

CALIFORNIA ATTORNEY GENERALS TAKING THE INITIATIVE . . . TO SKEW THE INITIATIVE PROCESS

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by Bill Whalen

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One way to understand the sometimes baffling enterprise that is California's initiative process: "the more things change, the more they remain the same."

By that, I mean there's a certain consistency to how direct democracy is practiced in the Golden State specifically, how California's "top cop" does his or her best to game the system strictly for partisan reasons.

Per Article II Section 10(d) of California's state constitution: "Before circulation of an initiative or referendum petition for signatures, a copy shall be submitted to the Attorney General who shall prepare a title and summary of the measure as provided by law."

That sounds innocent enough, until the creative juices start flowing in the AG's office. Take this November's ballot, for example.

The summary for Proposition 15, which would rewrite 1978's Proposition 13 and its limit on residential and commercial property taxes, doesn't mention Proposition 13 by name (an earlier version of the ballot title wasn't much better, as it claimed that the measure "increases funding for public schools" without so much as sourcing higher property taxes as the means of that largesse).

So why the Proposition 13 omission? Perhaps because, earlier this year, California primary voters reacted to a \$15 billion school construction bond that just happened to have the same numerical designation on the ballot much the same way a bull reacts to a waving red cape for the first time, in over 25 years, defeating a proposed statewide school bond.

Attorney General Xavier Becerra's approach to Proposition 16, which would undo 1996's Proposition 209 and end race-blind admissions to California's public universities, is also a good example of liberal sugar-coating:

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The AG's title "allows diversity in public employment, education, and contracting decisions" is a clever exercise in how to bury the lede (picking college admissions winners and losers based on race and gender) while avoiding such trigger words and phrases like "quotas" and "affirmative action."

Sadly, Becerra is but the latest California attorney general to be guilty of this political malfeasance. California senator Kamala Harris, who preceded Becerra before heading off to Washington in 2017, showed no shame in playing the same game.

Harris' favorite target: initiatives that attempted to change California's public pension laws.

In 2016, before one such reform measure headed for public signature gathering (a required step when an initiative doesn't stem from the State Legislature), Harris affixed the following toxic summary: "Eliminates constitutional protections for vested pension and retiree healthcare benefits for current public employees, including those working in K-12 schools, higher education, hospitals and police protection, for future work performed." A year later, the supporters of the proposed initiative, realizing that the state attorney general had in effect placed a skull and crossbones on their ballot measure, abandoned the effort to put their initiative to a public vote.

But reformers of California pension laws a sore spot for the state's Democratic existence as it rattles the cages of public employee unions aren't the only ones to run afoul of a partisan attorney general.

Take the example of Tim Draper, a renowned Silicon Valley venture capitalist and dabbler in Golden State public policy (yes, he's the guy who came up with the idea of dividing California into three new states before giving up on the concept), who went to the ballot two decades ago to shake up the Golden State's public school experience.

In November 2000, Draper's Proposition 38 offered an up-or-down vote on school choice \$4,000 vouchers for any California child to attend a private school (to spread the word, the always entertaining Draper gave away iMac computers and a trip to Hawaii to those who referred the most supporters to his campaign's website).

Draper's political venture didn't fail due to lack of capital and his father (also a famed venture capitalist and one-time member of the Hoover Institution's Board of Overseers) chipped in almost \$25.4 million versus nearly \$26.8 million from the collective pockets of the California Teachers Association, the Service Employees International Union (SEIU) and the California Democratic Party on the opposing side.

What Draper couldn't effectively counter: the stumbling block of what first confronted Californians when they opened their voter guides: an unflattering initiative title ("School Vouchers State-Funded Private and Religious Education") coupled with a descriptive summary that did its best to seed doubt in the minds of voters (among the poison pills offered by then attorney general Bill Lockyer: "restricts state and local authority to require private schools to meet standards, including state academic requirements" . . . "limits future health, safety, zoning, building restrictions on private schools" . . . "requires release of composite test scores of voucher pupils").

Not surprisingly, Draper's measure failed to clear 30% (it received 29.4% support) in the same general election in which George W. Bush raked in 41.6% of the statewide vote.

The story would end here if present and future California attorney generals took a vow of political chastity, but clearly that's not the case. In 2018, Becerra did his level best to scuttle a ballot measure that would have undone the previous year's increase in California's gasoline tax (that earlier measure increased excise taxes on gasoline by 12 cents per gallon, from 28 cents to 40 cents, and on diesel fuel by 20 cents per gallon over the next decade).

Becerra originally applied this title: "Eliminates Recently Enacted Road Repair and Transportation Funding by Repealing Revenues Dedicated for Those Purposes . . ."

And this summary: "Repeals a 2017 transportation law's taxes and fees designated for road repairs and public transportation . . ."

Outraged by Becerra's literary flair, Republican assemblyman Travis Allen took the attorney general to court. Indeed, a Sacramento Superior Court judge sided with Allen and went so far as to offer an alternate title: "Repeals

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recently enacted gas and diesel taxes and vehicle registration fees. Eliminates road repair and transportation programs funded by these taxes and fees."

However, California's 3rd Court of Appeals struck down the lower court's ruling, claiming that "the text prepared by the attorney general is not misleading, argumentative, or likely to create prejudice against the measure."

Moving forward, here's the challenge facing reformers who want to do battle with an entrenched Democratic regime in Sacramento. Change can't come in the form of the legislative process, not with Democrats enjoying supermajority control of both the State Assembly and State Senate. That's also true of the budget process, now that a simple majority vote requires only one party's buy-in.

That leaves jurisprudence (suing government for its actions based on their constitutionality or lack thereof) and the ballot process (initiatives and referenda either to enact new policies or overturn old ones) as the reformers' means of last resort. Which is why an attorney general's ability to play politics with the initiative process inflates some and deflates others depending upon partisan whims is so problematic.

The solution? Why, a ballot measure, of course, to take the attorney general out of the title- and summary-writing business.

One possibility: hand over the responsibility to the state's nonpartisan Legislative Analyst's Office, which already is in the initiative business in that its staff studies ballot measures primarily for fiscal impact. Or, let a panel of retired judges assess and rewrite (if need be) titles and summaries offered by initiative sponsors.

Those fixes are by no means perfect. But they would be an improvement over a status quo in which good and needed reforms are easily stifled by state attorney generals' partisan whims.

The question: who's going to take the initiative to improve the integrity of California's initiative process?

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