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Who is for people power? Jerry Brown or Prop. 8 sponsors?

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By Harold Johnson and Damien Schiff

Do voters have the ultimate political power in this state, or not?

The California Constitution says they do, by allowing direct democracy through the initiative and referendum.

But how exactly should these instruments be applied, exercised and defended?

This perennial question is being debated with special force right now.

On one front, the argument has been launched by Jerry Brown in his fight to balance the budget by giving a new lease on life to billions of dollars in expiring tax increases. Brown wants lawmakers to let voters decide on his plan to extend the levies. In order to prod the legislators, he's rhapsodizing about people power.

In his [State of the State speech](#), for example, he paid tribute to the demonstrators for political change in Egypt and Tunisia. As we marvel at their courage, he said it would be "unconscionable" for lawmakers to balk at putting his tax plan on a special election in June. The sovereign people must be free to direct their own fiscal destiny, he urged.

Meanwhile, in another forum -- the California Supreme Court -- basic questions about voters' rights are also in play. Or at least they will be, if the justices accept a request from a panel of the U.S. Court of Appeals for the Ninth Circuit that is presiding over the challenge to Proposition 8, the voter-passed initiative that limits marriage to heterosexual couples.

The state Supreme Court has been asked to rule on whether California law recognizes the right (or "legal standing") of an initiative's sponsors to defend the measure in court. After a federal district judge found Prop. 8 unconstitutional last year, the sponsors filed an appeal with the federal appellate court, something Jerry Brown, as attorney general, declined to do. So, if the sponsors are frozen out, Prop. 8 will fall simply for want of a legal defense.

"All political power is inherent in the people." That is the resonant phrase from the California Constitution that Brown quoted in his State of the State speech -- the phrase that overhangs both of these controversies.

But only one of the two controversies is real. To be candid, our rights won't be diminished a whit if Brown's tax election doesn't happen as he wants. If he can't persuade two-thirds of the members of both houses to put his plan before voters, it could still get on the ballot (later in the year, to be sure) through signature-gathering. This would employ the mechanisms of the initiative in one of the standard ways, leaving the people's "inherent" political power intact.

In contrast, the issue before the state Supreme Court -- the Prop. 8 "standing" issue -- goes to the heart of the initiative process, its viability and future.

And the outcome should concern you, no matter where you come down on Prop. 8. If sponsors of a successful initiative -- any initiative -- aren't permitted to step up and defend it in court, even when elected officials stand back and refuse to put on a defense of their own, then the "political power inherent in the people" will have suffered a roundhouse blow.

The initiative process -- which was put in place to give voters a route around the politicians -- will be put at the mercy of politicians' whims and ideologies.

This year marks the 100th anniversary of the initiative, referendum and recall in California. Promoted by the iconic populist Gov. Hiram Johnson and adopted in a special election in 1911, these tools were seen, in the first instance, as a means to break the Southern Pacific Railroad's power over government. But in a broader sense, they gave vital new expression to the principle

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that all political power emanates from the people.

That principle won't be disturbed if Brown's special election plans don't pan out. But it will be if the courts turn their backs on sponsors of successful initiatives -- and, by extension, the tens of millions of voters they represent.

The state Supreme Court has written of the people's "precious right" of initiative. The court should celebrate the centenary of that right by taking the Ninth Circuit up on its request to rule on sponsors' standing. The justices should affirm that sponsors have a special interest in defending their handiwork, and therefore a legal right to do so.

It would be a travesty if, in this anniversary year, the people's right of initiative were allowed to be sabotaged by politicians who pick and choose, on partisan or ideological grounds, whether and when the will of the voters will be defended in court.

Harold Johnson and Damien Schiff are attorneys with Pacific Legal Foundation. In concert with several well-known initiative proponents, including Ward Connerly (Proposition 209) and Ron Unz (Prop. 227) and the Howard Jarvis Taxpayers Association, PLF has submitted a letter to the California Supreme Court asking that it take up the issue of sponsors' standing to defend initiatives in court, and affirm that they do indeed have that right.

Posted By: Lois Kazakoff (Email, Twitter) | February 09 2011 at 05:03 PM

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erasure25 8:27 PM on February 10, 2011

I think the conclusions drawn in this article are dubious and somewhat ridiculous. The inherent power of the people comes from their ability to elect representatives to sit in local and state government. The inherent power of the people does not mean we should put every law, every regulation, every ordinance to a vote of the 10 million or so registered voters. Whatever the California Constitution says, it is subservient to the U.S. Constitution, which states that no other government is valid in the U.S. except a republican form of government. In other words, we cannot have a direct democracy. The U.S. Constitution forbids it. And rightly so. I for one do not trust my "fellow" citizen to draft meaningful legislation, given that the average citizen has poor reading, writing, and arithmetic skills.

REPLY (4) (0) POPULARITY: 4 [Report Abuse]



marcus816 7:00 PM on February 10, 2011

I am so tired of the "activist judges abrogating the will of the people" trope. If your neighbors could vote away your right to do whatever it was that annoyed them or offended them most of them would do so in a heartbeat. Sorry if I sound cynical but the whole message of this article verifies this. "Why can't we take away or deny equal rights to people we disagree with or are prejudiced against" they whine, "this is a democracy isn't it?" I recommend that Harold Johnson and Damien Schiff remove their respective heads from their respective rectums and buy a clue about what the Constitution and Bill of Rights are all about. This is the "democracy for the people" part.

REPLY (2) (1) POPULARITY: 1 [Report Abuse]



Jimcracky 6:55 PM on February 10, 2011

State officials may refuse to defend an initiative they know to violate the US Constitution and violate the rights of a minority. Moreover, Jerry Brown saved the state considerable cost by refusing to defend an indefensible law, no matter where it came from - legislative or voter initiative. Unconstitutional is unconstitutional regardless of the source.

REPLY (2) (0) POPULARITY: 2 [Report Abuse]

▶ 1 reply



br_political 6:33 AM on February 10, 2011

Or why doesn't the CA Supremeos resign since Brown is performing the judicial branch deciding what is unconstitutional by neglecting his oath and office to defend the CA constitution against foreign and domestic enemies, ie gay mafia. At least save the taxpayer's money by eliminating the CA Supremeos salary and pensions then just declare a gay dictatorship. This is easier to take than fake Hollywood democracy.

REPLY (1) (4) POPULARITY: -3 [Report Abuse]

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**sistergeorge** 6:14 AM on February 10, 2011

How come in any other instance (you know, issues that don't have to do with the suppression of homosexuality) what is being called "power of the people" is simply anarchy?

[REPLY](#) [\(3\)](#) [\(1\)](#) POPULARITY: 2 [↩](#) [✉](#) [\[Report Abuse\]](#)

**viscount1953** 6:12 AM on February 10, 2011

It would be a travesty if, in this anniversary year, the people's right of initiative were allowed to be sabotaged by politicians who pick and choose, on partisan or ideological grounds, whether and when the will of the voters will be defended in court.

It would be an even greater travesty to allow people to think that their voter initiatives will somehow override the federal rights for ALL citizens in the state and US. There will never be a time when any majority group will have the ability to dictate the rights of any minority group, regardless of voter outcome! There should be far greater scrutiny placed upon any eligibility for such initiatives before they're even allowed to go to the vote.

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[▶ 2 replies](#)**br_political** 6:09 AM on February 10, 2011

Please just kill us and put us out of our misery. Hollywood wasted the eastern church in Turkey and Russia but failed to do the western with it's failure in Spain and Germany but Hollywood never gives up. If I have to do another 10 years of this crap then wait for gay executioners please just do it now. These gays that follow the opposition around is for the birds! You would think that people would have better things to do. Anyway now that Hezbollah controls Lebanon now there is an exit and we can work for the Iranian nuke program since this is all the gay mafia understands.

[REPLY](#) [\(0\)](#) [\(7\)](#) POPULARITY: -7 [↩](#) [✉](#) [\[Report Abuse\]](#)

[▶ 2 replies](#)**KK_Smith** 4:02 AM on February 10, 2011

Why is it that the "for the people" part of the US constitution seems more like "to the people?"

Inherent political power is an awesome sound byte, unfortunately without true and unrepresented democracy it is just a bunch of lousy words written on lousy paper. The will of the people has been bought and sold since its inception.

Should this be anything new?

When will the "of the people", "by the people" parts be honored and the for the people part stops becoming to the people?

When there are no politicians grabbing what they think is some kind of power to control others' actions and lives. We are nearly fascist and no one is even realizing the transition because of fear replacing freedom and liberty.

This article sheds light on the truism that your rights are bought and sold daily by those you entrust to empower you.

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**sfcuir** 3:36 AM on February 10, 2011

Since the time of Jay was the Supreme Court Justice, it has been the responsibility of the courts to "protect the minority from the tyranny of the majority" because our country's fore fathers realized that there must be limits on popular democracy. Yes, the people have the power but it is not unlimited and when it takes rights from unpopular minorities, it is the responsibility of the courts to limit those powers.

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**minsf** 2:16 AM on February 10, 2011

The authors of this article conveniently ignore that there's a suit in Federal Court. You can't pass a state law (whatever the process) that violates the federal constitution. That's what is at issue here. Conservatives used to support the law. now a lot of them just "provide" political misinformation, tax free, as a "legal" foundation.

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