

Hi, this is Chris Micheli, a principal at the Sacramento government relations firm of Aprea & Micheli and an adjunct professor at McGeorge School of Law. Today's podcast is on what is subject to a referendum.

Pursuant to Article II, Section 9 of the California Constitution, the referendum is the power of the electors to approve or reject statutes or parts of statutes except urgency statutes, statutes calling elections, and statutes providing for tax levies or appropriations for usual current expenses of the State. As subject, all statutes are subject to a referendum except these four specified types.

The courts in California have several times explained what types of measures are subject to a referendum. The scope of the referendum power is generally treated as coextensive with the scope of the legislative authority. As a result, any legislative decision made by a representative type body is subject to referendum.

The courts have said that a referendum may review only legislative decisions but not matters that are strictly executive or administrative. This was discussed in a 1998 California Appellate Court decision in *Empire Waste Management versus the Town of Windsor*.

Other appellate courts have ruled that the power of the referendum conferred by Article II, Section 9 applies only to acts that are legislative in character and not to executive or administrative acts.

An act is legislative in nature if it prescribes a new policy or plan. The distinction between legislative and administrative action may sometimes present not only legal issues but factual ones as well bearing on the government entity's intent. This was discussed at length in a 1991 California Appellate Court decision called *Southwest Diversified, Inc. versus the City of Brisbane*.

As a result of this court guidance, we know that the power of referendum applies only to legislative enactments and not administrative agency regulations or other executive branch actions. Nonetheless, there are four types of statutes that are not subject to a referendum, urgency statutes, elections bills, tax levy measures, and bills paying for the current state expenses.

That's our brief look at what is subject to a referendum in California. Thanks for joining.