

Hi, this is Chris Micheli, with the Sacramento governmental relations firm of Aprea & Micheli and also an adjunct professor at McGeorge School of Law in its Capital Lawyering program. Today's topic is a quick look at direct democracy in the state of California, that is, the initiative and referendum processes here in California.

You know it was just over a century ago that the initiative process was proposed by the Progressive Party, the labor movement. It was developed as a means to counter the all-powerful Southern Pacific Railroad and other special interests. You might have read or heard that in the early 1900's, California voters followed our Governor, Hiram Johnson of the Progressive Party. And at that time, California became the 10th state to enact direct democracy procedures - the initiative, the referendum, and the recall.

Now, the initiative process is where the electorate proposes either constitutional amendments or statutory changes by initiative. The referendum process is where the electorate challenges and tries to overturn a statute that's been enacted by the Legislature and signed into law by the Governor. And the recall process is that used by the electorate to recall somebody from office.

Today we're just going to talk briefly about the initiative and referendum processes. They are there for the people when the people believe that their elected representatives, be the Governor or members of the Legislature, are either unwilling or unable to adopt laws. And so, in essence, the initiative is its own method of lawmaking. It of course requires a vote of the people, rather than a vote of the Legislature, but nonetheless, the voters - the people - can adopt both constitutional amendments as well as statutes. So, initiatives can be statutory initiatives or they can be constitutional initiatives.

To qualify them, first they have to be drafted, then they are given Title and Summary by the Attorney General, and then a sufficient number of signatures have to be obtained, valid signatures of course. And then it's placed on the next statewide ballot, but only the General Election, held every two years in November. Up until just a few short years ago, we had initiatives on either the June Primary or February or March, when it was moved earlier in Presidential years, or at the November General Election. But due to a statutory change, now initiatives can only be placed on the November ballot.

How many signatures do you need to qualify? Well those statutory initiatives I mentioned have to receive signatures of voters equal to 5% of the votes cast for all candidates for Governor at the last gubernatorial election. On the other hand, constitutional amendment initiatives have to receive signatures - valid signatures - equal to 8% of the number of votes cast for all candidates for Governor at the last gubernatorial election. So because California has had relatively turnout in the last gubernatorial elections, it's actually been a far smaller number needed to qualify measures to the ballot. One of the reasons why we had so many measures on the 2016 ballot. Now generally proponents have about 180 days to collect the required number of signatures, so it's not like they can take forever to do it.

With the referendum, again, the people have the power to approve or reject - usually in an effort to reject - statutes in whole or in part. Now there are a few exceptions to be aware of. They are: urgency statutes, statutes calling elections, statutes providing for tax levies, and statutes making appropriations for the usual and current expenses of the State of California. By way of the Constitution, those statutes enacted by the Legislature that fall into one of those four categories cannot be subject to a referendum which is why sometimes controversial bills, they include an urgency clause and that urgency clause - assuming it's adopted by two-thirds of both houses of the Legislature - is then precluded from being subject to a referendum.

Now a referendum, as opposed to those two types of initiatives are subject to signatures of 5% of the votes cast for all candidates for Governor at the last gubernatorial election. But here's an important distinction. Remember, with initiatives, proponents have 180 days to collect the required number of signatures. On the other hand, proponents of a referendum have only 90 days from the date of enactment of the legislation. And that date of enactment is the day that the Governor signs the bill and it is chaptered by the Secretary of State.

Now, in recent years, unfortunately, initiatives have been utilized more often by special interest groups and wealthy individuals who end up funding multi-million dollar campaigns in an effort to change the law - sometimes in a rather self-serving manner. And who knows if in all instances those efforts promote good public policy? But so too has the referendum process been successfully used by special interest groups.

For example, there were efforts on the November 2014 General Election ballot to overturn two gaming compacts. And those were successfully overturned. There was also an effort to overturn the statewide plastic bag ban. That was unsuccessful. But you can see how in some instances, special interests place these referendum measures on the ballot to overturn bills that they unsuccessfully fought in the California State Legislature.

Now, why has the use of these initiatives grown? Well, I think first, public opinion polls seem to keep indicating a continual decline in the confidence that the electorate has in both its elected officials and the political institutions of the state. For example, there have been surveys conducted and published by PPIC - the Public Policy Institute of California - where often times the public opines that they think they do a better job via the initiative process than the Legislature does utilizing the normal legislative process.

Another factor is, is that when an issue is very controversial or complex, sometimes the Legislature and Governor have been unable or even unwilling to act and so sometimes groups feel that there's no alternative but to go to direct democracy and pursue a change in the law or a new law through the initiative process.

Another factor is that there's been a significant increase in special interest groups sponsoring these measures for their own benefit. And as a result of that, in the state of California, we have created a truly professionalized petition industry. A little cottage

industry wherein groups utilize professional signature gatherers and other professionals to write ballot measures, to influence the Title and Summary of those ballot measures, pay individuals to gather the signatures rather than it is a grassroots effort, etc.

And then, lastly, we've also seen an increase in the use of initiatives because of an ever growing use of counter-initiatives. In other words, one group puts an initiative on the ballot and another competing group puts an initiative on the same ballot to either undermine or overturn the other competing ballot measure.

As you can well imagine, the costs of pursuing these ballot measures has grown astronomically. When it costs upwards of three, four, even half a dozen dollars per signature to qualify, the cost of advertising for ballot measures has gone up considerably. In November 2012, in just one ballot measure, \$120 million was spent. \$67 million for the Yes campaign on Prop 30, \$53 million on the No campaign. There was another big one, November 2012, on restricting political contributions by both unions and corporations. That was Prop 32 on the November statewide ballot. Over \$133 million was spent - \$60 by the Yes side, \$73 million by the No side.

As I mentioned, in 2014, a measure by then Senate leader Darrell Steinberg was enacted. It was SB 1253, and what that said was a couple of things. One, any proposed initiative is subject to a 30-day public review period once it's filed with the Attorney General for Title and Summary. So, you'll see there's a section of the Attorney General's website dealing with initiatives, and when they are initially posted, it will say that the 30-day public review period is open and when comments are due. What that allows is input, obviously, and then proponents have an opportunity to perhaps amend their proposal based upon the feedback that is provided.

Now, the new law also requires that when proponents have collected 25% of the required signatures to qualify, then state legislative committees - both the Senate and the Assembly - their policy committees, must hold a public hearing on the proposed ballot measure. And of course, the proponents and the opponents are given an opportunity to appear.

The other thing that SB 1253 from 2014 did was it said that the proponents are given an opportunity to actually withdraw their proposal if they are content with a legislative solution. And so, to accommodate these additional steps, the signature gathering period was extended from 150 days to 180 days.

The last thing that SB 1253 did was it requires the state to post the top ten donors that are in support or in opposition of an initiative. Now, as you can imagine, reality might set in with folks.

We did a little calculation over the first 100 years of the initiative process being available. That is, from 1912 through July of 2013. And what we found were the following numbers. 1,767 initiatives were given Title and Summary and circulated for signatures. Of those, 1,311 - or 74% of them - actually failed to qualify. Moreover, 92 of

them were withdrawn. So as a result, 360 initiatives, or only 20% of them - qualified for the ballot. Now of those 360 initiatives that qualified, and therefore appeared on a California state ballot, only 122 of them were approved by the people. So, if you think about it, as a historical basis, only 1 in 5 proposed initiatives has qualified for the statewide ballot, and only 1 in 3 of those that qualified were actually approved by the electorate. So, I guess even if initiatives are the tool of special interest groups, the odds of success on the statewide ballot are pretty slim.

Thanks for joining.