

8/15/72

Second Supplement to Memorandum 72-54

Subject: Annual Report (Unconstitutional Statutes)

Attached are two copies of a draft of the report on statutes repealed by implication or held unconstitutional. Please make your editorial revisions on one copy and return it to the staff at the September meeting.

Respectfully submitted,

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Legal Assistant

REPORT ON STATUTES REPEALED BY IMPLICATION  
OR HELD UNCONSTITUTIONAL

Section 10331 of the Government Code provides:

The Commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the State or the Supreme Court of the United States.

Pursuant to this directive the Commission has made a study of the decisions of the Supreme Court of the United States and of the Supreme Court of California handed down since the Commission's last Annual Report was prepared.<sup>1</sup> It has the following to report:

(1) No decision of the Supreme Court of the United States or of the Supreme Court of California holding a statute of this state repealed by implication has been found.

(2) No decision of the Supreme Court of the United States holding a statute of this state unconstitutional has been found.

(3) Eight decisions of the Supreme Court of California holding statutes of this state unconstitutional have been found.

Burrey v. Embarcadero Mun. Improvement Dist.<sup>2</sup> held that Sections 20 and 64 of the Embarcadero Municipal Improvement District Act<sup>3</sup>, limiting the right to vote on district affairs to the district's landowners and basing voting strength on assessed valuation, violated the one person, one vote rule of the equal protection clause of the Fourteenth Amendment of the United States Constitution.<sup>4</sup>

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1. This study has been carried through 406 U.S. \_\_\_\_, 92 S. Ct. 2845 (June 29, 1972) and 7 Cal.3d 487 (July 11, 1972).
  2. 5 Cal.3d 671, 488 P.2d 395, 97 Cal. Rptr. 203 (1971).
  3. Cal. Stats. 1961, First Ex. Sess. 1960, Ch. 81, p. 441.
  4. Cal. Stats. 1972, Ch. 95, amended Sections 20 and 64 to conform with the one person, one vote rule.

Hayes v. Superior Court<sup>5</sup> held that the procedure provided in Penal Code Section 1203.2a, whereby a criminal defendant who has been granted probation without imposition of sentence might obtain final disposition of the case upon subsequent imprisonment for another offense, was unconstitutionally limited to persons imprisoned "in this State" in violation of the equal protection clauses of the California and United States Constitutions.

Villa v. Hall<sup>6</sup> held that, to the extent that Welfare and Institutions Code Section 11450 required income of recipients of Aid to Families With Dependent Children to be deducted from statutory maximums and not from standards of need, it was inconsistent with the federal Social Security Act of 1935, and therefore violated the supremacy clause of Article VI, Section 2 of the United States Constitution. The United States Supreme Court vacated the judgment in this case and remanded it to the California Supreme Court for further consideration<sup>7</sup> in light of Jefferson v. Hackney.<sup>8</sup>

People v. Anderson<sup>9</sup> held that capital punishment is both cruel and unusual and therefore violates the prohibition against cruel or unusual punishments in Article I, Section 6, of the California Constitution.<sup>10</sup> Insofar as Penal Code Sections 190 and 190.1 (punishment and procedure for murder and other serious crimes) purported to authorize capital punishment, they were held unconstitutional.<sup>11</sup>

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5. 6 Cal.3d 216, 490 P.2d 1137, 98 Cal. Rptr. 449 (1971).

6. 6 Cal.3d 227, 490 P.2d 1148, 98 Cal. Rptr. 460 (1971), judgment vacated \_\_\_ U.S. \_\_\_ (1972).

7. Hall v. Villa, 406 U.S. \_\_\_, 92 S. Ct. 2407 (1972).

8. 406 U.S. \_\_\_, 92 S. Ct. 1724 (1972).

9. 6 Cal.3d 628, 493 P.2d 880, 100 Cal. Rptr. 152 (1972), cert. den. \_\_\_ U.S. \_\_\_, 92 S. Ct. 2060 (1972).

10. A proposed amendment to Article I, Section 6, has qualified for the November 1972 ballot.

11. The Court noted that the death penalty is authorized for eight crimes. (See Penal Code §§ 37, 128, 190, 209, 219, 4500, and 12310 and Mil. & Vet. Code § 1672(a).) Numerous other statutory and constitutional provisions refer to capital punishment.

McDermott v. Superior Court<sup>12</sup> held that, as applied to bail, Penal Code Section 13521, providing for a 25 percent penalty assessment on certain fines, penalties, and forfeitures, violates the excessive bail prohibitions of Article I, Section 6, of the California Constitution and the Eighth Amendment of the United States Constitution.

Young v. Gness<sup>13</sup> held that, under the equal protection clause of the Fourteenth Amendment of the United States Constitution, no durational residence requirement for voter registration in excess of 30 days may be imposed, and general voter registration must remain open at all times except during the 29 days immediately preceding an election. Provisions that violated these standards included Article II, Section 1 of the California Constitution (prescribing a 90-day county and 54-day precinct voter residence period),<sup>14</sup> Elections Code Section 203 (requiring registration closure 53 days preceding an election),<sup>15</sup> and to the extent that they could not be complied with under the 30-day rule, several sections of the Elections Code (imposing various pre-election duties on county clerks).<sup>16</sup>

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12. 6 Cal.3d 693, 493 P.2d 1161, 100 Cal. Rptr. 297 (1972).

13. 7 Cal.3d 18, 496 P.2d 445, 101 Cal. Rptr. 533 (1972).

14. A proposed amendment to Article II, Section 1, has qualified for the November 1972 ballot. See Cal. Stats. 1972, Res. Ch. 98.

15. Cal. Stats. 1972, Ch. \_\_\_, S.B. 840 (effective 1972) amended Elections Code Section 203 to require registration closure 29 days immediately preceding an election.

16. Statutes invalidated by the Court include Elections Code Sections 455, 456.5, 456.6, 459, 3573, 6460, 10009, 10012, and 10012.5. Cal. Stats. 1972, Ch. \_\_\_, S.B. 840 (effective 1972) and Cal. Stats. 1972, Ch. \_\_\_, A.B. 1699 (effective 1972) amended some of these sections to conform with the 30-day rule.

People v. Navarro<sup>17</sup> declared that Welfare and Institutions Code Sections 3050 and 3051 violated the separation of powers doctrine of Section 1 of Article VI of the California Constitution and the requirement of Article III of the California Constitution that the judicial power be vested in the judiciary to the extent that those provisions required the district attorney's concurrence in a judicial order committing for treatment a narcotics addict who would otherwise not qualify for such treatment because of his conviction of certain crimes specified in Section 3052.

Raffaelli v. Committee of Bar Examiners<sup>18</sup> held that subdivision (a) of Business and Professions Code Section 6060 which required applicants for admission to the bar to be citizens of the United States, violated the equal protection clauses of the California and United States Constitutions.<sup>19</sup>

The Commission also notes the following case:

Love v. Keayes<sup>20</sup> approved in dictum that portion of Gray v. Whitmore<sup>21</sup> holding certain aspects of Code of Civil Procedure Section 1174<sup>22</sup> to violate the due process and equal protection clauses of the California and United States Constitutions.

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17. 7 Cal.3d 248, 497 P.2d 481, 102 Cal. Rptr. 137 (1972).

18. 7 Cal.3d 288, 496 P.2d 1264, 101 Cal. Rptr. 896 (1972).

19. Cal. Stats. 1972, Ch. , A.B. 1986 amended Section 6060(a) to delete the United States citizenship requirement.

20. 6 Cal.3d 339, 491 P.2d 395, 98 Cal. Rptr. 811 (1971).

21. 17 Cal. App.3d 1, 94 Cal. Rptr. 904 (1971).

22. The provisions of Section 1174 struck down in Gray v. Whitmore required an evicted tenant to satisfy a money judgment entered in favor of the landlord in an unlawful detainer proceeding in order to redeem his personal property in the landlord's possession, and allowed the landlord to apply the proceeds from any sale of the property in payment of the landlord's judgment.