

Hi, this is Chris Micheli with the Sacramento governmental relations firm of Aprea & Micheli and an adjunct professor at McGeorge School of Law. Today's podcast is on standard features of initiative measures.

There are a number of provisions that are commonly contained today in proposed initiative measures in the state of California. When drafting initiative measures there are a number of instances where standardized language is contained in those proposed ballot measures. Our effort here is to take a look at several examples of some of that standardized language found in today's initiative measures.

The first is dealing with amendments. Does the initiative allow amendments to be made by the Legislature? According to the California Constitution, again, in Article II, in Section 10c, the Legislature may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without the electors' approval.

As a result, the general rule in California is that an initiative, once it's been enacted by the electorate, can only be amended by another statewide measure that's been adopted by the voters unless it provides otherwise.

Nonetheless, in many instances, initiatives do contain language that allows the Legislature to amend the law after its been adopted by the voters. The initiative language usually requires a super majority vote, generally two-thirds, by both houses of the Legislature and requires the amendment to quote-unquote further the purposes of the initiative. The following is an example of initiative language on allowing amendments by the Legislature.

For example, "The provisions of Section 5 may be amended so long as such amendments are consistent with and further the intent of this Act by a statute that is passed by a two-thirds vote of the members of each house of the Legislature and signed by the Governor."

Another standardized feature is severability. Here, does the initiative allow for provisions not struck down by a court to remain in effect? A severability clause generally refers to a provision in a ballot measure which states that if some of the ballot measure is held to be illegal or otherwise unenforceable, that the remaining provisions of the ballot measure will remain in effect. The following is an example of initiative language on severability:

"The provisions of this Act are severable. If any portion, section, subdivision, paragraph, clause, sentence, phrase, word, or application of this Act is for any reason held to be invalid by a decision of any court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Act."

Another example that is found in different ballot measures is on the defense of the initiative. Here, does the initiative allow the proponents or a third party to defend the measure's validity if the measure is challenged in court? The general rule is that laws, including initiative measures, are defended by the Attorney General. However, there have been occasions when our Attorney General has chosen not to defend a particular measure in a court of law. As a result, this if you

will, standardized provision of an initiative is intended to grant legal standing to the proponents of the ballot measure to defend the measure in Court.

The California Supreme Court has issued a decision regarding standing to defend a ballot measure's legal validity in a court of law. In a Cal Supreme Court decision, they ruled that in a post-election challenge to a voter-approved initiative measure, the official proponents of the initiative were authorized under California law to appear and assert the state's interest in the initiative's validity and to appeal a judgement invalidating the measure when the public officials who ordinarily would defend the measure on appeal decline to do so. The case in 2011 was *Perry v Brown*. The Supreme Court ruled that it is essential to the integrity of the initiative process that's embodied in the State Constitution that there be someone to assert the state's interest in an initiative's validity on behalf of the people who adopted it when the public official or officials who normally would assert that interest decline to do so, and where the constitutional and statutory provisions relating to the California Attorney General's authority and responsibilities do not actually preclude others from asserting the state's interest.

The following is an example of initiative language on defending a measure that you might find. "Notwithstanding any other provision of law, if the state or any of its officials fail to defend the constitutionality of this initiative following its approval by the voters then any other state governmental agency of this state shall have the authority to intervene in any court action challenging the constitutionality of this initiative."

Another standardized area is on competing measures on the same ballot. Here, does the initiative set forth a general rule if there's a competing or dueling measure on the same topic on the same statewide ballot? One tactic that opponents sometimes employ to fight a ballot measure is to place a competing measure on the same statewide ballot. The goal is to persuade voters to vote for the competing measure to knock out the first measure or potentially vote against both measures. In the state constitution, again Article II, here Section 10b, it provides that if the provisions of two or more measures approved at the same election conflict, then the provisions of the measure that receives the highest number of affirmative votes shall prevail. Because of this rule, initiative proponents often specify in their measure that if this measure conflicts with another measure, but the first measure receives more votes in favor of it, then they want to ensure that the other competing measure in its entirety does not take effect. The following is an example of standardized initiative language on the effect of competing measures:

"In the event that initiative and another measure addressing this topic appear on the same statewide ballot, the provisions of the other measure shall be deemed to conflict with this measure. In the event that this initiative receives a greater number of affirmative votes than a measure deemed to conflict with it, then the provisions of this initiative shall prevail in their entirety and the other measure shall be null and void."

Another standardized feature is often on the effective date. Here, does the initiative specify either an effective date or an operative date? The effective date is when the measure is officially on the books, if you will, while the operative date is when the measure's provisions are enforceable. Here in the state constitution, Article II Section 10a, it provides that an initiative statute or referendum approved by a majority of votes cast thereon takes effect on the fifth day after the

Secretary of State files the Statement of the Vote for the election at which the measure has been voted on. But the measure may provide that it becomes operative after its effective date. So, the following is an example of initiative language dealing with the effective date:

"This Act shall take effect upon approval by the voters as provided in Article II, Section 10 of the California Constitution." There might be additional language that provides different dates. Here's an example, "The provisions of this Act shall apply in any action that has not been resolved by way of a final settlement, judgement, or arbitration award as of the effective date of this Act provided that Section 2 of this Act shall apply prospectively to cases filed 90 days or more after the Act takes effect."

And the final, if you will, standardized feature of an initiative is how to properly construe the measure. In other words, does the initiative provide any rule for the courts to follow in construing the initiative's language? Occasionally, an initiative measure provides specific guidance to the courts when interpreting the initiative measures provisions. The following could be an example of initiative language. "This initiative shall be liberally construed to effectuate its purposes."

So, in the end, while initiatives do not have to contain all of these provisions that we've discussed on today's podcast, they have become more common and standardized in ballot initiatives. Proponents often study the relevant law in the area, and they need to determine for themselves whether to include one or more of these provisions in their proposed ballot measure.

Thanks for joining us on this podcast. I hope it was helpful.