

Hi, this is Chris Micheli with the Sacramento governmental relations firm of Aprea & Micheli, and an adjunct professor here at McGeorge School of Law in its Capital Lawyering program. Thanks for joining today's podcast on direct democracy in California, its function and a brief history. Direct democracy is the term that we use in government to describe the ability of the voters to if you will, take matters into their own hands. In other words, the ability to enact or even repeal laws or recall elected officials.

In most instances voting every two or four years in local state and federal elections is the truest form of democracy, but California is one of about two dozen states that also provides the electorate with an additional check on our local and state officials and the laws that they make. It is valuable to note that these forms of direct democracy which are the initiative, referendum and recall are not available at the federal level. That's because they're simply not provided for in either the US Constitution or in any federal statutes. As a result, federal elected officials cannot be recalled from office and federal laws cannot be enacted or repealed by the voters.

On the other hand here in California, these three forms of direct democracy are provided in our state constitution where they can be found in Article II in Sections 1-20. California's Constitution was amended in 1911 to allow the initiative process as well as the referendum process. Let's take a brief review or overview of these three forms of direct democracy in the state of California.

The first is the recall process. Local and state elected officials can be recalled from office, which means that the voters don't need to wait until the next scheduled election in order to remove an official from his or her office. However, it does require a petition which must be signed by a specified number of voters and once that threshold has been certified by either the Secretary of State or state elected officials or the local County Registrar of Voters for local elected officials, the recall petition will be placed before the voters within a specified period of time.

Now, sometimes these recalls are successful and at other times they're not. In fact, some targets of recalls have gone on to not only survive the recall attempt against them but also have ultimately gotten elected to other or even higher offices such as the State Senate or even a congressional seat. As such, many view recalls as being a mixed bag in that they can result in either strengthening the position of that elected official targeted by the recall or could result in removal from office. In many instances recalls are used for purely political purposes because an interest group or individuals feel that the legislator voted for or against something that greatly displeased them.

In other words, recalls are often not due to a violation of the public trust or some sort of criminal or unethical conduct, rather, they're often attributed to a specific vote. Some examples, an older one from 15 years ago, was when former Republican Assemblyman Paul Horcher voted for Democrat Willie Brown for Speaker of the Assembly and then was recalled from office. Or in June of 2018, former Democrat State Senator Josh Newman was recalled from office because he voted for the \$5 billion gas and vehicle fee increase measure.

Whether these types of recalls were intended or not, there's no limitation on the use of the recall. As such, the proponents of a recall do not need to specify a particular reason for pursuing that recall. Now, let's look at initiatives briefly. This form of direct

democracy is for the voters to make the laws, specifically, the voters can add, amend or repeal statutes or provisions of the Constitution.

Again, an initiative allows the voters to directly adopt a constitutional amendment or a statute. These are placed on the statewide ballot as a proposition and are given a number. The manner in which this occurs is that the proposed measure is submitted to our Attorney General once it's drafted so that the AG can draft the title in summary, and then later, the Secretary of State authorizes the signature process to begin.

There is a higher threshold for signatures for proposed constitutional amendments, which is 8% of the votes cast in the last statewide gubernatorial election versus the number of signatures required for statutory changes that are proposed, which is 5% of that vote. Either, a proposed ballot measure can add, repeal or amend either a statute or a constitutional provision or provisions.

Note that neither the Governor nor the Legislature have any formal role in the adoption of an initiative, although the Legislature must conduct an informational hearing on measures that will appear on the ballot. Of course, there are to be fair opportunities for the Legislature and the Governor to work with the initiative's backers on potential law changes or even the initiative language itself. In the end, the initiative is reserved to the people of the state of California for their use.

Note that the Legislature can place a measure on the ballot to not make statutory changes because those are done by bills that the Legislature adopts. For making amendments to the Constitution, that does require a two-thirds majority vote of both houses of the Legislature on either an ACA, Assembly Constitutional Amendment or SCA, a Senate Constitutional Amendment. However, the Governor does not act on an ACA or an SCA, only on bills.

Now, once that initiative is placed on the ballot, it's either voted up or down by the electorate, and it only requires a simple majority vote for passage. Even though there are certain vote thresholds for the Legislature when adopting some types of bills, there are no such limitations imposed on the voters when they adopt statutes or constitutional amendments by an initiative. It should also be noted that constitutional amendments can make additions or changes to or they can even repeal provisions of the California Constitution, but they cannot revise the Constitution, and that's because our California Constitution reserves that power of revision to constitutional conventions.

One recent example was in July of 2018, when the California Supreme Court removed a measure that otherwise qualified for the November 2018 general election ballot, which had proposed to split California to three separate states, and basically our state's High Court said this ballot measure - even though it went through all the required steps with title and summary, got all the requisite number of signatures, so that it could be properly placed on the statewide ballot. The Cal Supreme Court said that this ballot measure amounted to a revision of our state's constitution, which the Constitution prohibits, except by way of constitutional convention.

Now, it should be noted that these initiatives can sometimes be used as a threat to prompt the Legislature, and the Governor to act on something. We've seen that used in everything from worker compensation reform, to consumer data privacy laws, and

so the initiative can be a very powerful weapon in the arsenal utilized by interest groups. It only costs \$2,000 to submit a proposed ballot measure to the Attorney General for title and summary, and it will cost a few million dollars to get enough signatures to place a measure on the ballot. What that means is that a wealthy individual or a wealthy interest group can pretty easily get an initiative qualified. Now, supporting and opposing initiatives, of course, can cost in the tens of millions of dollars to pass or defeat them and in a few instances as much as 100 million dollars.

Nonetheless, these initiatives often prompt legislative action, either because the Legislature had been gridlocked or perhaps it didn't have the, if you will, political courage to act. Let me give you an example - both medicinal and recreational cannabis or marijuana were both enacted by the voters, both by ballot measures, both by initiative. Essentially, many legislators were wary of trying to legalize marijuana through legislation, and so frankly, they were more than happy to have the electorate decide and the voters passed those measures.

Now, in other instances, initiatives are done because interest groups cannot get a bill through the legislative process, but in either instance, the voters have the ability to substitute their judgment and their will in place of the Legislature's when it comes to these ballot measures. That's also the basis for criticism of the initiative process. In other words, some believe that the initiative process, and frankly direct democracy, in general, should not even be permitted. This isn't because they believe that voters should not have a voice in our democracy, but instead, these individuals believe that the elected officials were elected to do a job and conduct the state's business. So the voters should simply vote to keep or reject those elected officials each time they're on the ballot whether or not they're doing their jobs or not.

Critics of ballot measures have also complained that several of these measures over the years often tie the hands of legislators, such as in the state budget process. For example, the requirement of Prop 98, and its funding formula for K-12 education spending. While others have argued that Prop 13's limit on the ability to raise revenue has hampered the ability for the state to generate sufficient revenue. These measures like Prop 98 and Prop 13 are often called ballot box budgeting because they essentially limit through the ballot box the ability of the Governor and the Legislature to allocate all of the state budget resources.

The third type of direct democracy then is the referendum. The referendum is also a form of direct democracy, and it allows the voters to repeal a statute that was adopted by the Legislature and signed into law by the Governor. However, there are some significant limitations on that referendum process, in that the number of required signatures required must be achieved within 90 days of the bill being signed into law. On initiatives, those who are gathering signatures have 180 days, twice the amount of time that's afforded to proponents of a referendum. It's a pretty short period of time considering the number of signatures that must be obtained.

Now, there's also a limit on the types of bills that are not subject to a referendum. The vast majority are, but those bills that contain an urgency clause, or a tax levy, or that make appropriations for certain state expenditures, they are not subject to a referendum and cannot be overturned by the electorate. Note something important, once the referendum qualifies for the statewide ballot, then it's placed on the next ballot for a vote by the people. During the interim, that particular bill or a piece of the

bill that's the subject of the referendum is if you will stayed. It's actually put on hold until after the voters cast their vote on the referendum petition before them.

The referendum process, like its counterpart in the initiative process, can also be used as a tool of special interest groups. For example, they might threaten the use of a referendum to obtain certain changes to a pending bill that they find objectionable. Or it might be a way of doing away with such an objectionable bill as well. Many, just like in the initiative process, many of these referenda are successful, but frankly, many of them fail passage at the ballot box. Such as the one more recently to eliminate the grocery bag 10 cent fee charged by supermarkets.

I hope you've enjoyed this podcast about forms of direct democracy in California. Thanks for joining.