

California: Citizen initiatives are for special elections, two-thirds approval does not apply



David M. Kall | Thursday, September 21, 2017

The California Supreme Court recently issued an [opinion](#) in favor of the plaintiffs - the California Cannabis Coalition (CCC) and two individuals - holding that the mandate that general taxes be submitted to the voters at a regularly scheduled general election applies only to local governments, and not to the electorate's initiative power. This meant that the initiative at issue in the case, pertaining to legalization of medical marijuana in the city of Upland, should be submitted to the voters at a special election, not at a general election.

Background facts

The CCC, is a nonprofit corporation that drafted a medical marijuana initiative in 2014. The initiative sought three things:

1. To repeal an ordinance in the city of Upland that banned medical marijuana dispensaries.
2. To adopt regulations and establish standards for the operation of up to three dispensaries within Upland.
3. To require that each dispensary pay the city an "annual Licensing and Inspection fee" in the amount of \$75,000.

When the city received the plaintiffs' notice of intent to circulate the petition, it ordered an agency report. The report concluded that the \$75,000 "fee" for the initiative would actually constitute a general tax

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because it was so much higher than the costs incurred from issuing a license and conducting annual inspections of the dispensaries. Because the initiative concerned what was deemed to be a general tax, the city said that voters could not address it during a special election, but instead, at the next general election, which would have been on Nov. 8, 2016.

The plaintiffs disputed this conclusion, instead wanting the measure to go before voters in a special election. The appellate court agreed, and ordered the city of Upland to place the initiative on a special ballot. On Nov. 8, 2016, voters did indeed have the chance to consider the initiative, and 64.38 percent voted no. Thus, while the measure is no longer in play, which technically renders the case moot, the Supreme Court decided to review it, because it “presents important questions of continuing public interest...”

The Supreme Court’s discussion

At issue are two provisions in the state’s constitution. The first contains the “people’s initiative power,” which the Court has previously described as “one of the most precious rights of our democratic process.” The second “limits the ability of ‘local governments . . . to impose, extend, or increase any general tax.’” The crux of the question before the Court was whether the latter “also restricts the ability of *voters* to impose taxes via initiative.” Agreeing with the appellate court, the Supreme Court determined that there is no constitutional constraint on voters’ “power to propose and adopt initiatives, and that...the initiative at issue should be submitted to the voters at a special election, not at a general election.”

In the beginning of its analysis, the court noted that “the enactment of the initiative power was sparked by “dissatisfaction with the then governing public officials and a widespread belief that the people had lost control of the political process.” The purpose of the initiative power “was empowering voters to propose and adopt provisions ‘that their elected public officials had refused or declined to adopt.’” Along with this came various statutorily enacted procedures that would allow voters to exercise their right.

The court also recognized that “the people’s power to propose and adopt initiatives is at least as broad as the legislative power wielded by the Legislature and local governments.” Accordingly, when “voters exercise the initiative power, they do so subject to precious few limits on that power.”

Additionally, the court pointed to a previous holding that “the constitutional requirement that the Legislature obtain a two-thirds vote before raising taxes... is a requirement that does not apply to voters’ initiative power.”

Next, the court examined a number of prior cases addressing how the citizens’ initiative power relates to taxation. It reiterated holdings precluding restrictions “on the use of the initiative in the area of taxation. That is, electors may ‘use the initiative process to prospectively adopt or annul (repeal) statutes imposing taxes.’”

On this backdrop, the court quickly dispensed with one of the city’s arguments, that the electorate is included in the definition of “local government,” thus subjecting the initiative to the constraints with which local governments must comply. After a careful study of dictionary entries, previous jurisprudence, the language of the state’s constitution, rules of interpretation, and the ballot materials, the court declared that the constitution’s purpose “did not include limiting voters’ ‘power to raise taxes . . . by statutory initiative.’”

Another of the city’s arguments was that the state constitution “constrains voter initiatives because

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‘statutory and constitutional limits on the power of local government apply equally to local initiatives.’” The court shot this down as well, on the grounds that the city failed to present evidence to support its theory.

The court contradicted the city’s third and final argument too, which was that the word “impose” in the second provision described above “includes the collection of taxes by a local government...”

“Not so,” opined the court. Again agreeing with the lower court, “the ordinary meaning of ‘impose’ is ‘to establish,’ not to collect.”

As a “final observation,” the court remarked that when the city ordered the agency report, it was required to either adopt the ordinance or order a special election once the report was presented to city council; its failure to do so was an error. The city’s “unilateral determination that the proposed initiative constituted a general tax ... did not relieve it of its obligation” to take one of those two steps. The court warned that cities must follow these rules in the future.

SFGate highlighted a professor at UC Davis School of Law’s take on the matter, which was that the “ruling left open the possibility that tax increases proposed by voter initiatives ‘would be a lot easier to pass during special elections. That could be very helpful for groups capable of organizing and putting a tax increase on the ballot.’”



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