



Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

OFFICE OF GOVERNMENTAL AFFAIRS

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Director, Office of Governmental Affairs

June 7, 2006

Hon. Chuck DeVore
Member of the Assembly
State Capitol, Room 4102
Sacramento, California 95814

Subject: ACA 38 (DeVore), as introduced – Oppose

Dear Assembly Member DeVore:

The Judicial Council opposes ACA 38, which provides that the Supreme Court has original jurisdiction, and no other state court has jurisdiction, in any civil action challenging the facial validity of any statewide initiative measure or referendum placed on the ballot by signature petition of the voters and approved by the voters at a statewide election.

Article VI, Section 10 of the California Constitution gives the Supreme Court concurrent original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition. Presently, only appeals from death penalty judgments and State Bar matters may be filed directly in the Supreme Court without proceeding through both the trial court and the Court of Appeal. However, petitions for extraordinary relief are often filed with the Supreme Court, and the Court is required to determine whether to grant such review. In deciding whether its immediate consideration of the issues presented is necessary, the Court weighs factors such as the potential impact of delay, extrinsic time frames affecting the parties or claims, the significance of the questions presented, the costs of delay, and the state of the record upon which it must rely. Using these criteria, the Court carefully exercises its discretion whether to grant hearing on a petition for extraordinary relief, and has granted immediate hearing in challenges to ballot measures and other matters that warranted accelerated consideration. Examples include *Brosnahan v. Brown* (1982) 32 Cal.3d 236, in which the Supreme Court granted review of a trial court decision that sought to bar the implementation, application, and funding of Proposition 8, the Victim's Bill of Rights; and *Senate v. Jones* (1999) 21 Cal.4th 1142, in which the Court

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granted a writ of mandate to prevent Proposition 24 from being placed on the ballot because it violated the single-subject rule.

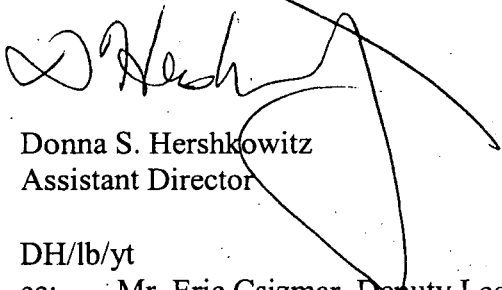
As a general matter, the Supreme Court benefits from having proceedings heard first in the lower courts where the issues are discussed and analyzed prior to being presented to the Supreme Court. This typically serves to narrow and sharpen claims and controversies.

ACA 38 would strip the Supreme Court of discretion to determine whether the case presented is one that necessitates original review by the Court. In effect, it would strip the Supreme Court of its basic traditional discretion to grant review, and instead would require the court, in every challenge to the validity of the an initiative or referendum placed on the ballot by signature and approved by the voters, to take the matter under consideration, regardless of the merits of the challenge. On average, Supreme Court review is granted in four percent of petitions filed. ACA 38 would mandate that all challenges to the facial validity of an initiative or referendum placed on the ballot by signature and approved by the voters be reviewed by the Supreme Court. This would limit or delay the determination of other causes the Supreme Court decides to hear.

In addition, ACA 38 directs the Court to render a final decision within 90 days of the filing of the matter. This would require the parties to file their briefs, the Court to hold oral arguments, and Court to render the decision in 90 days in all such matters. By imposing this time line, this measure has the effect of pushing these ballot measures to the front of the line, ahead of challenges to statutes adopted by the Legislature that could be of equal or greater statewide importance. Setting a 90-day deadline in all such matters is unnecessary and sets a dangerous precedent for dictating case management decisions that are within the purview of the Supreme Court. The Court has extensive experience with handling extraordinary actions in an expedited way.

For these reasons, the Judicial Council opposes ACA 38. Please feel free to contact me if you have any questions.

Sincerely,



Donna S. Hershkowitz
Assistant Director

DH/lb/yt

cc: Mr. Eric Csizmar, Deputy Legislative Secretary, Office of the Governor
Ms. Sue Blake, Director of Legislation, Office of Planning and Research



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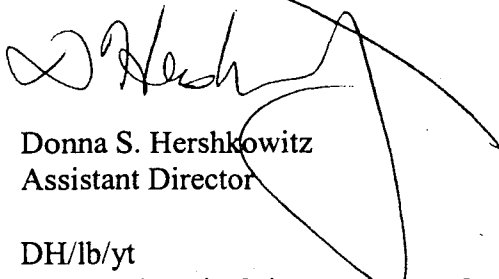
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