the authors of the original section had in mind, and the practical results of its operation. This section was amended in 1885; the amendment, however, simply consisted in striking out a provision which had no relation to the subject we are discussing.

But there have been other unfortunate results from this section. The control of cities over water, gas and electric companies, with respect to the use of the public streets, has been extremely weak and unsatisfactory. The only power which cities have in this regard is that the physical work of installing poles or wires, or tearing up streets for pipes and conduits, must be done under the direction of the city officer who has charge of the streets, and that the city may compel the observance of rules and regulations for the payment of damages occasioned by such work, and indemnity therefor. Cities generally, under their constitutional power to make local and police regulations, require all persons who tear up pavements or make excavations in public streets to conform to their ordinances prescribing the time when, the place where, and the manner in which such work shall be done. Persons and companies operating water, gas and electric lighting systems, however, are practically exempt from such regulations. The limitation in the present section that the laying of water and gas pipes and conduits shall be "under the direction" of the municipal officer who has charge of the streets does not mean much in practice, for this "direction" is clearly limited to the doing of the work itself, and does not imply a right to control the time or place when such work shall be done, or any effective method of regulating the method thereof.

The supreme court of this state has construed this section of the constitution on several occasions, and it has held that when the constitution designates "damages and indemnity for damages" as the subject upon which the municipality may prescribe regulations in regard to laying pipes and conduits, it places a limitation upon the authority of the municipality over the matter, and further, that such designation is a prohibition from prescribing any other regulations connected with the exercise of the privilege. Section 19 of article XI is a direct grant to the persons and corporations specified therein of the right to lay pipes, erect poles, and construct conduits in the streets. The supreme court has further held that when the sovereign authority of the state has created a right, and expressed and defined the conditions under which it may be enjoyed, it is not within the province of a municipality where such right is sought to be exercised to impose any other conditions to its exercise.

Therefore, the various cities and towns, at least those which do not own and operate water, gas and electric lighting systems themselves, have no effective control over the use of the streets by gas, water or electric light companies, for such companies may and do dig up the streets at their own sweet will, at any time, in any manner, and at any place. It is a matter of common knowledge that the indiscriminate manner in which streets, and particularly paved and other highly improved streets, are torn up by gas,

in excess thereof, or who shall in any r…
fined not exceeding five thousand doll…
one year. In all controversies, civil or …
by said commission shall be deemed …
against such corporation or company …
the plaintiff, in addition to the actual …
recover exemplary damages. Said com…
proceedings, and such other facts as …
shall prevent individuals from mainta…
legislature may, in addition to any pe…
failure of charter or otherwise, and m…
as shall be necessary to enable them to …
foregoing section. The legislature sha…
hereafter elected to each house, to remove …
for dereliction of duty or corruption …
vacancy in office shall occur in said …
appointment of a qualified person th…
unexpired term, and until his successo…

THE REASONS WHY ASSEMB… SHOU…

The amendment proposed change… following particulars:

It increases the membership of the … missioners are to be appointed by … elected by the people for a term of … from districts, except that the legis… districts for the purpose of such app… to expire at different times instead … to act in one of its members instead … tigation of every question presented … rate schedules which are not objecti… lature to confer additional powers on…

The increase in the number of com… the board to perform properly the d… and the "Railroad Commission Act" … We are informed that the present … commission in the State of Californ… it, which is increasing rapidly, and … the powers of the board are to be … porations, as is contemplated by Se… ity for the increase in the number … proposal that the commissioners sha… in the interest of efficiency. Tech… commissioner, and experience has al… been attained through appointment … by the people at large. In the stat… are doing the best work in the Unite… by the governor.

The greatest degree of interest in … the election of the governor, and th… self as to the qualifications of the … particularly dangerous in the case o… technical skill as well as their integ… governor directly responsible to th… charged with the supervision of … public. The amendment proposed … thirds vote to remove any one or m… of duty or corruption or incompeten… the integrity and ability of the com…

The abolition of the present sys… also obviously in the interest of e… members of an official board from … limitation upon the ability of the b… aggregate membership. Choice of … posed of experts, should be made … tions. It is to be noted, however … legislature may at any time requir… districts if such a change is deeme…

Still another proposed change in … rotation of the commissioners in of… at different periods. The resoluti… office until the expiration of the te… tional members to be appointed aft… for the same term. Upon the exp… quired to appoint five commissione… 1911, two on January 1, 1913, and … appointment of any new member … will be composed of a majority o… ance of the duties required of t… unfamiliar with these duties. It is … office of a commissioner is hand e… for any one governor during his t… board so far as its entire members…

Under the constitutional provisio… the railroad commission can act … many instances, investigations, h… single commissioner with the requ… ordered. This change is designed t… to act in such cases. The section … "shall have the power, and it shal… amendment proposed eliminates th… thousand schedules of rates in for… no ground for complaint. One of t… mission was to correct abuses in t… commission is, therefore, interest… The power to correct these abuses … out imposing on the board the ne… schedules generally. Especially i… single rate unnecessary when un… increases in rates are required to …

Finally, it is proposed to amend … the legislature to confer additional … as presented for adoption, the le… powers as it sees fit without any … thus given are not inconsistent wit…

The adoption of this amendmen… est of the people of the State of …

W. A. SU…
LESTER …
…

REASONS WHY ASSEMBLY C…

In compliance with chapter 312, … election to be held on Tuesday, O… qualified electors of the state of …