BILL ANALYSIS

Senate Research Center   S.J.R. 6
85R837 CAE-F   By: Zaffirini
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In much the way that a court may not enter judgment against a private party who has not received notice of the litigation, it has long been the case at the federal level that the government should be notified before one of its popularly enacted measures is consigned to the dustbin on constitutional grounds. Accordingly, more than 80 years ago the federal judicial code—a code which dates to 1789, when the U.S. Constitution was ratified—was amended to require that, in a case challenging the constitutionality of a federal statute, the U.S. Attorney General must be given notice and an opportunity to defend the challenged law. That notice provision remains on the books to this day, and there exists no serious controversy among practitioners or constitutional scholars concerning its validity.

In 2011, the Texas Legislature passed its own version of the notice provision. Similar to the federal law, the Texas statute provides that in an action in which a party challenges the constitutionality of a Texas statute, the Texas Attorney General (AG) is required to be notified and given 45 days to intervene. In a decision handed down in 2014, however, the Court of Criminal Appeals found both the notice and 45-day provision unconstitutional. This decision means that Texas legislative enactments may be struck down without the state—arguably the one party with a direct interest in the statutes' validity—having a chance to defend them. S.J.R. 6 remedies this situation by proposing a constitutional amendment to make clear that Texas' AG-notice provision is constitutional.

S.J.R. 6 proposes a constitutional amendment to authorize the legislature to require a court to provide notice to the attorney general of a challenge to the constitutionality of a state statute and authorizes the legislature to prescribe a waiting period before the court may enter a judgment holding the statute unconstitutional.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article V, Texas Constitution, by adding Section 32, as follows:

> Sec. 32. Authorizes the legislature, notwithstanding Section 1 (Division of Powers; Three Separate Departments; Exercise of Power Properly Attached to Other Departments), Article II (Powers of Government), to require a court to provide notice to the Texas attorney general (attorney general) of a challenge to the constitutionality of a statute of this state and prescribe a reasonable period after the provision of that notice during which the court is prohibited from entering a judgment holding the statute unconstitutional.

SECTION 2. Amends the Texas Constitution, by adding a temporary provision, as follows:

> TEMPORARY PROVISION. (a) Provides that this temporary provision applies to the constitutional amendment proposed by the 85th Legislature, Regular Session, 2017, authorizes the legislature to require a court to provide notice to the attorney general of a challenge to the constitutionality of a state statute, and authorizes the legislature to

prescribe a waiting period before the court may enter a judgment holding the statute unconstitutional.

(b) Provides that Section 402.010 (Legal Challenges to Constitutionality of State Statutes), as added by Chapter 808 (H.B. 2425), 82nd Legislature, Regular Session, 2011, and amended by Chapter 1162 (S.B. 392) and Chapter 1276 (H.B. 1435), 83rd Legislature, Regular Session, 2013, is validated and effective on approval of the constitutional amendment described by Subsection (a) of this temporary provision and applies only to a petition, motion, or other pleading filed on or after January 1, 2018.

(c) Provides that this temporary provision expires January 1, 2020.

SECTION 3. Requires that this proposed constitutional amendment be submitted to the voters at an election to be held on November 7, 2017. Sets forth the required language for the ballot.