

Hi, this is Chris Micheli with the Sacramento governmental relations firm of Aprea & Micheli, and an adjunct professor at McGeorge School of Law in its Capital Lawyering Program. Today is a brief look at the mechanics of California's forms of direct democracy. The state of California has three forms of direct democracy and they are found in Article II of the state constitution. Those three forms are the initiative, referendum, and recall processes.

Let's take a look at all three. On the initiative, that's basically proposing statutes and constitutional amendments and it begins with presenting a petition to the California Secretary of State that includes the text of the proposed statute or constitutional amendment before the circulation of an initiative petition for signatures by the voters, a copy is submitted to the Attorney General who prepares a Title and Summary of the measure.

Now if the AG, the Attorney General, determines a fiscal analysis is necessary then he or she sends that measure to the Department of Finance and the Joint Legislative Budget Committee for a fiscal analysis. Generally, it takes 15 to 45 days after submission for the Title and Summary to be completed by the AG. Once the Secretary of State certifies the petition, they look at the signature collection and then they begin the process once those signatures are submitted to review them.

What are the thresholds? For a statute it's 5% of the votes cast for governor at the last gubernatorial election. In 2018 that was a fairly big number as opposed to 2014 which is why some political pundits believe that quite a number of ballot measures were proposed and made it to the ballot in 2016 and 2018. That 5% threshold goes up to 8%, again of all the votes for governor at the last gubernatorial election, for proposed constitutional amendments.

Now, proponents have 180 days to collect those signatures. Note that only registered voters can sign in their county of registration and a measure is placed on the ballot at the next statewide general election that's at least 131 days after the measure has qualified. Note that ballot measures by initiative can only appear on the November general election ballot, not on the primary ballot.

Due to a state law enacted in 2018, an initiative statute is approved once approved by a majority of voters. It takes effect on the fifth day after the Secretary of State files the statement of vote for that election. If provisions of two or more measures approved at the same election actually conflict, then by state law the provisions of the measure receiving the highest number of affirmative votes will prevail.

Note that there is a constitutional prohibition that an initiative cannot name any individual to hold any office or name or identify any private corporation to perform any function or have any power or duty. Those can't even be submitted to the electorate. Now, I looked on the Secretary of State's website and found some interesting historical data on initiatives. Prior to 1960, initiative measures appeared on the general election ballot only like they do today, but for 51 years from 1960 to 2011, initiative measures appeared on the primary or general or even special election ballots.

As a result of 2011 legislation by then Senate President Pro Tem Darrell Steinberg from July 2011 going forward, initiative measures can only appear on the general election ballot. Also of historical note, ballot measures were not numbered until the

1914 general election. What I gleaned from the Secretary of State's website is that between 1912 when the initiative process took effect and 2017, so this does not include the recent 2018 elections, a total of 1,996 initiatives, just shy of 2000 received Title and Summary and were cleared for circulation.

A total of 1,483, which means 75 and a quarter percent, failed to qualify for the ballot. Only one-quarter of those, nearly 2,000 initiatives actually qualified for the ballot to be voted on. A total of 376 initiatives ended up qualifying. Of those 376 that qualified, only 132 which is 35% of them were approved by the voters, a very low number. A total of 241 were rejected by the voters.

Three initiatives, less than a percent, were removed from the ballot by court order, and a total of 113 initiatives were withdrawn from circulation. Obviously, very few ballot measures that are submitted for Title and Summary actually qualify for the ballot and then even fewer of those end up getting adopted by the voters. Now I want to turn to a brief discussion of the referendum process.

Here in California, the people - in addition to the initiative process wherein they can propose new laws - the people also have the power to approve or reject statutes, either in total or a part of a statute. That is the referendum process. As you can probably imagine, most referendum efforts have either failed to even qualify for the ballot or have been rejected by the voters.

I think an important point to note is that, when a valid referendum qualifies challenging a statute, that underlying statute actually is stayed implementation, until after a vote by the electorate. Now, proposing a referendum can be done to approve or reject either an entire statute or parts of a statute. Note, of course, that in almost all instances to reject a statute is when it is most often used.

Now per the California Constitution, there are four types of bills adopted by the Legislature that are actually excluded, i.e. not subject to referendum, and those are urgency statutes, statutes calling elections, and statutes providing for tax levies, or for appropriations for the usual and current expenses of the state of California. Now, just like an initiative, a referendum petition is done by presenting that petition to the Secretary of State.

However, there is a significant time limitation with the referendum. The referendum must be presented within 90 days after the enactment date of the statute, and by the way, that presentation is the requirement that a sufficient number of votes be signed to that referendum petition. Now just like an initiative before circulating a referendum petition for signatures, a copy of that referendum must be submitted to the Attorney General and the AG prepares a Title and Summary of the measure.

Referenda can qualify for the statewide ballot up to 31 days before an election, which is different than an initiative which must qualify 131 days before. Just like initiatives, per that earlier statute by Senator Steinberg, since July 2011 referendum measures can only appear on the general election ballots. Now once the petitions are filed with the county registrars, the county election officials, have only eight working days to determine the raw count of signatures submitted and report those findings to the Secretary of State.

Just like an initiative statutory proposal, a referendum petition must have at least 5% of voters based upon all the votes for the candidates for governor at the last gubernatorial election. Now note this point what a yes versus a no vote means. Once the referendum petition is on the ballot, the law is repealed if voters cast more no votes than yes votes on the referendum in question.

In other words, if you vote yes on the referendum, it means you want the law to remain intact. If you vote no on the referendum, then the law is repealed, assuming you get at least a majority who cast votes for the no side. Similar to an initiative, the referendum that's been approved takes effect on the fifth day after the Secretary of State files the statement of the vote for the election at which that measure was voted on.

The Secretary of State has also provided some historical data, which I wanted to share with you. There have been 89 attempted referenda since 1912 in the state of California. Here's the data from the 1912 election through the 2016 election. Again, a total of 89 referenda were provided Title and Summary and cleared for circulation. A total of 39 of those 89, basically 44% of them, failed to qualify for the ballot.

50 of the referenda, representing about 56%, qualified for the ballot. Of the 50 referenda petitions that qualified and were voted on, 21 or 42% were approved by the voters. On the other hand, 29 or 58% were rejected by the voters. Here, an overwhelming majority, basically 60-40 have rejected referenda rather than approve them. Let's turn to the final form of direct democracy provided in the state of California, which is the recall process.

Basically, under the California Constitution, the state's electors have the power to remove an elective office and that too is initiated by delivering a petition to the Secretary of State. In that written petition, it alleges a reason for the recall. Please note that the sufficiency of the reason for that recall is not reviewable by any state official, the Secretary of State, or a court.

Basically, proponents have 160 days to file the signed petitions on the recall, a petition to recall a statewide. A statewide officeholder must be signed by electors equal to 12% of the last vote for that office. The signatures from each of five counties must be equal in number to 1% of the last vote for the office in that particular county. An interesting limitation here. Signatures to recall State Senators, Assemblymembers, Board of Equalization Members, and judges of both the courts of appeal and the trial courts must equal 20% of the last vote for that particular office.

An election to determine whether to recall an officer, and if appropriate to elect a successor to that recalled official, must be called by the governor. The law requires that it be held, the recall election that is, not less than 60 days nor more than 80 days from the date that the signatures on the recall petition have been certified. A recall election may be conducted within 180 days from the date of certification of signatures, and it may be consolidated with the next regularly scheduled election that occurs wholly or partially within that same jurisdiction.

Basically, this is allowed if the number of voters eligible to vote is equal to at least 50% of all the voters eligible to vote in the recall election. Now, if a majority of the electorate votes to recall the state officer, then that officer is removed. If there's a candidate, the candidate who receives the plurality, not a majority, plurality, is the successor to that

office. We may recall, or you, the listeners may recall the instance of Governor Gray Davis being recalled and at that election, there were dozens and dozens of individuals who ran to replace Governor Davis, including then Lieutenant Governor Cruz Bustamante. It was, of course, actor, Arnold Schwarzenegger, who received a plurality and became the successor to Governor Davis.

The officer being recalled, as you can imagine, cannot actually be a candidate. Now, a state officer who is not recalled pursuant to state law, they must be reimbursed by the state for all of their recall election expenses. In addition, pursuant to state law, another recall may not be initiated against that officer until at least six months after that initial recall election. Now, so too as with the prior forms, I looked up at the research that was done by the California Secretary of State as to recalls.

According to their research, since 1913 there have been 164 recall attempts at state elected officials in California. Note, as you can imagine, I have not looked at nor discussed the issue of recalling local elected officials. Now of those 164 recall attempts, according to the Secretary of State 10, only 10 recall efforts have collected enough signatures to qualify for the ballot. Of those 10 recall efforts, the elected official was recalled in six instances.

Of interest, the vast majority for an individual office are Assembly with 50 and 49 to the Governor, then individual Supreme Court Justices and members of the Senate, there's been five efforts to recall the Attorney General, two members of the BOE and only one effort each for the Lieutenant Governor and the Insurance Commissioner. Of those recall attempts, again, the first two were in 1913 and the last ones were in 2003 Gray Davis, 2007 unsuccessful of Senator Jeff Denham, and then 2018 with Senator Josh Newman who was successfully recalled from the State Senate.

Again, of the successful, the six successful, 1913 a State Senator, 1914 a State Senator. Then not again until 1994 Assemblyman Paul Horture, 1995 Assemblywoman Doris Allen, and then again not until 2003 with Governor Gray Davis and now most recently, not until 2018 with Senator Josh Newman from Orange County. I hope you enjoyed this podcast that looked at some of the specifics of California's three forms of direct democracy. Thanks for joining me.