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SENATE BILL NO. 435

Offered January 22, 1996

A BILL to provide for the submission to the voters of a proposed amendment to Section 1 of Article VI of the Constitution of Virginia, relating to judicial power; jurisdiction; Commonwealth's right of appeal.

Patrons—Stolle, Barry, Benedetti, Edwards, Goode, Miller, K.G., Norment, Quayle, Saslaw, Stosch and Williams

Referred to the Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1.

§ 1. It shall be the duty of the officers conducting the election directed by law to be held on the Tuesday after the first Monday in November 1996, at the places appointed for holding the same, to open a poll and take the sense of the qualified voters upon the ratification or rejection of the proposed amendment to the Constitution of Virginia, contained herein and in the joint resolution proposing such amendment, to wit:

Amend Section 1 of Article VI of the Constitution of Virginia as follows:

ARTICLE VI**JUDICIARY Section 1. Judicial power; jurisdiction.**

The judicial power of the Commonwealth shall be vested in a Supreme Court and in such other courts of original or appellate jurisdiction subordinate to the Supreme Court as the General Assembly may from time to time establish. Trial courts of general jurisdiction, appellate courts, and such other courts as shall be so designated by the General Assembly shall be known as courts of record.

The Supreme Court shall, by virtue of this Constitution, have original jurisdiction in cases of habeas corpus, mandamus, and prohibition, in matters of judicial censure, retirement, and removal under Section 10 of this article, and to answer questions of state law certified by a court of the United States or the highest appellate court of any other state. All other jurisdiction of the Supreme Court shall be appellate. Subject to such reasonable rules as may be prescribed as to the course of appeals and other procedural matters, the Supreme Court shall, by virtue of this Constitution, have appellate jurisdiction in cases involving the constitutionality of a law under this Constitution or the Constitution of the United States and in cases involving the life or liberty of any person.

No appeal shall be allowed to the Commonwealth in a case involving the life or liberty of a person, except that an appeal by the Commonwealth may be allowed in any case involving the violation of a law relating to the State revenue. The General Assembly may also allow the Commonwealth a right of appeal in felony cases, before a jury is impaneled and sworn if tried by jury or, in cases tried without a jury, before the court begins to hear or receive evidence or the first witness is sworn, whichever occurs first, from (1) an order of a circuit court dismissing a warrant, information or indictment or any count or charge thereof on the grounds that a statute upon which it was based is unconstitutional and (2) an order of a circuit court proscribing the use of certain evidence at trial on the grounds such evidence was obtained in violation of the provisions of the Fourth, Fifth or Sixth Amendments to the Constitution of the United States or Article I, Sections 8, 10 or 11 of this Constitution proscribing illegal searches and seizures and protecting rights against self-incrimination, provided the Commonwealth certifies the evidence is essential to the prosecution.

The General Assembly may allow the Commonwealth the right to appeal in all cases, including those involving the life or liberty of a person, provided such appeal would not otherwise violate this Constitution or the Constitution of the United States.

Subject to the foregoing limitations, the General Assembly shall have the power to determine the original and appellate jurisdiction of the courts of the Commonwealth.

§ 2. The ballot shall contain the following question:

"Question: Shall the Constitution of Virginia be amended to authorize the General Assembly to allow the Commonwealth the right of an appeal in all cases, including criminal cases, provided that the appeal would not violate the Virginia or United States Constitutions?"

The ballots shall be prepared, distributed and voted, and the results of the election shall be ascertained and certified, in the manner prescribed by § 24.2-684 of the Code of Virginia. The State Board of Elections shall comply with § 30-19.9 of the Code and shall cause to be sent to the electoral boards of each county and city sufficient copies of the full text of the amendment and question contained herein for the officers of election to post in each polling place on election day.

INTRODUCED

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60 The electoral board of each county and city shall make out, certify and forward an abstract of the
61 votes cast for and against such proposed amendment in the manner now prescribed by law in relation to
62 votes cast in general elections.

63 The State Board of Elections shall open and canvass such abstracts and examine and report the
64 whole number of votes cast at the election for and against such amendment in the manner now
65 prescribed by law in relation to votes cast in general elections. The State Board of Elections shall record
66 a certified copy of such report in its office, and without delay make out and transmit to the Governor an
67 official copy of such report, certified by it. The Governor shall, without delay, make proclamation of the
68 result, stating therein the aggregate vote for and against the amendment.

69 If a majority of those voting vote in favor of the amendment, it shall become effective on January 1,
70 1997.

71 The expenses incurred in conducting this election shall be defrayed as in the case of election of
72 members of the General Assembly.