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Review Granted
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(Cal.Const. art. 6, s 12; Cal. Rules of
Court, Rules 8.500, 8.1105 and 8.1110,
8.1115, 8.1120 and 8.1125)
Court of Appeal, Third District, California.

CALIFORNIANS FOR AN OPEN PRIMARY et al., Petitioners,
v.
Kevin SHELLEY, as Secretary Of State, Respondent;
California Legislature, Real Party in Interest.

No. C047231. | July 30, 2004.
| Review Granted Aug. 9, 2004.

Synopsis

Background: Nonprofit public benefit corporation and interested citizen filed original petition in the Court of Appeal for writ of mandamus or prohibition, seeking order prohibiting the Secretary of State from placing Senate Constitutional Amendment No. 18 on November 2, 2004, general election ballot as Proposition 60.

Holdings: The Court of Appeal, Blease, J., held that:

[1] preelection review of petitioners' claim was appropriate;

[2] Court of Appeal would not apply rule of deference to Legislature's implied construction of constitutional provisions;

[3] constitutional provision on amendments and revisions to state Constitution did not require Legislature to vote separately on multiple proposed amendments;

[4] two proposed amendments did not constitute revision of Constitution;

[5] two proposed amended constituted separate amendments subject to separate votes by the People; and

[6] proper remedy was directing Secretary of State to prepare ballots such that proposed amendments were submitted as separate measures.

Writ of mandate issued.

Davis, J., filed a concurring and dissenting opinion.

Attorneys and Law Firms

***799** Strumwasser & Woocher; Fredric D. Woocher, Michael J. Strumwasser, Santa Monica, Aimee E. Dudovitz, for Petitioners.

Bill Lockyer, Attorney General, Louis R. Mauro, Senior Assistant Attorney General, Catherine M. Van Aken, Supervising Deputy Attorney General, Geoffrey L. Graybill, Deputy Attorney General, for Respondent.

Diane F. Boyer–Vine, Legislative Counsel, Marian M. Johnston, Principal Deputy Legislative Counsel, Dulcinea A. Grantham, Deputy Legislative Counsel, for Real Party in Interest.

Opinion

BLEASE, J.

Californians for an Open Primary, a nonprofit public benefit corporation, and Nick Tobey, an interested citizen and taxpayer, filed an original petition for writ of mandamus or prohibition in this court, [1] ***800** seeking an order prohibiting the Secretary of State, Kevin Shelley, from placing Senate Constitutional Amendment No. 18 of the 2003–04 Regular Session, (res. ch. 103, hereafter SCA 18) on the ballot for the November 2, 2004, general election as Proposition 60.

SCA 18 proposes two unrelated changes in the Constitution, one relating to "primary elections," [2] the other relating to "state property." [3] Because the proposed changes were adopted by the Legislature in a single resolution to be joined in a single ballot proposition, in the absence of judicial intervention they will be submitted to the voters as a single measure.

Petitioners contend SCA 18 violates the separate vote requirement of section 1, article XVIII (section 1) of the California Constitution [4] (Constitution), which governs the amendment and revision of the Constitution. It authorizes the Legislature to "propose an amendment or revision" to the Constitution for submission to the voters, but requires that

"[e]ach amendment shall be so prepared and submitted that it can be voted on separately." We agree with petitioners' claim that because SCA 18 proposes to make two wholly unrelated, substantive changes in the Constitution, it proposes two "amendments," each of which under article XVIII must be "so prepared and submitted" that it "can be voted on separately" by the voters. We disagree with petitioners' claim that section 1 requires the Legislature to vote separately on each of several proposed amendments.

Real party in interest, the Legislature of the State of California (real party), assumes the proposed changes are amendments but contends a simple collection of multiple amendments constitutes a "revision" within the power of the Legislature to submit to the People. We reject real party's argument because it would nullify the plain requirement of section 1 and because the mere joining of two unrelated amendments does not quantitatively or qualitatively constitute a "revision." (*Raven v. Deukmejian* (1990) 52 Cal.3d 336, 349–353, 276 Cal.Rptr. 326, 801 P.2d 1077.) We need not consider to what extent or in what manner two or more changes need be related to constitute "an amendment" because the two changes proposed by SCA 18 are wholly unrelated.

SCA 18 is peculiarly subject to preelection review since the remedy we provide for violation of article XVIII is to direct that its provisions be carried out. If the Legislature disagrees with this remedy it ***801** may, by appropriate vote, withdraw either or both of the amendments from the ballot pursuant to section 1.

Since section 4 of article XVIII mandates that a constitutional amendment proposed by the Legislature shall be submitted to the voters in a form consistent with the separate vote requirement of section 1, we will issue a peremptory writ of mandate directing the Secretary of State to prepare and place the amendments on the ballot so that each can be voted on separately.

DISCUSSION

I.

Preelection Review

[1] Preliminarily, we address the question whether preelection review of the petitioners' claim is appropriate.

Section 1 sets forth the means by which the Legislature may amend the Constitution. (*Livermore v. Waite* (1894) 102 Cal. 113, 117, 36 P. 424.) The first sentence provides the Legislature may propose "an amendment" of the Constitution by a two-thirds vote. The second sentence requires that "[e]ach amendment [so proposed] shall be so prepared and submitted that it can be voted on separately."

In *Senate of the State of Cal. v. Jones* (1999) 21 Cal.4th 1142, 90 Cal.Rptr.2d 810, 988 P.2d 1089 (*Senate v. Jones*), the Supreme Court conducted preelection review of a statewide initiative ballot measure challenged under the single subject rule of article II, section 8, subdivision (d). The court found that article II, section 8, subdivision (d), expressly contemplated preelection relief in stating that " '[a]n initiative measure embracing more than one subject may not be submitted to the voters or have any effect.' " (*Id.* at p. 1153, 90 Cal.Rptr.2d 810, 988 P.2d 1089, italics omitted.)

The court said that deferring review until after an election primarily applies when the challenge is to the substance of the measure. The rule, however, does not preclude preelection review when the challenge is based upon a claim the proposal violates a provision governing the manner or form in which the proposal must be considered by the voters. The court recalled the accuracy of its past observation that " '[t]he presence of an invalid measure on the ballot steals attention, time, and money from the numerous valid propositions on the same ballot. It will confuse some voters and frustrate others, and an ultimate decision that the measure is invalid, coming after the voters have voted in favor of the measure, tends to denigrate the legitimate use of the initiative procedure.' " (*Senate v. Jones, supra*, 21 Cal.4th at p. 1154, 90 Cal.Rptr.2d 810, 988 P.2d 1089, quoting *American Federation of Labor v. Eu* (1984) 36 Cal.3d 687, 697, 206 Cal.Rptr. 89, 686 P.2d 609.) Contrary to the claim of real party that no reported decision grants preelection review of a legislatively proposed constitutional amendment, just such review was granted in *Livermore v. Waite, supra*, 102 Cal. 113, 36 P. 424, which restrained the Secretary of State from certifying a proposed constitutional amendment because it was "not such an amendment as the legislature has been authorized to submit to their votes." (*Id.* at pp. 123–124, 36 P. 424.)

[2] Section 1 presents a similar candidate for preelection review. The separate vote requirement is directed to the means by which the voters may exercise an effective voice in the amendment of the Constitution. Its manifest purpose is to

prevent voter confusion and coercion that results from the holding of a vote on a measure that impermissibly joins unrelated amendments and to avoid log-rolling, by which a provision with strong support may carry ***802** with it a provision that otherwise might not pass. Such an election would defeat the very purpose of the requirement. Such a defect could not be cured by post-election relief because it is not possible to determine which of the proposed changes would have been adopted by the voters had they been submitted as separate amendments.

Preelection review is all the more appropriate when the court can provide relief that satisfies the requirements of the Constitution by directing the Secretary of State to prepare the amendments for the ballot so that they may be voted on separately.

II.

The Separate Vote Requirement

This case turns on the distinction between an amendment and a revision, as those terms are used in article XVIII, and upon the meaning of the first sentence of section 1, whether the Legislature must vote separately on each proposed amendment.

Petitioners contend that placement of SCA 18 on the November 2004 ballot as a single measure, subject to a single vote, would violate the separate vote requirement of section 1 because it contains two "amendments," each of which must be submitted separately to the voters.

Real party assumes that each of the proposed changes is an amendment but claims that section 1 "does not restrict the Legislature's plenary authority to decide how it wishes to draft proposals to amend or revise the California Constitution." It reasons that, because section 1 authorizes the Legislature to propose both amendments and revisions of the Constitution, "[i]t defies logic as well as common sense to suggest that the Legislature's unconditional constitutional power to propose to the voters a revision measure addressing multiple subjects does not encompass the authority to propose to the voters a measure with two changes it deems necessary and appropriate."

Stated another way, real party argues that two unrelated amendments constitute a revision. That is not the case, as we will show.

A. Standard of Review

[3] [4] [5] Before addressing the merits of petitioners' claim, we consider the standard of review to be applied in construing and applying the constitutional language. We are guided by two principles. First, it is the judiciary that possesses the power to construe the Constitution in the last resort. (*Raven v. Deukmejian, supra,* 52 Cal.3d at p. 354, 276 Cal.Rptr. 326, 801 P.2d 1077; *Marbury v. Madison* (1803) 5 U.S. (1 Cranch) 137, 176, 2 L.Ed 60, 73 [interpreting and applying the Constitution is "the very essence of judicial power"].) Second, when the Legislature proposes to amend the Constitution, its authority is delegated, not plenary. (*Livermore v. Waite, supra,* 102 Cal. at pp. 117–118, 36 P. 424.)

The basis for the second principle was explained in *Livermore v. Waite* where the court recognized that article XVIII provides two methods to effect legislatively proposed changes to the Constitution, one by amendment, the other by revision. In either case, the Constitution cannot be revised or amended "except in the manner prescribed by itself, and the power which it has conferred upon the legislature in reference to proposed amendments, as well as to calling a convention, must be *strictly pursued* ... The power of the legislature to initiate any change in the existing organic law is, however, of greatly less extent, and, being a delegated power, is to be *strictly construed* under the limitations by ***803** which it has been conferred. In submitting propositions for the amendment of the constitution, the legislature is not in the exercise of its legislative power, or of any sovereignty of the people that has been intrusted to it, but is merely acting under a limited power conferred upon it by the people, and which might with equal propriety have been conferred upon either house, or upon the governor, or upon a special commission, or any other body or tribunal. The extent of this power is limited to the object for which it is given, and is measured by the terms in which it has been conferred, and cannot be extended by the legislature to any other object, or enlarged beyond these terms." (102 Cal. at pp. 117–118, 36 P. 424, italics added.)

[6] Thus, we reject real party's claim that we should apply a rule of deference, which states that we must give deference to the Legislature's implied interpretation of constitutional provisions. While the Legislature's authority to enact laws is plenary and all intendments favor the exercise of that

authority (*County of Riverside v. Superior Court* (2003) 30 Cal.4th 278, 284, 132 Cal.Rptr.2d 713, 66 P.3d 718), that principle applies when the Legislature is acting in its purely legislative capacity. (*California Housing Finance Agency v. Patitucci* (1978) 22 Cal.3d 171, 175, 148 Cal.Rptr. 875, 583 P.2d 729.) As noted above, the Legislature does not act in that capacity when it proposes a constitutional amendment. (*Livermore v. Waite, supra*, 102 Cal. at p. 117, 36 P. 424.)

B. History of Section 1

The construction of article XVIII turns in part on the history of its enactment.

As originally adopted in 1849, former article X, sections 1 and 2 set forth the procedures for the Legislature to propose one or more amendments to the Constitution and to revise the entire Constitution. Section 1 [5] required that proposed amendments be submitted to the voters for adoption. However, as real party points out, the Legislature was given the authority to decide exactly how the amendments it proposed would be submitted to the voters. Section 2 set forth the procedures for convening a constitutional convention to revise and change the entire Constitution, to be submitted to the voters for rejection or ratification by the people by majority vote. (3 Deering's Cal.Codes Annot., Const. Annot., *supra*, appen. 1, at p. 724.)

In 1879, the Constitution was revised, changing section 1 of former article X in several respects. Pertinent to our discussion, the provisions were moved to article XVIII, sections 1 and 2 and the separate vote requirement was added to section 1. [6]

***804** The 1879 revision contained two pertinent changes. First, it provided that "[a]ny amendment or amendments to this Constitution may be proposed in the Senate or Assembly, and if two-thirds of all the members elected to each of the two houses shall vote in favor thereof ... it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people in such manner, and at such time, and after such publication as may be deemed expedient." As evident from the text, this section authorized the Legislature to propose one or more amendments in a single resolution. Second, the discretion to submit proposed amendments was conditioned by the provision that "[s]hould more amendments than one be submitted at the same election they shall be so prepared and distinguished, by numbers or otherwise, that each can be voted on separately." (Const. of the State of California, Annot., *supra*, art. XVIII, § 1 (1879), p. 1291.) Thus, the 1879 provisions authorized the Legislature to propose multiple amendments in a single resolution but required it to prepare them for submission, "by numbers or otherwise," so that "each can be voted on separately."

Article XVIII, section 1 was amended again in 1962 without change in the above provisions. The amendment granted the Legislature the additional authority to propose for voter approval, a partial or total revision of the Constitution. (3 Deering's Cal.Codes Annot., Constitutional Annotations 1849–1973, *supra*, art. XVIII, § 1, adopted November 6, 1962, p. 527.) [7] Under this version of article XVIII, the Legislature had the authority to propose revisions as well as amendments, and revisions could be effected by legislative proposal as well as by a constitutional convention.

The current version of article XVIII had its genesis in 1968 as a proposal to the Legislature by the California Constitutional Revision Commission. The Commission was of the view the separate vote requirement could not be enforced because the Legislature could avoid the requirement ***805** by grouping several amendments together, classifying them as a partial revision, and submitting them to the voters, thus avoiding the separate vote requirement. (Cal. Const. Revision Com., Article XVIII Amending and Revising the Constitution, Background Study 7 (May 1967) pp. 4, 19.) This view implied that a revision is nothing more than a collection of amendments. It also implied that the term "amendment", in the first sentence of section 1, includes the plural "amendments" since it sanctioned the submission of multiple amendments. Accordingly, the Commission proposed that the separate vote requirement be deleted because it found "[i]t is ineffective because it can be circumvented by entitling several amendments as a revision." (Cal. Const. Revision Com., Proposed Revision of Article XVIII (1968) Summary of Recommendations, pp. 107, 109.)

The Commission's proposal to eliminate the separate vote requirement was not placed on the ballot by the Legislature and consequently was not enacted by vote of the People. Instead, in 1970, when section 1 was repealed and replaced by the current provisions by a vote of the people, the separate vote requirement was retained in the abbreviated form now found in section 1. [8] Accordingly, the Commission's implied construction of the term "revision" as including the mere aggregation of multiple amendments was rejected. The language requiring the Legislature to submit proposed revisions to the voters was moved to section 4.

The ballot pamphlet submitted to the voters stated that the measure "would retain some existing provisions without change and would restate other provisions, some with and some without substantive change." (Ballot Pamp., Gen. Elec. (Nov. 3, 1970) Proposed Amends. to Cal. Const., Detailed Analysis by the Legislative Counsel, p. 27.) The pamphlet advised the voters that the proposed amendments did not change the separate vote requirement of section 1 nor abrogate the authority of the Legislature to package several amendments in a single resolution for its vote. [9]

***806** Accordingly, we read the current version of article XVIII as making no substantive change in the separate vote requirement as set forth in 1879 and 1962.

C. The Legislative Vote Requirement

[7] At issue is the meaning of section 1. It provides in full as follows.

"Sec. 1. The Legislature by rollcall vote ... two-thirds of the membership of each house concurring, may propose an amendment or revision of the Constitution and in the same manner may amend or withdraw its proposal. Each amendment shall be so prepared and submitted that it can be voted on separately."

Standing alone, the first sentence appears to make a substantive change to the preexisting language by eliminating the term "amendments," thereby suggesting that each amendment ("an amendment") must be voted on separately by the Legislature. By contrast, the second sentence refers to "[e]ach amendment," plainly referring to more than one amendment.

Since the second sentence modifies the first sentence, the term "amendment" in the first sentence must be read to embrace multiple amendments as well. If the first sentence required the Legislature to vote separately on each amendment, there would be no need for the second sentence. This is in keeping with the constitutional history of the 1970 amendments to article XVIII, set forth above, which fully supports this construction.

Thus, the two sentences of section 1 should be read together to authorize the Legislature to package several constitutional amendments in a resolution for its single vote but to require that the package be "so prepared and submitted" that each amendment can be voted on separately by the People.

This construction rules out a separate challenge by petitioner to the constitutionality of the vote by the Legislature in adopting SCA 18. As will be seen, this will affect the remedy we provide.

This brings us to the meaning of the terms "amendment" and "revision" in section 1.

D. The Meaning of Revision

[8] Section 1 authorizes the Legislature to propose and submit to the voters ***807** either "an amendment" or a "revision" of the Constitution and requires that "[e]ach amendment shall be so prepared and submitted that it can be voted on separately." The separate vote requirement does not apply to a revision. Thus, real party argues that a "revision" is nothing more than a collection of two or more amendments. [10] We disagree.

The court in *Livermore v. Waite, supra,* described the fundamental difference between an amendment and a revision: "The very term 'constitution' implies an instrument of a permanent and abiding nature, and the provisions contained therein for its revision indicate the will of the people that the underlying principles upon which it rests, as well as the substantial entirety of the instrument, shall be of a like permanent and abiding nature. On the other hand, the significance of the term 'amendment' implies such an addition or change within the lines of the original instrument as will effect an improvement, or better carry out the purpose for which it was framed." (103 Cal. at pp. 118–119, 37 P. 194.)

More recently, the court in *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 223, 149 Cal.Rptr. 239, 583 P.2d 1281 (*Amador Valley*), applied a quantitative and qualitative test in determining whether the Legislature proposed a revision rather than an amendment. [11] The court explained that a revision is proposed if the changes are "so extensive ... as to change directly the 'substantial entirety' of the Constitution by the deletion or alteration of numerous existing provisions...." (*Ibid.*) A single enactment that accomplishes " 'such far reaching changes in the nature of our basic governmental plan ... [may] amount to a revision.' " (*Raven v. Deukmejian, supra,* 52 Cal.3d at pp. 354–355, 276 Cal.Rptr. 326, 801 P.2d 1077, quoting *Amador Valley, supra,* 22 Cal.3d at p. 223,

149 Cal.Rptr. 239, 583 P.2d 1281 [finding a change proposed by Proposition 115 to vest all judicial interpretive power as to fundamental criminal defense rights in the United States Supreme Court effected a revision of the Constitution].)

The individual changes proposed by SCA 18 are not revisions, nor does real party assert that they are. SCA 18 proposes to add two different provisions to the Constitution. First, it proposes to add subdivision (b) to article II, section 5, which would give a political party the right to participate in the general election by placing the candidate who received, at the primary election, the highest vote among that party's candidates. This provision merely encodes the existing law into the Constitution. (See Elec.Code, §§ 2151, 13102, 15451; see and compare *California's Democratic Party v. Jones* (2000) 530 U.S. 567, 120 S.Ct. 2402, 147 L.Ed.2d 502.)

Second, it proposes to add section 9 to article III, which would require the Legislature to use the proceeds from the sale of surplus state property "to pay the principal and interest on bonds issued pursuant to the Economic Recovery Bond Act authorized at the March 2, 2004, statewide primary election." Article III, section 9 ***808** changes existing law [12] by limiting the Legislature's authority to appropriate funds from a specific non-tax revenue source by restricting the purposes for which those funds may be appropriated. Because it restricts the Legislature's appropriation authority in a very limited manner, it does not effect such a substantial change of the Legislature's authority to determine how state funds shall be expended as to amount to a revision. (Art. IV, § 12; compare *Raven v. Deukmejian*, *supra*, 52 Cal.3d at pp. 350–353, 276 Cal.Rptr. 326, 801 P.2d 1077 and *In re Lance W.* (1985) 37 Cal.3d 873, 891, 210 Cal.Rptr. 631, 694 P.2d 744.)

Thus, the amendments proposed by SCA 18 are two in number, wholly unrelated, not extensive, and do not constitute integral parts of a far-reaching change in the nature of the government plan. Although they are substantive in nature, neither changes the Constitution in a fundamental way that alters our basic plan of government.

E. Single–Subject

Before addressing the meaning of amendment, we examine the single subject rule, a related but different principle governing initiative measures and legislatively enacted statutes.

[9] [10] [11] The electorate may propose statutes and amendments, but not revisions, to the Constitution by initiative measure (Art. II, §§ 8, subd. (a), 10, subd. (a)), however, the measure must not embrace more than one subject. (Art. II, § 8, subd. (d).) This limitation is known as the single subject rule. An initiative measure complies with this rule if, " ' " 'despite its varied collateral effects, *all of its parts are "reasonably germane"* to each other,' and to the general purpose or object of the initiative." ' (*Legislature v. Eu* [1991] 54 Cal.3d 492, 512, 286 Cal.Rptr. 283, 816 P.2d 1309, original italics.)" (*Senate v. Jones*, *supra*, 21 Cal.4th at p. 1157, 90 Cal.Rptr.2d 810, 988 P.2d 1089.) " '[T]he single-subject provision does not require that each of the provisions of a measure effectively interlock in a functional relationship. [Citation.] It is enough that the various provisions are reasonably related to a common theme or purpose.' " (*Senate v. Jones*, *supra*, 21 Cal.4th at p. 1157, 90 Cal.Rptr.2d 810, 988 P.2d 1089, quoting *Legislature v. Eu*, *supra*, 54 Cal.3d at p. 513, 286 Cal.Rptr. 283, 816 P.2d 1309.) Because the rule is qualitative and looks only to the subject of the proposed changes, it does not limit the number of amendments that may be included in a measure or bill. (*Brosnahan v. Brown* (1982) 32 Cal.3d 236, 246, 186 Cal.Rptr. 30, 651 P.2d 274.)

[12] The primary purpose of the single subject rule is to minimize the risk of confusion and deception and prevent the subversion of the will of the Legislature or voters. (*Amador Valley*, *supra*, 22 Cal.3d at p. 231, 149 Cal.Rptr. 239, 583 P.2d 1281; *Senate v. Jones*, *supra*, 21 Cal.4th at pp. 1156–1157, 90 Cal.Rptr.2d 810, 988 P.2d 1089.) The rule also prevents "log-rolling," the practice of including in a bill or measure "a provision unrelated to [the] main subject matter and title ... with the hope that the provision will remain unnoticed and unchallenged. By invalidating these unrelated clauses, the single subject rule prevents the passage of laws that otherwise might not have passed had the ***809** legislative mind been directed to them. [Citation.]" (*Homan v. Gomez* (1995) 37 Cal.App.4th 597, 600, 43 Cal.Rptr.2d 647; *Amador Valley*, *supra*, 22 Cal.3d at p. 231, 149 Cal.Rptr. 239, 583 P.2d 1281.)

F. The Meaning of Amendment

[13] The word "amendment" appears twice in section 1. The first sentence refers to "an amendment." The second sentence refers to "each amendment." Giving each word and phrase a meaning and construing each word in its ordinary sense (*Thompson v. Department of Corrections* (2001) 25 Cal.4th 117, 122, 105 Cal.Rptr.2d 46, 18 P.3d 1198; *Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798–799, 268 Cal.Rptr.

753, 789 P.2d 934), it seems clear the framers intended the Legislature to prepare and submit to the voters a single amendment.

The question then is what is meant by "amendment." The Constitution does not define that term. Petitioners contend the word is ambiguous and therefore requires judicial construction to determine whether multiple changes proposed to existing provisions should be treated as multiple amendments for purposes of the separate vote requirement. In petitioners' view an amendment includes changes that are substantive and closely related.

Real party contends section 1 does not impose any restriction on the Legislature's exercise of its discretion as to the substance of a proposed amendment. Under this reading, the separate vote requirement is nothing more than a requirement that a legislative proposal be voted upon separately from other proposals.

We disagree and look to the historical development of the provision and pertinent case law for guidance.

1. Case Law

[14] Turning to the few California cases construing the term amendment in section 1, it has been held that an amendment is a change that adds to or repeals another provision of the Constitution (*Brosnahan v. Brown, supra,* 32 Cal.3d at p. 260, 186 Cal.Rptr. 30, 651 P.2d 274), but does not include amendments by implication. (*Tinsley v. Superior Court* (1983) 150 Cal.App.3d 90, 107, 197 Cal.Rptr. 643; *Wright v. Jordan* (1923) 192 Cal. 704, 711, 221 P. 915.) [13] "The requirement of article XVIII, section 1, is merely that each constitutional provision which is *directly* amended by an initiative measure must be separately submitted to the voters." (*Tinsley v. Superior Court, supra,* 150 Cal.App.3d at p. 107, 197 Cal.Rptr. 643.) On the other hand, as noted, a revision changes " 'the nature of our basic governmental plan ....' " (*Raven v. Deukmejian, supra,* 52 Cal.3d at pp. 354–355, 276 Cal.Rptr. 326, 801 P.2d 1077, quoting *Amador Valley, supra,* 22 Cal.3d at p. 223, 149 Cal.Rptr. 239, 583 P.2d 1281.)

The term amendment has also been defined as used in article II, section 10, subdivision (d), which limits the Legislature's authority to amend or repeal an initiative statute. In *People v. Cooper* (2002) 27 Cal.4th 38, at page 44, 115 Cal.Rptr.2d 219, 37 P.3d 403, the court stated that an amendment is "a legislative act designed to change an existing initiative statute by adding or taking from it some *particular* provision." (Italics added.) Similarly, in ***810** *Franchise Tax Bd. v. Cory* (1978) 80 Cal.App.3d 772, 145 Cal.Rptr. 819, the court said "[a]n amendment is '... any change of the scope or effect of an existing statute, whether by addition, omission, or substitution of provisions, which does not wholly terminate its existence, whether by an act purporting to amend, repeal, revise, or supplement, or by an act independent and original in form, ...' " (*Id.* at p. 776, 145 Cal.Rptr. 819, quoting Sutherland, Statutory Construction (4th ed.1972) § 22.01, p. 105.)

2. The Law of Other States

We next turn to case law from other states interpreting similar provisions of their respective constitutions. (*People v. Batts* (2003) 30 Cal.4th 660, 687–688, 134 Cal.Rptr.2d 67, 68 P.3d 357 [we may consider the case law of sister states in light of the paucity of our own case law].)

At least 29 other states impose a separate vote requirement upon legislative constitutional amendments. (*Cambria v. Soaries* (2001) 169 N.J. 1, 14–15, 776 A.2d 754, 762.) [14] While there is a wide variance in the interpretation of the separate vote requirement (*Id.* at p. 14, 776 A.2d at p. 762), the courts generally recognize that these provisions share a primary goal, to avoid voter confusion and to prevent "log-rolling." As noted, log-rolling is the disfavored practice of joining two or more independent measures in a single proposal to entice voters who support one of the measures into voting for the entire measure in order to secure passage of the individual provision that is favored. (*Id.* at p. 18, 776 A.2d at p. 764.)

In *State ex rel. Clark v. State Canvassing Bd.* (N.M.1995) 119 N.M. 12, 15, 888 P.2d 458, 461, the New Mexico Supreme Court explained that log-rolling was considered inimical to the constitutional amendment process. " '[T]he particular vice in "logrolling," or the presentation of double propositions to the voters, lies in the fact that such is "inducive of fraud," and that it becomes "uncertain whether either [of] two or more propositions could have been carried by vote had they been submitted singly." [Citations.] Indeed, we recently reaffirmed that 'the joinder of two or more amendments is no mere irregularity, and that the constitutional prohibition against joinder goes to the heart of the amendment process mandated by the people in the adoption of their Constitution.' [Citation.]"

Similarly, the Arizona Supreme Court has noted that log-rolling actions, which are "evil in the Legislature, where they deal only with statutes, ... [are all the more] vicious when constitutional changes, far-reaching in their effect, are to be submitted to the voters." (*Kerby v. Luhrs* (1934) 44 Ariz. 208, 215, 36 P.2d 549, 552.) The court therefore concluded that constitutional amendments, which must be submitted separately, "must be construed to mean amendments which have different objects and purposes in view. In order to constitute more than one amendment, the propositions submitted must relate to ***811** more than one subject, and have at least two distinct and separate purposes not dependent upon or connected with each other....' " (*Id.* at p. 217, 36 P.2d at p. 553.) Similarly, in *Cambria v. Soaries, supra,* 169 N.J. at page 19, 776 A.2d at p. 765, the court held that the separate vote requirement is triggered by "two or more changes to the constitution unless they are closely related to one another."

More recently, in *Armatta v. Kitzhaber* (Or.1998) 327 Or. 250, 959 P.2d 49, the Oregon Supreme Court considered a post election challenge to an initiative measure, in which it undertook a comprehensive review and analysis of that state's similarly worded separate vote provision. [15] The court concluded the measure had been submitted to the voters and voted on without complying with the separate vote requirement and therefore held the measure invalid in its entirety. (*Id.* at p. 284, 959 P.2d at p. 68.) In so doing, the court stated that "as a textual matter, the separate-vote requirement ... focuses both upon the proposed change to the constitution, as well as the procedural form of submitted amendments." (*Id.* at p. 274, 959 P.2d at p. 62.) By contrast, the court found the single-subject requirement focuses on the content of the proposed amendments. The court concluded that because the separate vote requirement applies only to constitutional amendments, it "imposes a narrower requirement than does the single-subject requirement.... Indeed, because the separate-vote requirement is concerned only with a change to the fundamental law, the notion that the people should be able to vote separately upon each separate amendment should come as no surprise. In short, the requirement serves as a safeguard that is fundamental to the concept of a constitution." (*Id.* at p. 276, 959 P.2d at p. 63.)

Accordingly, "the proper inquiry is to determine whether, if adopted, the proposal would make two or more changes to the constitution that are substantive and that are not closely related." (*Armatta v. Kitzhaber, supra,* 327 Or. at p. 276, 959 P.2d at p. 63.) This formulation has been adopted by at least two other states. (See *Marshall v. State ex rel. Cooney* (Mont.1999) 293 Mont. 274, 282, 975 P.2d 325, 330–331; *Cambria v. Soaries, supra,* 169 N.J. at p. 19, 776 A.2d at p. 765.)

3. The Conclusion

The formulation set forth in *Armatta v. Kitzhaber, supra,* comports with the constitutional text, framework, historical development, and purpose of the separate vote requirement in section 1.

As noted, the history of section 1 shows the framers intended the separate vote requirement to apply to a particular constitutional change. The 1879 version of the provision set forth the procedures for proposing constitutional amendments and distinguished between an amendment and amendments. While it authorized the Legislature to propose multiple amendments, it required that if more than one amendment were submitted at the same time, "they shall be so prepared and distinguished, by numbers or otherwise, that each can be voted on separately." (Former art. XVIII, § 1 (1879).) The distinction between amendments and an amendment was carried through until 1970 when the text was abbreviated, but as discussed, without making a substantive change to the separate vote requirement.

***812** The separate vote requirement ensures that the voters may consider and vote for or against each substantive change to the fundamental law of California without compromise. To this end, the proposed changes must be substantively and functionally related. We therefore reject a test that is purely quantitative, one that treats each change to a constitutional provision as an amendment without regard to its substantive connection to the other proposed changes. This test is so strict that it would fragment a substantive change into its linguistic parts and fail to serve the purpose of the separate vote requirement.

Because the Legislature's authority to propose constitutional amendments is delegated and must be strictly construed (*Livermore v. Waite, supra,* 102 Cal. at p. 117, 36 P. 424), we also reject a purely formalistic or procedural test as suggested by real party. It would render the separate vote requirement a nullity by allowing the Legislature to submit multiple amendments of unrelated provisions to a single vote by the people. As such, it ignores the words of section 1, which requires a separate vote of the people for "each amendment", not "each proposal." It also ignores the history of the requirement, which dates to 1879, when the Legislature

did not yet have the authority to propose constitutional revisions by ballot measure submitted to the voters.

[15] Real party argues that this test has been used for years, citing numerous examples of propositions proposing unrelated substantive changes to more than one constitutional provision. However, we do not know that any of these examples violate section 1 for no cases have been brought to test them. "Cases are not authority ... for issues not raised and resolved." (*San Diego Gas & Electric Co. v. Superior Court* (1996) 13 Cal.4th 893, 943, 55 Cal.Rptr.2d 724, 920 P.2d 669.) Thus, the absence of any case challenging the propositions under the separate vote requirement is not authority for the principle that the practice comports with the separate vote requirement.

Nor does the single subject test alone serve to fully meet the separate vote requirement. Because section 1 does not include a single subject clause, we must assume the framers intended the separate vote requirement to have a different scope and application. The single subject requirement allows amendments to be made to two or more provisions that are germane to each other but need not be functionally related. (*Senate v. Jones, supra*, 21 Cal.4th at p. 1157, 90 Cal.Rptr.2d 810, 988 P.2d 1089.) It therefore fails to give meaning to the word "each," which precedes the word "amendment." Additionally, it fails to fully serve the purpose of the separate vote requirement because it would force voters to cast a single vote for the measure despite the fact a different vote might be cast if the amendments were submitted separately. While the separate vote requirement necessarily includes the notion of single subject as a component, it is a more stringent limitation, reflecting the seriousness of amending the Constitution by requiring an examination of the relationship between the parts of a proposed constitutional change.

As noted, the court in *Livermore v. Waite* described an amendment as "an addition or change within the lines of the original instrument as will effect an improvement, or better carry out the purpose for which it was framed." (102 Cal. at pp. 118–119, 36 P. 424.) This definition clearly requires consideration of the substance of the change in order to make this determination. Thus, contrary to real party's claim that the separate vote requirement is purely one of form rather than substance, we find it requires an inquiry into the ***813** substance or subject of the proposed change or changes.

We therefore conclude that the test for an amendment for purposes of the separate vote requirement, like the test for a revision, requires a quantitative and a qualitative analysis. The proposed changes must be substantive and functionally related to each other so that the proposed changes provide a coherent whole.

[16] The changes proposed by SCA 18 would make two additions to the Constitution that are substantive and not related at all. Accordingly, we hold that under section 1, the proposed changes constitute two amendments that must be prepared and submitted to the voters for separate votes.

III

The Remedy

[17] The remaining question is whether we must direct the Secretary of State to remove SCA 18 from the ballot or may direct the Secretary of State to prepare and submit the proposed amendments so that each amendment can be voted upon separately.

Petitioner contends the only remedy for ensuring compliance with the separate vote requirement is removal of SCA 18 from the ballot. Real party argues that we have no authority to remove SCA 18 from the ballot because section 4 of article XVIII mandates that a proposed amendment, amendments or revision be submitted to the voters. In the alternative, real party suggests that we could order SCA 18 be retitled "partial constitutional revision."

Neither party is correct. We have the authority in the appropriate case to issue a writ of mandate restraining the Secretary of State from certifying SCA 18 and causing it to be placed on the ballot. (Elec.Code, § 13314, subd. (a)(2); *Livermore v. Waite, supra*, 102 Cal. 113, 36 P. 424.) However, we need not invoke our authority to remove SCA 18 from the ballot because a more limited remedy will serve the purposes of the separate vote requirement, that "[e]ach amendment [be] submitted that it can be voted on separately."

We shall provide a remedy that gives meaning to section 1 (*Raven v. Deukmejian, supra*, 52 Cal.3d at pp. 350–353, 276 Cal.Rptr. 326, 801 P.2d 1077) [16] and harmonizes sections 1 and 4. (*City and County of San Francisco v. County of San Mateo* (1995) 10 Cal.4th 554, 571, 41 Cal.Rptr.2d 888, 896 P.2d 181 [we must harmonize two constitutional provisions of equal dignity].)

Petitioners contend SCA 18 must be removed from the ballot because the Legislature failed to comply with the two-thirds vote requirement set forth in the first sentence of section 1. However, as we showed in Part II, the two-thirds vote requirement is not a separate vote requirement and therefore the Legislature did not violate section 1 by proposing two constitutional amendments in one resolution. [17] Because ***814** the Legislature did not violate its internal procedures for proposing SCA 18 as a single resolution, there is no basis for holding it invalid as proposed. [18]

We therefore turn to the question whether we may direct the Secretary of State to prepare the amendments proposed by SCA 18 so that each amendment can be voted on separately. We again turn to the constitutional history.

Prior to 1970, section 1 vested the Legislature with the duty "to submit such proposed amendment, amendments ... to the people in such manner, and at such time, and after such publication as may be deemed expedient. Should more amendments than one be submitted at the same election they shall be so prepared and distinguished, by numbers or otherwise, that each can be voted on separately." (Former § 1, (1962) 3 Deerings Cal.Codes Annot., Const. Annot., *supra*, at pp. 723–724.)

[18] In keeping with our construction of section 1 as making no substantive change in the 1962 provisions, we read the term "submit" to mean a submission by the Legislature. While article II, section 8, subdivision (d) prohibits an "initiative measure embracing more than one subject ... [from being] submitted to the electors or hav[ing] any effect," section 4 of article XVIII mandates that a proposed amendment be submitted for a vote of the People. When read in light of and harmonized with section 1, these two provisions of article XVIII (§§ 1 and 4) require that constitutional amendments proposed by the Legislature be prepared and submitted by the Legislature to the voters in such a form that the separate vote requirement can be satisfied.

Although the Legislature has not submitted the two amendments in separate resolutions, it has prepared SCA 18 in such a way that we may discern its intent to do so. The title announces that it proposes two constitutional amendments and they are separately set out as separate sections of the resolution. That satisfies the Legislature's responsibility and permits the Secretary of State to perform the ministerial duty of placing the separate amendments on the ballot for a separate vote.

Nevertheless, at oral argument, counsel for real party argued that the Legislature passed SCA 18 as a single measure and intended that both amendments be submitted to the voters as a single measure, implying that the Legislature would not have passed the resolution had it known the two amendments would be submitted to the voters separately. Counsel therefore advised us that if the Legislature's argument is rejected, the remedy should be the removal of SCA 18 from the ballot. [19]

***815** We need not address the merits of this argument because the Legislature retains a remedy to forestall placement of SCA 18 on the ballot as a single measure under section 1, which authorizes the Legislature to amend or withdraw its proposal. "The Legislature by rollcall vote entered in the journal, two-thirds of the membership of each house concurring, may propose an amendment ... of the Constitution and in the same manner may amend or *withdraw its proposal.*" (§ 1, italics added.) This provision was added to section 1 in 1970 by Proposition 16. The analysis in the Ballot Pamphlet described the proposed addition as "authorizing the Legislature, by a two-thirds vote of the membership of each house, to amend or withdraw a constitutional amendment ... which the Legislature has proposed where the action is taken before the proposal has been voted on by the electorate." (Ballot Pamp., Gen. Elec. (Nov. 3, 1970) Proposed Amends. to Cal. Const., General Analysis by Legislative Counsel, pp. 27–28.) Thus, if the Legislature desires to remove SCA 18 from the ballot in lieu of the submission of separate amendments, it may do so by voting to withdraw either or both of the proposed amendments before they have been placed on the ballot.

In the absence of such a vote, section 4 mandates that the amendments proposed by SCA 18 be placed on the ballot and section 1 mandates that they be submitted so they can be voted on separately. As discussed above, the Legislature has prepared SCA 18 in such a way, by segregating the two amendments in sections, that we may direct that they be submitted separately to the voters. By statute, the duty of preparing the ballot pamphlets and assigning a number to each statewide measure to be voted upon falls to the Secretary of State. [20] We shall therefore direct the Secretary of State to prepare each amendment as a separate measure on the ballot so that each may be voted upon separately.

DISPOSITION

Let a peremptory writ of mandate issue directing respondent Kevin Shelley, Secretary ***816** of State, to prepare the ballot for the November 2, 2004, statewide general election, so that section 5 of article II and section 9 of article III, as proposed in SCA 18, will be submitted to the voters as separate measures to be voted on separately. Petitioners are awarded their costs in these proceedings. (Cal. Rules of Court, rule 56.4(a).) The alternative writ is discharged. In order to prevent the frustration of the relief granted, the decision of this court shall be final forthwith. (Cal. Rules of Court, rule 24(b)(3).)

I concur: SCOTLAND, P.J.

DAVIS, J., concurring and dissenting.

I subscribe to the reasoning of the majority opinion until it reaches the question of remedy. At that point, I must respectfully part company because I believe its resolution is an impermissible intrusion into constitutional prerogatives reserved for the legislative branch. It mistakenly treats the *legislatively conjoined* amendments as nothing more than a "to-do" list for the Secretary of State (Secretary), who then ticks off amendments one by one as he prepares ballot measures for each.

The majority effectively assigns full responsibility to the Secretary for ensuring compliance with the constitutional dictate that "[e]ach amendment shall be so prepared and submitted that it can be voted on separately." (Cal. Const., art. XVIII, § 1 (section 1).) It is true that historically the Legislature has designated the Governor, then later the Secretary, with the *ministerial* responsibilities involved in executing its directives to submit constitutional amendments to the electors for approval. (Elec.Code, § 9080 et seq.; see Stats. 1883, ch. XXIX.) But it transgresses the fundamental principles underlying our uniquely American concept of the "separation of powers" to suppose that an executive officer, either sua sponte or at the direction of the judiciary, can make *substantive* changes to the form of a legislative proposal in order to bring it into compliance with the separate-vote requirement.

The initiation of a constitutional amendment is a species of legislative enactment. (*People v. Curry* (1900) 130 Cal. 82, 89, 62 P. 516 [proposed amendment not within purview of proclamation for extraordinary session of Legislature].) Even without the separate-vote prescription of section 1, it would seem to be axiomatic that the separation of powers would preclude the Secretary, either sua sponte or at the command of the judiciary, from combining separately proposed constitutional amendments into a single ballot measure. This is no less true where the Legislature has erroneously combined unrelated amendments.

Kopp v. Fair Pol. Practices Com. (1995) 11 Cal.4th 607, 47 Cal.Rptr.2d 108, 905 P.2d 1248 (*Kopp*) carefully circumscribed the judicial power to alter legislative enactments for the purpose of making them comply with constitutional requirements (rather than invalidating them in toto). The touchstone is consistency with legislative intent. A court may hazard the interface between legislative and judicial powers *only* where it can conclude "with confidence" that an alteration effects "clearly articulated" legislative policy judgments *and* that the Legislature would prefer the altered form to invalidation. This remedy is unavailable where it would be inconsistent with legislative intent or where the intent is unascertainable. (*Id.* at pp. 615, 626, 643, 655–656, 660–661, 47 Cal.Rptr.2d 108, 905 P.2d 1248.)

In the present case, the Legislature's representative at oral argument unequivocally rejected the majority's proposed remedy, but this express intent goes unheeded. Even if we may properly ignore this ***817** post hoc declaration, the majority still runs afoul of *Kopp* 's strictures. The majority purports to infer legislative intent from the structure of the proposal, but this is equivocal: the title describes it as "A resolution to propose ... *an amendment* to the Constitution" (italics added) by the amendment of the two sections thereof; in the body, it then introduces the two amendments with a "First—" and a "Second—." (Sen. Const. Amend. No. 18, Stats. 2004 (2003–2004 Reg. Sess.) res. ch. 103.) This is hardly a clearly articulated intent allowing us to conclude with confidence that both amendments should have independent viability, and thus, under *Kopp,* we should not attempt to exercise the power to direct the Secretary to make this alteration.

What is true as a matter of separation of powers and the alteration of legislation is also true in the context of judicial review of the electorate's enactments. I have not found a preelection single-vote case that takes the majority's tack. To the extent (as the majority has discussed) that the *single-subject* rule protects similar interests, there has never been a case suggesting that the Secretary can engage in splitting an initiative and thus bypass the qualifying requirements; to

the contrary, "If the drafters ... wish to place such unrelated proposals before the voters, the constitutionally permissible means to do so is through the submission and qualification of separate initiative measures, rather than the 'take it or leave it' approach embodied in Proposition 24." (*Senate of the State of Cal. v. Jones* (1999) 21 Cal.4th 1142, 1168, 90 Cal.Rptr.2d 810, 988 P.2d 1089.) Nor may a court sever one provision and invalidate the rest, because severance is not an expressly available remedy for a violation of the single-subject rule. (*Ibid.*, citing *California Trial Lawyers Assn. v. Eu* (1988) 200 Cal.App.3d 351, 361–362, 245 Cal.Rptr. 916.) As section 1 also lacks any express provision for the preelection splitting or severing of improperly conjoined amendments, we should avoid inferring one.

I also do not find any support in authority undertaking the postelection review of a flawed electoral enactment, an analogous context in that a proposed amendment represents a "postelection" review of the outcome of a legislative vote. Particularly where fortified with the presence of a severability clause, a court will sustain the valid portion of an enactment only where it is grammatically severable, capable of independent application, *and the enacting body would have adopted it independently of the rest.* (*People's Advocate, Inc. v. Superior Court* (1986) 181 Cal.App.3d 316, 330–333, 226 Cal.Rptr. 640, cited with approval in *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 821–822, 258 Cal.Rptr. 161, 771 P.2d 1247.) Lacking omniscient clairvoyance, a court could not resolve the latter criterion when confronted with a violation of the single-vote rule (or the single-subject rule, for that matter).

The potential future repercussions of the majority's remedy are staggering. Not only does the majority disregard legislative intent, it countenances an evasion of the constitutional constraints on the exercise of the legislative power. (Cf. *MWAA v. CAAN* (1991) 501 U.S. 252, 274–277, 111 S.Ct. 2298, 115 L.Ed.2d 236; *INS v. Chadha* (1983) 462 U.S. 919, 948–951, 103 S.Ct. 2764, 77 L.Ed.2d 317.) Dividing the improperly conjoined amendments achieves what some proponents could not otherwise. The narrow vote tallies in the two legislative chambers indicate that placement of the amendments as individual proposals on the ballot does not command the votes of 54 assembly members and 27 senators. The majority's remedy therefore furthers possible logrolling rather than imposes a sanction against it. In future cases, the majority's remedy would allow a faction of ***818** those voting for a conjoined set of amendments to accomplish with stealth what could not be secured through the legislative process; namely the separate enactment of an amendment. Those members and their allies could do so by later persuading the Secretary or the judiciary to extract their favored amendment for individual consideration. This pragmatic remedy should not be invoked in the context of the fundamental organic law of the state, where the Legislature must comply strictly with the procedure for amendment. (*Livermore v. Waite* (1894) 102 Cal. 113, 117–118, 36 P. 424.)

Article XVIII itself provides the proper remedy: the *Legislature* "in the same manner may amend or withdraw its proposal." (§ 1.) Upon learning from our opinion that it cannot propose "partial revisions," the *Legislature* can expeditiously vote to amend its proposal into two separate ballot measures *if that is the desire of two-thirds of its membership.* Ironically, the majority's remedy has stood this constitutionally prescribed process on its head. By judicial fiat, the majority has supplanted the legislative prerogative of deciding whether to withdraw or amend *its* proposal. This court has made that choice for the Legislature by deciding that one or both of these two amendments can be enacted by the voters regardless of the fate of the other. It will require a two-thirds vote of each house of the Legislature to undo this court's well-intentioned but wrongheaded foray into legislative decisionmaking. Instead of voting on whether to withdraw *its own* proposal, the Legislature must garner a two-thirds vote to withdraw *this court's* proposal. This may very well be a politically unrealistic task for the reasons I have previously alluded to.

I therefore do not believe it is proper to infer from section 1 the remarkable delegation of legislative authority to the Secretary, or to assume this power ourselves. What the Legislature hath joined, let no one put asunder.

Parallel Citations

, 04 Cal. Daily Op. Serv. 6963, 2004 Daily Journal D.A.R. 9425

Footnotes

1 Petitioners invoke our original jurisdiction to consider their petition for writ of mandamus challenging the constitutionality of a statewide ballot measure. (Cal. Const., art. VI, § 10; Code Civ. Proc., § 1085; Elec.Code, § 13314; Cal. Rules of Court, rule 56(a).) We issued an alternative writ.

2 Proposed subdivision (b) of article II, section 5 states: "A political party that participated in a primary election for a partisan office has the right to participate in the general election for that office and shall not be denied the ability to place on the general election ballot the candidate who received, at the primary election, the highest vote among that party's candidates."

3 Proposed section 9 of article III states: "The proceeds from the sale of surplus state property occurring on or after the effective date of this section, and any proceeds from the previous sale of surplus state property that have not been expended or encumbered as of that date, shall be used to pay the principal and interest on bonds issued pursuant to the Economic Recovery Bond Act authorized at the March 2, 2004, statewide primary election. Once the principal and interest on those bonds are fully paid, the proceeds from the sale of surplus state property shall be deposited into the Special Fund for Economic Uncertainties, or any successor fund. For purposes of this section, surplus state property does not include property purchased with revenues described in Article XIX or any other special fund moneys."

4 A reference to a section isto a section of article XVIII of the California Constitution unless otherwise designated.

5 Section1 provided in pertinent part: "Any amendment or amendments to this Constitution may be proposed in the Senate or Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two Houses, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and referred to the Legislature then next to be chosen, and shall be published for three months next preceding the time of making such choice. And if in the Legislature next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each House, then *it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people, in such manner and at such time as the Legislature shall prescribe;* and if the people shall approve and ratify such amendment or amendments, by a majority of the electors qualified to vote for members of the Legislature voting thereon, such amendment or amendments shall become part of the Constitution." (3 Deering's Cal.Codes Annot., Constitutional Annotations (1849–1973) (1974) appen. 1, art. X, § 1 (1849) pp. 723–724.)

6 Former article XVIII, section 1, provided in full: "Any amendment or amendments to this Constitution may be proposed in the Senate or Assembly, and if two-thirds of all the members elected to each of the two houses shall vote in favor thereof, such proposed amendment or amendments shall be entered in their journals, with the yeas and nays taken thereon; and it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people in such manner, and at such time, and after such publication as may be deemed expedient. *Should more amendments than one be submitted at the same election they shall be so prepared and distinguished, by numbers or otherwise, that each can be voted on separately.* If the people shall approve and ratify such amendment or amendments, or any of them, by a majority of the qualified electors voting thereon such amendment or amendments shall become part of this Constitution. (Const. of State of California Annot. (1946) art. XVIII, § 1 (1879), p. 1291, italics added.)

7 Former article XVIII, section 1 provided in full: "Any amendment or amendments to, or revision of, this Constitution may be proposed in the Senate or Assembly, and if two-thirds of all the members elected to each of the two houses shall vote in favor thereof, such proposed amendment, amendments, or revision shall be entered in their Journals, with the yeas and nays taken thereon; and it shall be the duty of the Legislature to submit such proposed amendment, amendments, or revision to the people in such manner, and at such time, and after such publication as may be deemed expedient. *Should more amendments than one be submitted at the same election they shall be so prepared and distinguished, by numbers or otherwise, that each can be voted on separately.* If the people shall approve and ratify such amendment or amendments, or any of them, or such revision, by a majority of the qualified electors voting thereon such amendment or amendments shall become a part of this Constitution, and such revision shall be the Constitution of the State of California or shall become a part of the Constitution if the measure revises only a part of the Constitution." (Art. XVIII, § 1 (1962), italics added.)

8 It appears in its present form as a replacement of unrelated matter in Assembly Constitutional Amendment No. 67 (1970 Reg. Sess.) as amended in Assembly June 16, 1970.

9 We quote the Legislative Counsel's analysis in the ballot pamphlet in full:

"This measure would revise portions of Articles IV and XVIII of the California Constitution. The revision would retain some existing provisions without change and would restate other provisions, some with and some without substantive change. In addition, certain existing provisions would be deleted from the Constitution, thus placing the subject matter of the deleted provisions from then on under legislative control through the enactment of statutes.

Amending and Revising the Constitution and Initiative and Referendum Measures

Generally, Sections 22 and 24 of Article IV and Article XVIII of the Constitution now provide:

(1) Constitutional amendments may be proposed for submission to the voters (a) by the Legislature and (b) by electors through the initiative process. Revision of the Constitution may be proposed by the Legislature.

(2) If provisions of two or more amendments proposed by initiative or referendum measures approved at the same election conflict, the provisions of the measure receiving the highest affirmative vote prevail. There is no such express provision regarding amendments proposed by the Legislature.

(3) The Legislature by two-thirds vote may submit to the voters the proposition as to whether to call a convention to revise the Constitution. If the proposition is approved by a majority of those voting on it, the Legislature at its next session must provide by law for the calling of a convention consisting of delegates (not to exceed the number of legislators) who are to be chosen in the same manner and to have the same qualifications as legislators. Delegates are required to meet within three months of their election.

The revision would retain the general substance of these provisions with the following major changes:

(1) A new provision would be added specifically authorizing the Legislature, by a two-thirds vote of the membership of each house, to amend or withdraw a constitutional amendment or revision which the Legislature has proposed where the action is taken before the proposal has been voted on by the electorate.

(2) (a) The general requirement that the Legislature provide for the constitutional convention at the session following the voters' approval of the proposition authorizing the convention would be replaced with a requirement that the Legislature provide for the convention within six months after the voters' approval.

(b) The existing constitutional limitations on the number of elected delegates to a constitutional convention and the requirement that they have the same qualifications and be chosen in the same manner as legislators would be deleted. A requirement would be added that the delegates, each of whom must be a voter, be elected from districts as nearly equal in population as may be practicable.

(c) The existing constitutional requirement that the delegates meet within three months after their election would be deleted.

(3) A provision would be added that if two or more measures amending or revising the Constitution are approved by the voters at the same election and they conflict, the provisions of the measure receiving the highest affirmative vote shall prevail. Thus, no distinction would be made in the Constitution between amendments proposed by the Legislature and by initiative measures.

(4) Provisions prescribing detailed procedures for submitting to the voters, revisions proposed by the constitutional convention and for certifying the results of the election, would be deleted." (*Ibid.*)

10 The dissent mistakenly claims that we have suggested the Legislature "cannot propose 'partial revisions.' " (Dis. opn. at p. 818.) We have made no such assertion.

11 Although *Amador Valley* and *Raven v. Deukmejian* concern initiatives and distinguish between a "revision" and an "amendment" because the initiative process does not apply to a revision (art. II, § 8, subd. (a)), it cannot be supposed that a difference in meaning would turn on the genesis of the constitutional proposal.

12 Currently, the proceeds from a state agency's sale of surplus state personal property is remitted to the fund from which that agency receives the majority of its support appropriation. (Gov.Code, § 14674, subds. (b) & (d).) The funds are used to augment its support appropriation. If the surplus property is sold by the Department of General Services, the proceeds are deposited in the General Fund.

13 The measure considered by the court in *Tinsley v. Superior Court, supra,* was an initiative measure, although, constitutional amendments adopted by initiative are not subject to the separate vote requirement of section 1. (*Wright v. Jordan, supra,* 192 Cal. at pp. 710–712, 221 P. 915; *Epperson v. Jordan* (1938) 12 Cal.2d 61, 68–69, 82 P.2d 445.)

14 Ariz. Const., art. XXI, § 1; Ark. Const., art. XIX, § 22; Colo. Const., art. XIX, § 2; Ga. Const., art. X, § 1, P 2; Haw. Const., art. XVII, § 3; Idaho Const., art. XX, § 2; Ind. Const., art. XVI, § 2; Iowa Const., art. X, § 2; Kan. Const., art. XIV, § 1; Ky. Const., § 256; La. Const., art. XIII, § 1; Md. Const., art. XIV, § 1; Minn. Const., art. IX, § 1; Miss. Const., art. XV, § 273; Mo. Const., art. XII, § 2(b); Mont. Const., art. XIV, § 11; Neb. Const., art. XVI, § 1; N.J. Const., art. IX, P 5; N.M. Const., art. XIX, § 1; Ohio Const., art. XVI, § 1; Okla. Const., art. XXIV, § 1; Or. Const., art. XVII, § 1; Pa. Const., art. XI, § 1; Tenn. Const., art. XI, § 3; Wash. Const., art. XXIII, § 1; W. Va. Const., art. XIV, § 2; Wis. Const., art. XII, § 1; and Wyo. Const., art. XX, § 2.

15 The Oregon separate vote provision provides in pertinent part:

"When two or more amendments shall be submitted ... to the voters of this state at the same election, they shall be so submitted that *each amendment shall be voted on separately*." (Or. Const., art. XVII, § 1, italics added.)

16 As discussed, a change does not become a revision merely by classifying it as such, and we have previously concluded that neither change proposed by SCA 18 constitutes a revision.

17 Petitioners assume the unit of separation is the resolution and consequently each resolution must contain a single amendment. For reasons set forth above, that is not the case. The Legislature may do so in that manner, but as shown by the 1879 and 1962 versions of article XVIII, it also may separate the multiple amendments by "numbers or otherwise" *within* a resolution. We need not canvass the various means of separation so long as the Legislature has prepared the amendments in such a fashion that the separation can be adduced. In this case that has been done by the form in which SCA 18 has separated its two proposed amendments in different sections of the resolution.

18 Although the separate vote requirement in *Armatta v. Kitzhaber, supra,* 327 Or. 250, 959 P.2d 49, is virtually identical to the separate requirement of section 1 of article XVIII, the procedural posture of *Armatta* was quite different from the present case in that it

involved a post election challenge to the measure. In that posture it was not possible to separate the different amendments because the vote was on the collective measures.

19 Relying on *Kopp v. Fair Pol. Practices Com.* (1995) 11 Cal.4th 607, 47 Cal.Rptr.2d 108, 905 P.2d 1248, the dissent argues that by directing the Secretary of State to separate the two proposed amendments for submission to the voters, we have overstepped our judicial authority by making a *substantive* change to the form of the legislative proposal. The dissent is mistaken in its reliance on *Kopp* and in its assumption that we have made any substantive change to SCA 18.

Kopp involved Proposition 73, which made several changes to the Government Code relating to campaign finance reform. One of the provisions restricted the amount of money a person or specified group could contribute per fiscal year. The federal court had previously held that provision violated the Federal Constitution. (11 Cal.4th at p. 614, 47 Cal.Rptr.2d 108, 905 P.2d 1248.) The issue framed by the court was, "*may*, and if so, *should*, the statutes be *judicially reformed* in a manner that avoids the fiscal year measure?" (*Ibid.*) The court began by rejecting "the view that a court lacks authority to rewrite a statute in order to preserve its constitutionality or that the separation of powers doctrine ... invariably precludes such judicial rewriting." (*Id.* at p. 615, 47 Cal.Rptr.2d 108, 905 P.2d 1248.) It then set forth and applied the two-pronged test that "a court may reform a statute to satisfy constitutional requirements if it can conclude with confidence that (i) it is possible to reform the statute in a manner that closely effectuates policy judgments clearly articulated by the enacting body, and (ii) the enacting body would have preferred such a reformed version of the statute to invalidation of the statute." (*Ibid.*)

Because SCA 18 is not a statute, the Legislature is not the enacting body, and we have not *reformed* the text of the proposed amendments or otherwise made any substantive changes to them, the test applied in *Kopp* does not assist us in determining the appropriate remedy. Moreover, as previously discussed, there is no constitutional basis to invalidate SCA 18 as proposed or to direct that it be removed from the ballot. By contrast, the remedy we provide is required under the express terms of article XVIII.

20 A proposed constitutional amendment "submitted to a popular vote" is defined as a measure. (Elec.Code, § 329.) The ballot pamphlet must contain each measure identified by number and title (Elec.Code, §§ 9040, 9053, 9086, 13116, subd. (a), 13117) and the duty of preparing the ballot pamphlets and causing them to be printed is vested in the Secretary of State. (Elec.Code, §§ 9081, 9082.) It is the duty of the Secretary of State to assign separate numbers to the ballot measures.