

Comment for Voter-Initiative 25-0019A1

NOTICE: We are now in a different world, a world of AI. No AI platform or engine has been used in the creation of this document. Consequently, there may be a few typographical errors.

In this comment we will address the language of this proposed initiative by voter petition (voter-initiative) in accordance with the purpose of the comment period -- to provide the proponent with suggestions so as to enable the proponent to improve the language without having to re-file the voter-initiative. At the end of the comment period, the proponent has a 30-day window to address those suggestions, or not, by filing an amendment with germane changes to the language.

The proponent calls this voter-initiative the "Reclaim Voters' Rights Act." Titles mean nothing.

We will compare the claims with the actual language.

The proponent filed an amendment during the comment period. The cover letter appears to have conditioned the amendment with: "if it can remain on a single page." We don't believe that the attorney general determines conditions like that. It just executes its mandatory ministerial duty to accept amendments. However, it gives insight into the proponent's objective of circulating a single-page petition.

Background:

This voter-initiative amends a statute in the Elections Code. That statute was first enacted in 2009 and was subsequently amended in 2011. The purpose of the 2011 amendment was to grant then Governor Jerry Brown's wish for voter-initiatives to be prohibited from appearing on the primary election ballot in even-numbered years.

When Proposition 7 amended the constitution in 1911 to reserve the initiative power to the voters, the only regularly scheduled statewide election in California was the general election conducted in November of even-numbered years. Naturally, the language of Proposition 7 used the language

"general election" to refer to the election at which voter-initiatives were to be submitted to the voters. That language, despite several amendments that have ultimately resulted in what we have today in Article II, Section 8, has never changed.

The Legislature enacted the primary election system for constitutional offices in 1923.

The operative language of Article II, Section 8(c) today is below. We've added parentheses around two clauses to help with the discussion following.

(c) The Secretary of State shall then submit the measure (at the next general election held at least 131 days after it qualifies) or (at any special statewide election held prior to that general election). The Governor may call a special statewide election for the measure.

As you can read, the language provides for submitting voter-initiatives at the "next general election" or at "any special statewide election." It does not refer to primary elections. Primary elections are not "special" in the language of the Elections Code because, like general elections, they are regularly scheduled.

The Legislature must have encountered a problem that it wanted to solve in 2009. The problem revolved around some sloppily written language in subdivision (c). As you can see by the added parentheses, there are two "at" clauses separated by an "or." The first clause has a 131-day restriction for general elections that clearly does not apply to special statewide elections.

As a result the Legislature added the 131-day restriction to statewide special elections by enacting Elections Code section 9016 in 2009. Clearly, the Legislature does not have the authority to change the meaning of the constitution without having the people vote on the change. It appears that no one complained.

At the next session of the Legislature in 2011, the Legislature compounded its unauthorized revision of the constitution by re-defining "general election." The words "general election" are not defined in the constitution. The term "general election" is defined in the Elections Code. Our supreme court has prohibited all other departments (branches) of government from making conclusions about what the words of the constitution mean. In the Elections Code, "general election" is a defined term. In the constitution, "general election" are just two words. Consequently, the term and the words can mean different things. We contend that if a court were presented with a case

where the words in the constitution were at issue, it would look back to when those words were adopted for their meaning. In support of our contention, we point to the amendments to the constitution since 1911 that added "special statewide election." The words "primary election" or "regularly scheduled election" have never been added to the articles under discussion.

The problem with the term "general election" being used for the meaning of the words "general election" is that the Legislature can change the term any time it wishes. And it has.

The current meaning of the term includes five dates as listed in Elections Code section 1000. Clearly, Article II, Section 8, Section 9, and Section 10 do not anticipate or intend that an election date intended for local elections should control the words in the constitution.

So that's the conundrum. Section 9016 purports to make the words in the constitution conform to the term in the Elections Code. But wait, it doesn't want it to conform to everything included in the term, it wants to specifically exclude the election dates defined by section 1000, except the one that is also defined in section 324.

Currently section 9016 is a mess built upon another mess.

Claims:

The effective language of this voter-initiative, if enacted, is below.

2016. Notwithstanding any other provision of law, an initiative measure shall not be placed on a statewide special election ballot that qualifies less than 131 days before the date of the election.

For comparison, we include the original language of section 2016 that was added in 2009.

9016. Notwithstanding any other provision of law, no initiative measure shall be placed on a statewide special election ballot that qualifies less than 131 days before the date of the election.

As you can see, there is a slight, inconsequential difference in the proposed language. This was likely because of the proponent's overriding concern that the voter-initiative fit on a single page.

The only claims made are in Section 1(b): "In 2011, Californians lost the right to vote on citizen-initiated ballot measures at statewide primary elections. This act restores that right." We are not aware of any materials external to the voter-initiative that make any other claims.

The first claim, that the voters lost a right in 2011, is somewhat misleading. Neither the constitution, nor any enacted statute has granted voters the privilege of putting voter-initiatives on the primary election ballot. Over the years since 1911, the powers-that-be have allowed it. No one thought to challenge it in court. The powers-that-be in 2011 wanted to stop allowing it. No one thought to challenge that in court, either, most likely because there is no basis in the constitution for it.

Note that the Legislature can put a measure on the ballot at any election it wishes. It can even, with a cooperative governor, create an election, like the upcoming November 4, 2025 election for Proposition 50. Nothing in the constitution prohibits the Legislature. That's why the Legislature can put measures on the ballot at primary elections.

The second claim, that this voter-initiative restores the lost right, is equally without basis. It cannot restore a right that has never existed.

Comment 1: Benefits of Passage of 25-0019

We see no benefit to this voter-initiative.

It simply keeps the unconstitutional enactment of 2009 in effect.

There is nothing in the self-executing language of Article II, Section 8 that tells the Secretary of State to submit a qualified voter-initiative at the next primary election. While previous Secretary's of State have done so, they did so without authority.

If this voter-initiative were to pass, the only thing future proponents could do about a Secretary of State who refused to submit their measure at a primary election would be take the issue to court. They would lose.

While it's possible that a court, after years of expensive litigation, could hold that a "primary election" is in the penumbra (courts like those fancy words) of Article II, Section 8, because a statewide primary election is a regularly

scheduled election, that's unlikely. Neither the Executive nor the Legislative departments want to allow it. As Meat Loaf sang, "Two Out of Three Ain't Bad."

Comment 2: Conclusion

This voter-initiative can certainly change section 2016 back to its 2009 incarnation. We contend, however, that the 2009 language alters the constitution, which is beyond the authority of the Legislature or the people, except by a constitutional amendment.

The words "general election" or "special statewide election" in the constitution do not include the primary election. The words in the constitution could be easily changed as well as be made less confusing by replacing both sets of words with "any statewide election." That, however, requires a constitutional amendment.

Any voters who read the petition will be confused by the restoration of a previously enacted statute primarily because the effective language doesn't even mention primary elections.

The only way that the proponent could make good on its claims and purposes is to revise Article II, Section 8. Since that section has six subdivisions which must all appear on the petition, whether altered or not, it is not likely it fit on one page.

The one-page voter-initiative petition craze will likely have only a few consequences -- bad law, wasted time and money, and, if enacted, disappointed voters. There is no such thing as a free lunch.

Consequently, we conclude that the proponent's claim is false and that the voter-initiative, if enacted, will not accomplish its purported purposes.

#