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MORE DELIBERATION? PERSPECTIVES ON THE CALIFORNIA INITIATIVE PROCESS AND THE PROBLEMS AND PROMISE OF ITS REFORM

INTRODUCTION

A majority of Californians consistently tell opinion pollsters that they value having the voter-initiative process as a safeguard against unresponsive representative government. Yet, both survey research and anecdotal evidence suggest a growing voter perception that the initiative process is flawed in fundamental ways. Voters decry an initiative process in which ballot measures are too complicated and initiative campaigns are too often misleading and unenlightening.

In suffering under the defects of the initiative process, these voters are joined by public officials who must deal with unexpected public-policy shifts often causing unintended consequences, judges asked to litigate unprecedented issues involving initiative constitutionality and intent, and even initiative proponents—who spend substantial sums to qualify and pass initiatives without clear assurance that their strategic intent will be effectively written into law.

Californians have generally discussed reform of the initiative process in two limiting contexts. It is often discussed along with other large questions of political-system change (such as whether the California constitution should be comprehensively overhauled, whether basic changes in budgetary and taxation procedures are warranted, and how elections should be reformed generally). This tie in to larger, more intractable political problems risks an unnecessary slowing in the momentum for initiative reform. Alternatively, discussion of the problems of the initiative process is often prompted by particular controversial initiatives (such as the anti-same-sex marriage Proposition 8 or the anti-affirmative-action Proposition 209).

Although understandable, the tying of initiative-reform to specific controversial contexts may complicate arriving at the consensus of disparate interests necessary for meaningful reform.

This issue of the *California Western Law Review* seeks to facilitate a discussion of how the value of the direct democracy can be fully realized by improving the processes through which proponents craft initiatives and voters consider them. By collecting the experience of key policymakers in the arena of initiative reform and the insights of academics regarding the institutional dynamics at play, this collection aims to both identify deficiencies in the process and suggest practical improvements.

In *The California Initiative Process at its Centennial*, California Secretary of State Debra Bowen, a leader in efforts to promote voter deliberation in the initiative process, provides an overview of the points in the initiative process that present problematic informational deficits for voters, and how more time and transparency in the process might improve voter deliberation.

In *Legislative Reform of California's Direct Democracy: A Field Guide to Recent Efforts*, Professor Glenn Smith and Brendan Bailey present a detailed study of recent initiative-process reform proposals originating in the California legislature. The study explores the relationship of the proposed reforms to the enhancement of deliberation in the initiative process. In addition, Smith and Bailey explore the political dynamics that have led to gubernatorial resistance to reform efforts and how reformers might overcome such dynamics by focusing upon the deliberation-enhancing potential of future reform proposals.

California Secretary of Natural Resources John Laird and Clyde Macdonald, in *AB 1245 of 2003 – An Attempt at Modest Reform of California's Initiative Process*, describe Secretary Laird's effort as a member of the California Assembly to enhance initiative process deliberation. Laird's proposed legislation would have provided an opportunity for voters to review and comment upon proposed initiatives, and for initiative proponents to respond to public comments by amending proposed initiatives prior to circulation—resulting in more considered and effective voter-enacted law. The essay also provides an account of the dynamics that led to gubernatorial veto of the legislation, and the possibility of enactment of similar reform in the future.

In *Making California's Initiative Process More Deliberative*, Nora H. Kashani and Robert M. Stern of the Center for Governmental Studies identify barriers in the deliberation process and propose practical solutions to make the process more effective. Kashani and Stern argue that deficiencies in the current process impede the electorate's ability to effectively evaluate proposed initiatives, respond to implementation problems by amending voter-passed law through their legislative representatives, and provide guidance for government actors seeking to interpret and enforce initiatives. Their proposals seek to improve voter information and enable the voters' legislative representatives to facilitate deliberation.

By ascertaining those aspects of the initiative process that impede effective public discussion of proposed initiatives and presenting practical deliberation-enhancing solutions, this collection seeks to contribute to the goal of making one of the pillars of California's democratic edifice fairer, more efficient, and more satisfying to all who participate in it.

