

Date of Hearing: July 3, 2012

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
ACA 10 (Gatto) – As Amended: April 9, 2012

SUBJECT: Initiative constitutional amendments: qualification and approval.

SUMMARY: Requires signatures on a petition for a proposed initiative measure to amend the state Constitution to be geographically distributed among at least 27 state Senate districts, as specified, in order for that initiative to appear on the ballot. Requires an initiative measure that amends the state constitution to receive 55 percent of the vote in order to be approved, unless the measure repeals a previously adopted constitutional amendment. Specifically, this measure:

- 1) Provides that, in order for an initiative that amends the state constitution to qualify for the ballot, the petition for that initiative must include signatures from each of 27 of the Senatorial districts in the state equal in number to eight percent of the votes cast for candidates for Governor in the last gubernatorial election, in addition to including signatures equal in number to eight percent of the votes cast for candidates for Governor statewide.
- 2) Requires an initiative measure that proposes to amend the state constitution to receive at least 55 percent of the votes cast thereon in support in order to be approved, unless the sole effect of the initiative is to repeal one or more amendments to the Constitution previously approved by the electors, in which case a majority vote is required.
- 3) Makes various corresponding and technical changes.

EXISTING LAW:

- 1) Permits voters to propose statutes or amendments to the Constitution by initiative.
- 2) Requires a petition for an initiative that amends or enacts a statute to contain a number of signatures equal to five percent of the votes cast for candidates for Governor at the last gubernatorial election in order for that initiative to appear on the ballot. Requires a petition for an initiative that amends the state constitution to contain a number of signatures equal to eight percent of the votes cast for candidates for Governor at the last gubernatorial election in order to appear on the ballot.
- 3) Provides that all constitutional amendments, whether placed on the ballot by the Legislature or by an initiative, take effect if approved by a majority of votes cast thereon.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) Purpose of the Bill: According to the author:

ACA 10 proposes an amendment to the California Constitution to require, in the case of an initiative petition that proposes an amendment to the Constitution, that

the petition include signatures from each of ... 27 of the State's Senate districts equal in number to 8% of the votes cast for Governor in that district in the last gubernatorial election. The geographical distribution requirement does not affect the total number of signatures that a petition must gather to qualify for the ballot. Additionally, ACA 10 increases the vote threshold for an initiative constitutional amendment to 55% of the votes cast thereon but maintains that a simple majority of voters may repeal a previously adopted constitutional amendment....

A constitution is the most fundamental document in any government, holding within it the rights of the people as well as the most basic rules by which the people's business is conducted. Any change to it should not be taken lightly. Even the founders of our nation thought the concept of a constitution so sacred that they wrote into the US Constitution a process of amendment so difficult so as to ensure that it would only happen when truly necessary. While the US Constitution has been amended only 27 times in 223 years, California's has been amended 521 times in 133 years. That is because California makes it the easiest to amend its Constitution of any of the 50 states.

The US Constitution does not permit initiatives. An amendment must garner 2/3 approval of both houses of Congress or a petition of 2/3 of the states, followed always by ratification of 3/4 of the states. However, in California, to put an amendment on the ballot, initiative proponents need only gather signatures equal in number to 8% of the votes cast for Governor in the last gubernatorial election. Then, amendments pass with just 50% + 1 of the votes cast.

A supermajority to amend the Constitution is different from a supermajority to pass other laws. A constitution is not a statute; it is a governing document that sets forth basic rights and government structures. If a constitution can be amended by a simple majority, there is no constitution. Any reform or any right can be altered or taken away in the very next election. Had California's rules been in place nationally, there are several times in history where the public would have overturned the First Amendment.

Furthermore, because California lacks a geographic distribution requirement for petition signatures, initiative proponents often gather all of their signatures in the State's largest urban population centers, permitting urban voters to decide which initiatives make the ballot. Requiring signatures to be gathered from urban and rural areas of the state would force proponents to illustrate statewide interest and appeal for their proposals, just as ratification of U.S. constitutional amendments by 3/4 of the states ensures approval by the many states....

ACA 10 is a reasonable measure that seeks to make California's constitutional amendment process more reflective of the national constitutional amendment process by placing higher thresholds for voters' consideration and passage of initiative constitutional amendments to protect the document's sacredness.

- 2) Initiative Constitutional Amendment History: In the last decade, California voters have voted on 58 initiative measures. Of those 58 measures, 33 proposed amendments to the state constitution. During that time, about 30 percent of initiative measures that amended the

constitution were approved, compared to 32 percent of initiative measures that made only statutory changes.

- 3) Supermajority Vote Requirement: Under this measure, an initiative constitutional amendment would require approval by 55 percent of voters statewide to take effect. This supermajority vote requirement would apply only to constitutional amendments that are proposed through the initiative process—that is, constitutional amendments that are placed on the ballot after proponents gather a sufficient number of signatures on an initiative petition. The vote requirement for constitutional amendments that are proposed by the Legislature would not be affected by this measure.

Since the creation of the initiative process, the voters have approved 52 initiative measures that proposed amendments to the constitution, including Proposition 28 at the statewide primary election held last month. Of this total, 35 received more than 55% of the vote. In the last 25 years, 12 of the 23 initiative constitutional amendments approved by the voters have received more than 55% of the vote. Among the high profile initiatives that passed but did not receive 55% of the vote are: Proposition 98 of 1988 (school funding); Proposition 140 of 1990 (term limits); Proposition 209 of 1996 (affirmative action); Proposition 8 of 2008 (same-sex marriage); and Proposition 11 of 2008 (redistricting commission).

Currently, all state ballot measures require a simple majority to be approved by the voters, regardless of the changes to state law made by the measure. If this constitutional amendment is approved by voters, it would mark the first time that any measure that appears on the state ballot would require more than a simple majority to be approved by voters.

- 4) Other States: According to the National Conference of State Legislatures (NCSL), California is one of 24 states that have an initiative process. Of those 24 states, six states permit initiatives for statutes only, three states permit initiatives for constitutional amendments only, and the remaining 15 states permit initiatives both for constitutional amendments and for statutes.

Of the 18 states that permit the state constitution to be amended through the initiative process, only one state requires all initiative constitutional amendments to be approved by a supermajority in all circumstances. In 2006, Florida voters approved a constitutional amendment that requires any future amendment to the Florida Constitution, whether put on the ballot by initiative or by the Legislature, to be approved by 60 percent of voters in order to take effect. Additionally, in Florida, any constitutional amendment that imposes a tax or fee not in place in November 1994 must receive a 2/3rds vote in order to pass.

Certain other states do require a supermajority vote to approve an initiative constitutional amendment in certain circumstances, however. In Illinois, initiative constitutional amendments must pass by 3/5ths of those voting on the measure or by a majority of those voting in the election. Massachusetts, Mississippi, and Nebraska all permit initiative constitutional amendments to pass on a majority vote, provided that the total number of votes cast on the initiative equals a specified threshold (ranging from 30% to 40%) of the total votes cast in the election.

Nevada does not require a supermajority vote on initiative constitutional amendments, but initiative constitutional amendments must receive a majority vote at two consecutive general

elections in order to pass.

According to information from NCSL, of the 24 states that have the initiative process, 12 require some sort of geographic distribution requirement for signatures on an initiative petition in order for that measure to qualify for the ballot. These geographic distribution requirements typically require initiative proponents to collect a specified number of signatures in a certain number of counties, legislative districts, or congressional districts.

Although at least five states require initiative proponents to gather a certain number of signatures from a specified number of counties, federal courts have struck down other states' laws that had county-based requirements. In 2001, the United States District Court in Idaho ruled that an Idaho law that required petition sponsors to collect a certain number of signatures from registered voters in each of 22 counties was unconstitutional. In its ruling, the court found that the distribution requirement was inconsistent with the Equal Protection Clause to the United States Constitution because it gave greater power to rural voters in more sparsely populated counties (*Idaho Coalition United for Bears v. Cenarrusa* (2001), 234 F.Supp.2d 1159). That decision subsequently was upheld by the Ninth Circuit Court of Appeals in 2003 (*Idaho Coalition United for Bears v. Cenarrusa* (2003), 342 F.3d 1073). Federal courts also struck down a similar county-based geographic distribution law in Nevada for the same reasons (*ACLU of Nevada v. Lomax* (2006), 471 F.3d 1010).

On the other hand, earlier this year, the Ninth Circuit Court of Appeals upheld a Nevada law that requires initiative proponents to gather a certain number of signatures from each of the state's congressional districts. Nevada adopted that law after its county-based geographic distribution requirement was struck down by federal courts. In its opinion upholding the new Nevada law, the Court ruled that a congressional district-based distribution requirement did not suffer from the same deficiencies as the county-based distribution requirement because the congressional district-based requirement "grants equal political power to...districts having *equal* populations," unlike the county-based requirement (*Angle et al. v. Miller* (2012), No. 10-16707).

The distribution requirement contained in this bill is analogous to the Nevada law that was recently upheld by the Ninth Circuit Court of Appeals, because the geographic distribution requirement is based on Senate districts that have equal populations.

- 5) Arguments in Opposition: In opposition to this measure, the Howard Jarvis Taxpayers Association writes:

ACA 10...drastically inhibits the initiative process. According to a recent PPIC poll, 62 percent of likely voters still want to vote on ballot measures that are important to them. Amending the Constitution still requires a high standard of over a million signatures to get on the ballot, not an easy process. A higher vote threshold also ensures that important measures approved by voters over the years, including Proposition 98, term limits, and redistricting, would not have been approved had this [measure] been law.

- 6) Related Legislation: ACA 9 (Gatto), which is pending in this committee, would require an initiative that would increase the current vote requirement for an action by either the electors or by the Legislature, or would impose an extraordinary vote requirement for the amendment

of an initiative statute by the Legislature without approval by the electors, to itself receive the same affirmative vote percentage in order to be approved by the electors.

ACA 11 (Gatto) would require an initiative measure that amends the state constitution to receive 55 percent of the vote in order to be approved, unless the measure repeals a previously adopted constitutional amendment. ACA 11 was approved by this committee on a 4-2 vote, but was held on the Assembly Appropriations Committee's suspense file.

- 7) Previous Legislation: As introduced, ACA 21 (Charles Calderon) of 2009 would have required an initiative measure that amended the state constitution to receive a two-thirds vote in order to be approved. ACA 21 was never voted on in this committee in that form, but instead was amended to address another issue.
- 8) Approval of Voters: As a constitutional amendment, this measure requires the approval of the voters to take effect.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

CalTax
Howard Jarvis Taxpayers Association

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