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THE CASE FOR CAUTIOUS OPTIMISM: CALIFORNIA ENVIRONMENTAL PROPOSITIONS IN THE LATE TWENTIETH CENTURY¹

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L'efficacité de la démocratie directe dans l'histoire de la Californie reste un sujet de débat intense, un phénomène à l'échelle de l'État de Californie mais qui suscite l'attention du monde entier. L'article offre une analyse de cette expérience depuis ses débuts en 1911 et apporte un contrepoint à la vague de critiques formulées contre le principe des référendums d'initiative populaire. Il étudie la protection de l'environnement, un sujet qui oppose clairement les intérêts de la population et ceux des plus puissantes entreprises californiennes. La conclusion est que malgré les abus, les distorsions et les problèmes, la démocratie directe, même imparfaite, reste un outil efficace pour protéger l'environnement. Devant l'inertie de l'assemblée législative et des gouverneurs successifs, et face aux pressions énormes exercées par les entreprises pour prévenir toute législation sur la protection de l'environnement, l'exemple de la démocratie directe en Californie, telle qu'on peut en juger par les résultats électoraux des référendums de la fin du XX^e siècle, justifie un optimisme prudent.

Direct democracy in California represents an imperfect addition to a flawed political process... [and] should be regarded more as a warning than an example.²

[C]itizens... often stand to benefit from the laws created through the initiative and referendum.³

1. The authors would like to thank Santa Clara University for its generous support, and students Blair Thedinger and Patty Adams for their research assistance.

2. Wyn Grant, "Direct Democracy in California: Example or Warning?" *Democratization*, 3.1 (1996), pp. 147-148.

3. Richard Braunstein, "Practicing Democracy: Initiative and Referendum Voting at the End of the 20th Century," Ph.D. diss. (University of Colorado, 1999), p. 201.

Environmentalists clearly have won—it's an effective tool for them.⁴

[V]oting on the propositions is a strikingly idiosyncratic process.⁵

Establishing California's "Fourth Branch" of Government

The efficacy of direct democracy throughout California's history continues to be a subject of intense debate, a state-wide phenomenon with an international audience. California boasts the world's fifth largest economy, and plays a leadership role in national, and sometimes even international, politics. British scholar Wyn Grant, studying the politics of air quality management in California, succinctly sums up the burning issue for environmentalists worldwide who are striving to understand the efficacy of California's activists' efforts: in "Direct Democracy in California: Example or Warning?" Grant concludes that although direct democracy has its merits, its history in California ultimately provides more of a cautionary tale than a model to be emulated. Other scholars, examining the same phenomenon, disagree, but for a variety of contradictory reasons.⁶

Previously we examined how other democratic traditions and practices, in particular community activism within California, have been utilized to promote environmental justice. This study weighs in on the debate over the efficacy of direct democracy to bring about environ-

4. Patrick McGuigan quoted in Thomas Cronin, *Direct Democracy: The Politics of Initiative, Referendum, and Recall* (Cambridge: Harvard University Press, 1989), p. 200.

5. John Mueller, "Voting on the Propositions: Ballot Patterns and Historical Trends of California," *American Political Science Review*, 63.4 (1969), p. 1211.

6. See Silvano Mockli, "Direkte Demokratie in Kalifornien," *Annuaire Suisse de Science Politique*, 31 (1991), pp. 27-44, and Larry Berg & C.B. Holman, "The Initiative Process and its Declining Agenda-Setting Value," *Law and Policy* [Britain], 11.4 (1989), pp. 451-469. Grant, pp. 133-149. Elisabeth Gerber, for example, argues that features of the legislature, especially party organization, lead legislators elected to represent their constituents to vote against their district majority preference. Direct legislation, therefore, is frequently the truer measure of the will of the people. Elisabeth Gerber, "Legislatures, Initiatives, and Representation: The Effects of State Legislative Institutions on Policy," *Political Research Quarterly*, 49.2 (1996), pp. 263-286. Cynthia DeChaine, on the other hand, contests the wisdom of following the "will of the people." She reveals how NIMBYism (Not in My Back Yard) and a number of other factors including education and communication, led to the defeat of a 1997 referendum that would have created an environmentally and economically sound landfill project. Cynthia DeChaine, "The NIMBYism in Modern Suburbia: The Case of Pomona," *International Science Review*, 73.1-2 (1998), pp. 103-117.

mental protection. Our initial assumptions, based on a great deal of secondary material and much anecdotal evidence, including our own experiences as California voters, led us to our working title, "Using Direct Democracy to Thwart the Will of the People: California Environmental Propositions in the Late Twentieth Century." However, as we more closely evaluated the sources, especially the actual campaigns of the late twentieth century and their outcomes, we came to a startling conclusion. It is not, despite many scholars' assertions to the contrary, a case of "simple black or white, but rather a dirty shade of grey." Further investigation revealed results in even lighter tones. Despite its many abuses, distortions, and problems, direct democracy remains an avenue to be utilized, however imperfectly, to protect the environment.⁷

Our focus is state, rather than nation-wide, not just because of California's political and economic prominence. What makes California unique even among the states utilizing direct democracy methods is how frequently and consistently it has exercised these mechanisms. Although intended by some of its creators to be a lifeboat to be used only in extreme circumstances, direct democracy has been termed the "fourth branch" of the state's political system. By the late 1970s, California was using the initiative more widely than any other democratic society.⁸

Any effort to answer Grant's question as to California's appropriateness as role model for direct democracy, especially concerning environmental issues, requires an understanding of both the promise and the reality of nearly a century of Californians' efforts to control their state. Neither the initiative, the referendum, nor the recall, were pioneered in California. Switzerland incorporated referendums into its 1874 constitution, guaranteeing the rights of citizens to approve or reject decisions made by the government, as well as the right to initiate legislation. Within the United States, South Dakota made the initiative and the referendum a part of its state constitution in 1898. Eight other

7. Marie Bolton & Nancy C. Unger, "Pollution, Refineries, and People: Environmental Justice in Contra Costa County, California, 1980," *Le démon moderne: la pollution dans les sociétés urbaines et industrielles d'Europe/The Modern Demon: Pollution in Urban and Industrial Societies* (Clermont-Ferrand: Blaise Pascal University Press, 2002), pp. 425-438. Marie Bolton mariebolton@minitel.net "Re:Taming the Tiger!," 13 Jan. 2003, personal email. Direct democracy measures do not take place in a vacuum, however. California's adoption of term limits, for example, ensures a steady stream of inexperienced, short term legislatures. The subject of the impact of term limits on California government, including direct democracy measures, is a story that is still unfolding and one that warrants careful future study.

8. Eugene C. Lee, "The Initiative and Referendum: How California Has Fared," *National Civic Review*, 68.2 (1979), p. 69.

western or mid-western states followed suit before Californians voted overwhelmingly to join them in 1911.⁹

California's passion for direct democracy was born out of Progressivism, an amorphous movement that is maddeningly difficult to define, and yet one undeniable in its significance. Although various progressives sought diverse, sometimes mutually exclusive goals, all shared a desire to right the wrongs of Gilded Age America. The "gilt" of the period of amazing growth at the turn of the twentieth century was glittering indeed, as industrialization and urbanization quickly transformed the United States, enhancing its position economically and politically. But rising right along with the gross national product were concerns about the increasingly unequal distribution of wealth and power. America's reputation as a land of glorious opportunity seemed to be realized exclusively by major industrialists who pulled the ladder up after themselves rather than allow others to ascend. Citizens who sought remedies from their political representatives frequently found government at best helpless to curb the harmful excesses, or, at worst, a willing collaborator, as the influence of elected officials was purchased covertly or even overtly. Specific solutions to redistribute more equitably the nation's wealth ranged from natural resource preservation to tax and labor legislation, while efforts to redistribute the political power centered on election reforms, including the direct election of U.S. Senators (previously nominated by state legislators), the initiative, the referendum, and the recall, all designed to return political power to the people.¹⁰

In Los Angeles, direct democracy was spearheaded by John Randolph Haynes, a Fabian and successful physician who facilitated, at the city level, the nation's first initiative, referendum, and recall legislation in 1902, leading to the first recall of a public official in 1904. In the minds of citizens throughout the state, the biggest corrupter of the legislature was the Southern Pacific Railroad, famously depicted in a political cartoon as an octopus, with each of its eight legs wound around some crucial aspect of California's political and economic system. Progressivism, as the potential slayer of this beast, was personified by Hiram Johnson, elected to the governor's chair in 1910. The combined efforts of Haynes and Johnson soon made California a leader in direct democracy. But with what results?¹¹

9. John M. Allswang, *The Initiative and Referendum in California, 1898-1998* (Stanford, Calif.: Stanford University Press, 2000), p. 3.

10. See Nancy C. Unger, *Fighting Bob La Follette: The Righteous Reformer* (Chapel Hill & London: University of North Carolina Press, 2000).

11. See Tom Sitton, *John Randolph Haynes: California Progressive* (Stanford, Calif.: Stanford University Press, 1992). Frank Norris's classic novel *The Octopus* (1901)

Critics paint a very dark picture indeed. From the very beginning, ballot measures have been fraught with confusion. In 1912, a "yes" vote on a referendum meant a vote in favor of the statute as passed by the legislature, while a "no" vote meant a vote to revoke that statute, so a vote "yes" meant a vote against the aim of the referendum. "It was enough," notes scholar John Allswang, "to confuse anybody." As voter pamphlets more clearly explained what each vote meant, and the number of measures on the ballot escalated, responsible voting required increasing amounts of careful study prior to stepping into the voting booth. Lengthy newspaper articles provided extensive information on all sides of the issues, augmented in more recent years by websites produced not only by the official proponents and opponents of various measures, but also by concerned citizens. While many celebrate these extensive offerings as some of the most valuable fruits of the "Information Age," this potential overload has led to what some scholars have termed "voter fatigue," which has resulted in complex measures being reduced to campaigns of catchy slogans, and, in more recent years, radio "sound bites" and fifteen-second television commercials.¹²

The role played by money in direct democracy from its first implantation in California caused many to question the ability of the measures to truly carry out the will of the people. As early as 1917 critics noted the enormously expensive campaigns launched by big business concerns to counter various proposals and were especially vocal in their opposition to the professional signature gatherers necessary to place measures on the ballot. Valid signatures from a number of registered voters equal to 8 percent of the vote in the preceding gubernatorial election were required to put a measure on the ballot, a process that critics argued benefited only those campaigns sufficiently well funded to hire signature gatherers. The regulations also limited successful signature gathering to urban areas with sufficient populations to make signature solicitation profitable. The expense and organization involved in putting measures on the ballot, critics claimed, made direct democracy a big business in its own right.¹³

Although scholars hold a variety of contradictory opinions about the role of money in a ballot measure's success, many are based on

details the death struggle between wheat farmers and a railroad monopoly in California's San Joaquin Valley.

12. Allswang, p. 19. See also Thomas Cronin, *Direct Democracy: The Politics of Initiative, Referendum, and Recall* (Cambridge: Harvard University Press, 1989), p. 74. See Shaun Bowler, Todd Donovan, and Trudi Happ, "Ballot Propositions and Information Costs: Direct Democracy and the Fatigued Voter," *Western Political Quarterly*, 45.2 (1992), pp. 559-568.

13. Allswang, p. 144.

popular perception rather than evidence. In fact, from the very beginning, major funding has never been a guarantee that a proposition would succeed, although significantly, "it could almost always guarantee that one could be beaten." Moreover, the widespread belief that increased spending over the years has increasingly determined election results has been disproved by a careful study of sixty years of campaign spending and election results showing that spending on direct democracy measures, adjusted for inflation, has been remarkably consistent. A variety of factors, however, do impinge on the ability of direct democracy to carry out the will of the people. In an early example, even proponents of the process were frustrated by the ability of political conservatives to undo some of Hiram Johnson's progressive programs by utilizing the very measures of direct democracy they had initially opposed.¹⁴

Direct democracy measures continued to be confusing and related expenditures difficult to trace, as the ostensibly altruistic organization formally funding one side of a measure frequently turned out to be a front for a corporation with great profits at stake. Moreover, voters suffered from "ballot fatigue," brought on by the increasing number of measures requiring their vote. Frequently, but not always, position on the ballot directly affected the number of votes cast, as propositions higher on the ballot, regardless of subject matter, received more votes. By 1938, the *San Francisco Chronicle* claimed that initiatives and referendums "have become a means of confusion and tinkering, crackpot schemes and frequent frustration of public information." They remained an integral part of California's political fabric, however, and frequently revealed much about the goals and values of the state's residents. In 1964, for example, California voters passed a measure to overturn the Fair Housing Act passed by the state legislature the preceding year, an outcome that seemed more in keeping with the openly racist southern United States than "liberal" California. The California Supreme Court ultimately ruled unconstitutional this decision by two thirds of the state's voters to deny African Americans fair housing, just one example of the fate of a controversial initiative ultimately being decided by the courts.¹⁵

Environmentalists' interest in this system of government was born out of California's number of unique features including an enormous and ever increasing population (growing in the twenty-first century at a rate of around 600,000 people a year), and a shockingly arid climate. For example, the San Jose area, by the 1990s a suburban sprawl of lush palm trees and green suburb lawns, home to the world-renown Silicon

14. Allswang, p. 49. John R. Owens & Larry L. Wade, "Campaign Spending on California Ballot Propositions, 1924-1984: Trends and Voting Effects," *Western Political Quarterly*, 39.4 (1986), pp. 675-689.

15. Bowler, Donovan, & Happ. Allswang, pp. 65, 61.

Valley, averages 14 inches/35 centimeters of rainfall per year, less than Casablanca. The state, whose survival depends on vast, ongoing manipulation of natural resources, including the world's largest and most expensive water delivery system, is especially vulnerable to environmental devastation. Environmental problems range from the high levels of mercury left over from the 1849 Gold Rush that still contaminate San Francisco bay waters and marine life, to the two million tons of hazardous waste Californians currently generate every year. The vast profits of California corporations, ranging from agribusiness to high tech weapons development, have allowed them to yield enormous economic and political power. In the showdowns between profits and clean air or water, profits have continually won out. Many in California found their elected officials, unable to resist the siren song of large campaign contributions, rendered seemingly oblivious to the environmental crises ravaging the state. With all hopes dashed that relief would come from the legislature, environmental protection advocates repeatedly turned to direct, rather than representative democracy as the only means by which polluters and exploiters could be controlled.¹⁶

Direct democracy quickly became the new battleground for the water wars that so dominate California's environmental history. The attempt in 1914 to invalidate the newly created state commission to adjudicate water rights failed, but only by the narrowest of margins. In the 1920s three well funded initiatives proposing a state water and power commission that would have the right to issue bonds and to use the proceeds to expand public control of water and power all fell victim to powerful campaigns funded by business organizations and private power companies determined to resist government regulation of these vital resources. However, the record of direct democracy in protecting the environment was fairly strong throughout the 1930s as many Californians understood the reckless avarice of big business to be the root cause of the Great Depression. Voters have fairly consistently opposed propositions during adverse economic conditions. In 1933, the Central Valley Water Project, passed by the state legislature, resisted a repeal referendum launched by private power companies. During this period voters also rejected four different attempts to allow state-owned beach lands to be leased for mineral and oil production.¹⁷

16. Allswang, pp. 64, 136. Paul Rogers, "Green Blitz for State Parks: Environmentalists Push Prop. 12," *San Jose Mercury News* 2 March 2000: 1A, 16A. "Toxic Questions," Department of Toxic Waste, 2000 <www.dtsc.ca.gov/ToxicQuestions/DTSC_Overview.html> 10 Jan. 2003.

17. Based on a study of 1974-92. Sean Bowler & Todd Donovan, "Economic Conditions and Voting on Ballot Propositions," *American Politics Quarterly*, 22.1 (1994), pp. 27-40. Allswang, p. 43.

In 1956, the year of the Suez crisis, came one in what would become a long series of propositions funded by "Big Oil" which, in the name of eliminating waste and maximizing production, threatened state-owned tidelands and the public interest. Although vastly outspent, the foes of the oil forces mounted an effective counter-campaign, demonstrating the maxim that money alone cannot guarantee success. Eight environmentally-related measures were introduced between 1970 and 1982, illuminating both the frustration of many with the legislature's inability to keep up with environmental abuses, and the conflicts between environmental protection and economic development. The record for 1972 provides a good example of the inconsistent, yet overall protectionist results of such measures: Proposition 9, which proposed a wide variety of reforms from pesticide restrictions to a five-year ban on the construction of nuclear powered electric generating plants, went down to defeat. Five months later, Proposition 20, a measure to protect coastal lands, passed, despite the fact that the plan had originally died in committee when presented to the state legislature and despite the disproportionate sums spent by Shell Oil and other business and labor organizations to ensure its defeat. In 1982, Californians determined to protect the environment overturned legislation that would expand the Central Valley Water Project and voted to require the governor to petition the President of the United States to, along with the Soviet Union, stop nuclear testing, production, and deployment.¹⁸

In the more recent debates over the effectiveness of direct democracy, several factors are emphasized by those claiming that it is becoming increasingly undemocratic. They point, for example, to the frequently tiny number (less than 25 percent) of voters who determine a measure's success or failure. In addition, as California's population grows, so does the number of signatures required to place a measure on the ballot, revitalizing charges that money remained the key to all forms of California politics. Environmentalists have been outraged by the efforts of various polluters to utilize the initiative process to protect themselves. In 1994, for example, the Philip Morris Company, a major tobacco producer, contributed \$13 million to an initiative promoted as "anti-smoking," that, if passed, would have reduced rather than intensified existing regulations concerning smoking in public places.¹⁹

Environmentalists who defend direct democracy note that ballot measures can be funded not just by big businesses, but also by popular organizations such as labor unions and, frequently, by grass roots

18. Allswang, p. 140.

19. David Hadwiger, "Money, Turnout, and Ballot Measure Success in California Cities," *Western Political Quarterly*, 45.2 (1992), pp. 539-547. See Berg & Holman. Allswang, p. 199.

groups that are environmentally motivated. The often tiny budgets of these groups do not guarantee the defeat of the measures they propose—in many instances, environmental Davids have slain corporate Goliaths. And while direct democracy defenders acknowledge that the actual number of votes on any particular measure may be small, they claim that because Americans are decreasingly voting a straight party ticket and increasingly voting on the merits of the specific individuals and/or issues involved, the votes that are cast are based on more thoughtful and informed decision-making than blind party alliance. Direct democracy defenders also note that, despite the system's various imperfections, it still is more truly representative of the people than are the legislators they elect. Although elected officials may, in recent times, be as likely to be influenced by pressures from within their party organizations as by the bribes of big business or the influence of professional lobbyists, the end result remains the same: they vote against the majority preference of their districts.²⁰

Direct democracy has yielded decidedly mixed results from its inception in 1911. In Part Two: "Environmental Propositions in Late Twentieth Century California," we examine more recent, specific developments in the history of direct democracy measures, and offer some conclusions as to the appropriateness of California's "fourth branch of government" as a model for other states and nations seeking to remedy environmental wrongs.

Environmental Propositions in Late Twentieth Century California

The first thing to impress an observer of California initiative campaigns in the 1980s and 1990s is the explosion of big money involved. The California Commission on Campaign Financing reports that from 1976-1990, spending on initiatives jumped by 1200%, from \$8.9 million to over \$110 million. In 1988 and 1990, for the first time, more money was spent on initiative campaigns than on lobbying the state legislature. In 1990, 67% of all initiative campaign funds were raised in amounts of \$100,000 or more, and over 33% in amounts of over \$1 million. Business

20. Carl Lutrin & Allen K. Settle, "The Public and Ecology: The Role of Initiatives in California's Environmental Politics," *Western Political Quarterly*, 28 (1975), pp. 352-371. Lee, p. 76. See also Micah L. Sifrey, "Independents' Day," *The Nation*, 18 June 2001, pp. 4-5, and Sifrey's *Spoiling for a Fight: Third-Party Politics in America*, Routledge 2002. Gerber, pp. 263-286. See also Richard Braunstein, "Practicing Democracy: Initiative and Referendum Voting at the End of the 20th Century," Ph.D. diss. (University of Colorado, 1999).

contributed over 66% of initiative campaign funds, individuals 12%, politicians 9%, political parties 7%, and labor 1%. In the 1990s, every election was dominated by a major economic battle in which corporations spent without limit in order to advance their economic interests. This increase in spending brought about a professionalization of initiative campaigns and operations which in turn generated more expenses. The cost of qualifying an initiative for ballot increased from \$45,000 in 1976 to over \$1 million 1990, due in large part to the increasing need for paid signature gatherers to keep pace with the rapid growth of the population, as pointed out above, a practice long denounced as a major problem. In addition, professional political consultants managed every part of a initiative campaign, starting with the use of paid signature firms which could guarantee almost any client automatic qualification for about \$1 million.²¹

California corporations were investing in initiative campaigns as a means of selling to voters their political and economic vision of California. Many observers, of all political stripes, have decided that this is reason enough to consider direct democracy in California a failure. David Broder went so far as to title his 2000 book, *Democracy Derailed: Initiative Campaigns and the Power of Money*.²² This article seeks to counter the tide of criticism of the initiative process. Rather than addressing all initiatives and propositions in the same manner, here we focus solely on environmental politics, issues which we argue most clearly pit popular interests against California's largest and most powerful corporations. We argue that corporate manipulation and political corruption is so pervasive in the California political system that direct democracy, despite clear abuse, remains the best chance of voters to counter the power of big business. If we indulge in a bit of "if history," as did historian Joseph Zimmerman, we agree that the progressives who put into place direct democracy would be disturbed by the large sums spent by corporate interests to undermine the initiative process, but "their trust in the common sense of the average citizen would be undaunted." To demonstrate our argument, this portion of our article first outlines the two principle methods used to corrupt the California initiative process in the late twentieth century: the co-optation of initiatives and the rise of counter-initiatives. It then considers the experiences of certain environmental propositions in 1988 and 1990, and finally presents our analysis and conclusions.²³

21. California Commission on Campaign Financing; Jim Shultz, *The Initiative Cookbook* (San Francisco: The Democracy Center, 1998), p. 81.

22. David Broder, *Democracy Derailed: Initiative Campaigns and the Power of Money* (New York: Harcourt, Inc., 2000).

23. Joseph Zimmerman, *Participatory Democracy: Populism Revived* (New York: Praeger Publishers, 1986), pp. 96-97.

Starting in the 1970s, state politicians of both parties attached their names to initiative campaigns as a way of attracting voters. In his 1974 gubernatorial primary campaign, democrat Jerry Brown joined with Common Cause and other reform groups to support a proposition that would limit lobbyist spending to "two hamburgers and a Coke." The June proposition won by a two to one margin, and Brown rode the reformist wave into the governor's office in November. Similarly, republicans supported ballot measures that seemed tough on crime. George Deukmejian's close association with initiatives to reinstate the death penalty and his campaign position in favor of capital punishment helped him win election as Attorney General in 1978 and Governor in 1982. As one analyst put it, the "adopt an initiative strategy" can result in a "dangerous political whirlpool in which extreme initiatives get adopted by mainstream leaders trying to capitalize on popular emotion. The public votes to send a message, but it is the detail of the law that Californians must live with, long, long after the politician involved has moved on to other ambitions."²⁴

The co-optation of initiatives continued to increase. Between 1988 and 1996, candidates for statewide office and other politicians either sponsored or affiliated themselves closely with twenty-one ballot initiatives. State democrats in the 1980s associated themselves particularly with environmentalist initiatives as a way to boost their personal campaigns. Environmental groups, in turn, solicited the support of state democrats, eschewing non-partisan politics in exchange for the support offered by the democratic political machine. When the Sierra Club asked democrat leaders in 1986 for financial support for Proposition 65, the "anti-toxics" initiative, Democratic Assemblyman Tom Hayden adopted the measure as his central cause, bringing with him popular and lucrative Hollywood connections. Democrat candidates for Governor Tom Bradley and Senate Alan Cranston also strongly backed Prop 65, seeking an issue which would distinguish them from their republican counterparts. In part due to this powerful support, Prop 65 passed in the November election by a two to one margin. Although Bradley lost his race, most analysts credit Cranston's slim re-election to his association with the initiative.

In 1990, environmental initiatives became even further entangled with state partisan politics. Environmental groups were preparing to launch a variety of separate measures to control pesticide use, and to protect coasts and forests. Some groups, wary of becoming embroiled in partisan issues, planned to draft measures sufficiently bipartisan to win support from both democrat and republican candidates. At the same

24. Shultz, pp. 86, 88.

time, Tom Hayden and democrat gubernatorial candidate John Van de Kamp proposed to combine all the initiatives into one single proposition and make it radical enough so that republican candidate for governor Pete Wilson would be forced to campaign against it. Although many environmentalists opposed this strategy, Hayden and Van de Kamp were able to win enough support to place Proposition 128, "Big Green," on the November ballot. The measure was drafted by Van de Kamp, along with Hayden, the Sierra Club, the California League of Conservation Voters, and the National Resources Defense Council. Van de Kamp also supported two other non-environmental initiatives, certain that his sponsorship would strengthen his own campaign position with voters. When he lost the June primary to Dianne Feinstein, all these initiatives were left half-orphaned, losing Van de Kamp's political and financial support as well as the services of his professional campaign staff. Although Prop 128 was hopelessly entangled in the gubernatorial campaign, both Dianne Feinstein and her republican opponent Pete Wilson kept their distance from it, with Feinstein embracing it gingerly and Wilson opposing it gingerly. Prop 128 lost in the November election, victim to political manipulation, its own complexity, a crowded ballot, attacks on Hayden, and as we shall see, a blizzard of corporate counter-initiatives. Its loss is generally seen as a major reverse of Prop 65's victory four years earlier.²⁵

The loss of this strongly partisan and politically oriented environmental proposition can also be understood as a sign of voters' ability to distinguish between citizen group initiatives and political machine initiatives. Direct democracy was developed to help voters counter the ability of powerful corporations to corrupt political parties, individual office holders, and the state political system. The initiative was viewed as a way to help voters force reform on specific issues and was purposefully created to bypass the political negotiations in the legislature which often bogged down progress. In the late 20th century, most successful environmental propositions were written by environmental citizen reformers, targeted specific issues, were short, and avoided bureaucratic detail and political issues. In contrast, Prop 128 was the creation of political maneuvering, was particularly long (16,000 words in contrast to most initiatives which averaged around 5,000), and in one of its most controversial sections, created a new state agency. The Office of Environmental Advocate would have been a statewide elected position with a four-year term and broad powers to use the courts to enforce all laws "enacted to protect the environment and public health."²⁶ Opponents

25. *Ibid.*, 86-7; *Wall Street Journal*, 22 October 1990.

26. The full texts of ballot proposals are available at <<http://holmes.uchastings.edu>>; *Los Angeles Daily Journal*, 1 November 1990.

very quickly labeled this position the "environmental czar" or "environmental cop," and warned voters against the potential for a new layer of bureaucracy in the state government created to undertake investigations, studies, and analyses, and to bring lawsuits "to ensure compliance with state laws." Voters responded to this argument and were sensitive to the proposition's political entanglements. The dissonance was too strong between the limited thrust of direct democracy initiatives and the octopus-like form of Prop 128.

Prop 128 shared the 1990 ballot with a wave of counter-initiatives. When in 1986, Prop 65, the anti-toxics initiative, passed in spite of an extensive and expensive "no" campaign waged by oil companies and manufacturers, industry understood that with issues which aroused public emotion, a simple call to vote "no" was not enough. In 1988, insurance companies began a trend to place counter-initiatives on the ballot, resulting in a ballot on which five separate initiatives dealing with automobile insurance and tort reform appeared. The 1990 ballot featured a blizzard of health and environment initiatives and counter-initiatives. Each counter-measure was designed to nullify its progressive counterpart. Rather than presenting genuine alternatives, they aimed at confusing voters and dragging down all competing initiatives to maintain the status quo, itself imposed in part by industry's traditional political lobbying tactics. Industry created front organizations with citizen-friendly names to author ballot initiatives, further confusing voters. These strategies were to some degree successful. In what was called "the Big NO," voters in 1990 rejected all competing measures, including those with strong polling leads shortly before the election. Out of the total twenty-seven sometimes complicated initiatives on the ballot, voters only passed twenty-three.²⁷ Most analyses of this election focus on four competing environmental initiatives, as well as two competing health/alcohol tax initiatives, to demonstrate the success of corporate tactics, but as we shall see the situation was far more complex.

We have already illustrated the political manipulation of the initiative process with the example of Prop 128 on the 1990 ballot. Prop 128, which would have required significant environmental reform, is also a good example of the counter-initiative process. Prop 128, presented by its supporters as "Big Green," would have imposed a five-year phase-out of many pesticides, banned the sale within the state of any food containing residues of proven cancer-causing pesticides, curbed off-shore drilling in state waters, established a \$500 million oil-spill clean-up fund, required upgraded sewage-treatment plants, required a 40% reduction in carbon dioxide emissions by 2010, and

27. See *Los Angeles Daily Journal*, 7 November 1990.

spent \$300 million to protect ancient redwood stands and plant new trees.²⁸ California's most powerful corporations, those dominating its extensive petro-chemical industry, poured millions of dollars into the effort to defeat Prop 128, both directly and through the sponsorship of their own initiative, Prop 135.

The petro-chemical industry was especially alarmed about Prop 128's requirements for emission reductions and its limits on pesticide use. Their failure in 1986 to stave off approval of Prop 65, the anti-toxics initiative, with dire economic projections designed to convince voters to vote "no," prompted them early on to consider multiple strategies to defeat Prop 128. A year before the June 1990 election, the Western Agricultural Chemical Association was pressing its members for money and organizing its own anti-initiative group, Californians for Food Safety. It hired Woodward and McDowell, a campaign-management firm long active in California initiative battles, who began a series of radio advertisements against the initiative. In August 1989, Woodward and McDowell were forced to recall their ads until they added a required disclaimer that chemical company money had heavily financed them. To ensure defeat of Prop 128, the industry also launched its own initiative, Prop 135, quickly dubbed "Big Brown" by opponents. Prop 135 proposed to voters far less stringent regulations than Prop 128 and specifically nullified its pesticide portions. In the case of passage of two or more competing initiatives, the one with the most votes is dominant. At the least, Prop 135 could be counted on to confuse voters, and if Prop 128 were to succeed, industry could gamble that Prop 135 would as well, and perhaps override it with its own, industry-friendly measures.²⁹

With such high stakes and with such powerful players, the amount of money spent on the 1990 initiative campaigns was astronomical. Out of the \$6.5 million raised to defeat Prop 128, over \$5 million came from oil and chemical companies.³⁰

As Carl Pope, national conservation director for the Sierra Club explained, "What is driving this is pesticides, pesticides, pesticides." California had long been the nation's largest agricultural producer and consumer of pesticides. In 1987 alone, 600 million pounds of pesticides were sold in California. Campaign-finance statements show that chemical companies with extensive pesticide divisions donated over \$3.2 million to the campaign to defeat Prop 128 and oil companies added almost \$1.8 million. According to Rick Rountree, spokesman for Rhone-Poulenc Agriculture Company, "While it's a lot of money, it is not large in terms

28. See <<http://holmes.uchastings.edu>>

29. *Wall Street Journal*, 22 October 1990; Shultz, p. 89; <<http://holmes.uchastings.edu>>.

30. *San Jose Mercury News*, 11 October 1990; *Wall Street Journal*, 22 October 1990.

of the amount of business we do in California because of the size and importance of agriculture in the state." Skip Ragland, spokesman for Ciba-Geigy, said the company could lose 30% of its California business if Prop 128 were approved and that opposition to Prop 128 is "certainly worth the amount of money that's been reported from various companies." Prop 128 would have made it illegal to sell any food grown outside the state with a pesticide banned within it. Industry was concerned that California would provide an example for other states that might adopt similar restrictions, or that growers might reduce or eliminate pesticide use outside of the state to make sure they could sell crops in the huge California market. Bob Neunreiter, of Monsanto, pointed out: "It's not just the alachlor [herbicide] market in California, it's our alachlor market in Iowa and Indiana, and the major impact on that business if 128 should pass."³¹

Largest Contributors to Campaign to Defeat Prop 128,
Operations Concerned, and
Pesticides Likely to be Banned:³²

Company	Contribution	Operation and Pesticides Concerned
Monsanto	405,000	Pesticides: alachlor
ARCO	397,000	Oil
Chevron	395,000	Oil
ICI Americas	379,500	Pesticides: captan
Ciba-Geigy	375,500	Pesticides: simazine, methidathion
DuPont	365,000	Pesticides: mancozeb, benomyl, atrazine, linuron
DowElanco	359,000	Pesticides
Rhone-Poulenc	249,000	Pesticides: fosetyl al, aidicarb

Other industry representatives minimized the impact of the measure on their businesses and portrayed their opposition as altruistic. George Dunn, government affairs manager for ARCO, said that Prop 128 "doesn't affect us that much economically," but that the company was worried that the measure "would have such a drastic effect on the economy that people would rebel." The front group created by the agrochemical industry, Californians for Food Safety, was joined by the petrochemical industry's Californians for Air and Water Quality. When polls demonstrated that because of Tom Hayden's radical youth, voters were wary of his close association with the initiative, a third front group was created, "No on 128, The Hayden Initiative." Voters were then misleadingly presented with opposition to Prop 128 under the cover of progressive or anti-radical sounding organizations, rather than as a "vote

31. *San Francisco Chronicle*, 4 October 1990, 31 October 1990; *San Jose Mercury News*, 11 October 1990.

32. *San Jose Mercury News*, 11 October 1990.

no" movement coming from industry opponents. In contrast to the vast sums spent by California's economic powerhouses to defeat Prop 128, supporters of the measure raised only \$3 million. They were successful in making contribution patterns a major campaign issue, but instead of creating support for Prop 128, this only increased cynicism about the initiative process and encouraged the "Big NO" vote. Prop 128 failed with 64% "no" votes cast, and Prop 135 failed with 70% "no" votes cast.³³

Following the election, environmentalists readily admitted their errors. Sierra Club conservation director Carl Pope concluded that in the future, environmentalists would push for narrow propositions, rather than broad ones that were now proven too easy to defeat. Lucy Blake, of the California League of Conservation Voters suggested that "Big Green was a casualty of a broader political climate that really had nothing to do with the environment. You can't pull a Democrat or Republican lever on the propositions. But you can pull 'no,' and I think that's what people did." Another environmentalist anonymously admitted, "As a matter of both tactics and policy, Big Green was a mistake. It tried to make too much controversial and complicated law in one ballot measure."³⁴

Voters were presented with a parallel situation on the same 1990 ballot with two bond initiatives affecting timber harvesting, Prop 130, "Forests Forever," and Prop 138, "Big Stump." Wealthy California conservationist Hal Arbit spent \$5 million to sponsor Prop 130, which authorized a \$742 million bond issue to acquire ancient forests and preserve wildlife habitat, retrain loggers, ban clearcutting, and mandate sustained yield standards. The timber industry countered with an ad campaign portraying Prop 130 as an extremist measure supported by fringe environmental activists such as Earth First! It also wrote its own measure, Prop 138, which would authorize a \$300 million bond issue to finance private reforestation projects and urban and rural tree planting programs, negotiate timber management plans, and prohibit the state from acquiring timberland without the agreement of the owner. Prop 138 was designed to allow timber corporations to continue to maximize their operations with a minimum of state interference. Both of these initiatives failed to pass, Prop 130 with 52% "no" votes cast, and Prop 138 with 71% "no" votes cast.³⁵

Many observers conclude from the 1990 ballot that there existed a crisis in the democratic process due to abuses of direct democracy. As pollster Mervin Field suggests, "More times than not, when the 'No' side really takes aim, has the money and can find real or alleged flaws, it

33. Shultz, 83; *San Jose Mercury News*, 11 October 1990; <<http://holmes.uchastings.edu>>.

34. *San Jose Mercury News*, 11 October 1990; *Wall Street Journal*, 22 October 1990.

35. <<http://holmes.uchastings.edu>>.

can completely turn public opinion around."³⁶ Yet, while still affirming the tremendous power that corporations have in influencing politicians and the public and even in writing law, we maintain our faith in voters' instincts. Prop 128, a sprawling approach to law-writing and an example of the political misuse of the initiative process, failed with 64% "no" votes. Props 135 and 138, both examples of corporate-sponsored and deliberately misleading counter-initiatives, failed with a strong 70% and 71% "no" votes cast. Prop 130, a narrowly defined initiative such as voters often approve, yet put on the ballot by a wealthy individual who himself had disturbingly close ties to the timber industry lost, although only by a slim margin of 52% "no" votes cast. In all these cases, the voters seem to display a healthy dose of common sense.

To extend our argument, Props 128, 135, 130, and 138, as well as the rest of the 1990 ballot need to be examined in a larger context. The following is the full and impressively long list of initiatives presented to voters on the Fall 1990 ballot:

State Ballot Propositions, Fall 1990³⁷

- 124 Local Hospital Districts
- 125 Rail Cars and Locomotives
- 126 Alcohol Tax
- 127 Property Tax Exemption for Earthquake Improvements
- 128 Natural Environment, Public Health
- 129 Drug Enforcement, Taxation, Bonds
- 130 Forest and Wildlife Protection Bond and Initiative
- 131 Term Limits, Ethics, Campaign Funding
- 132 Marine Resources Initiative
- 133 Anti-Drug Programs: Sales Tax and Prison Terms
- 134 Alcohol Tax Initiative
- 135 Pesticide Regulation
- 136 Voting on State and Local Taxes
- 137 Initiative and Referendum Process
- 138 Forestry Programs and Timber Harvesting Bond and Initiative
- 139 Prison Inmate Labor
- 140 Terms of Office, Retirement, Operating Costs
- 141 Toxic Chemicals
- 142 Veterans Bonds
- 143 Higher Education Bonds
- 144 Prison Bonds
- 145 Housing Bonds
- 146 K-12 School Bonds
- 147 County Jail Bonds
- 148 Water Bonds
- 149 Park and Recreation Bonds
- 150 County Courthouse Bonds
- 151 Child Care Bonds

36. *San Francisco Chronicle*, 23 March 1996.

37. *San Francisco Chronicle*, 31 October 1990.

The fall 1990 election saw one of the smallest off-year voter turnouts in the state's history. Political commentators suggest that nervousness about economic recession and the potential war in the Persian Gulf kept voters home, but there may have been additional reasons.³⁸ Out of the twenty-seven initiatives, thirteen, or 50%, were bond issues. A small voter turnout generally means that older, more conservative voters dominate at the polls, and these voters, when worried about the economy, were much less likely to pass bond issues which would increase the state's debt load. Even Prop 148, an initiative placed on the ballot by the legislature to establish a fund for a water resources program failed with a 56% "no" vote, whereas moderate water initiatives were typically approved by voters. In 1988, for example, all three clean water propositions placed on the ballot by the state legislature passed by healthy margins of 72%, 62%, and 65% "yes" votes.³⁹

Out of the twenty-seven 1990 initiatives, only four (138, 135, 130, and 138) have been treated in the literature as related to the environment. We suggest that this definition of what is "environmental" is very limited, and extend our analysis to three additional initiatives, Prop 148 (discussed above), Prop 141, "Toxic Chemical Discharge," and Prop 132, "Marine Resources." These initiatives also involve environmental issues and their omission from analyses both of direct democracy and environmental initiatives is both startling and distorting.

Prop 141 was presented to voters by the legislature in order to extend to public agencies the 1988 Prop 65, which prohibited private businesses from discharging or releasing toxic chemicals into any of the state's water systems. Independent state Senator Quentin Kopp, Assemblyman Lloyd Connelly, and taxpayer advocate Richard Gann promoted Prop 141 as imposing uniform standards on both private businesses and public agencies, thereby plugging a significant loophole left by Prop 65. Opposition came not from industry, but from various public water agencies and water management systems which resisted forced compliance with Prop 65's safeguards. Prop 141 provides a good example of the sort of legislation that might have been passed through negotiations in the state capital without going to voters. That it was presented to voters attests to the strength of resistance within public agencies. Swept along the current of "vote no" and fears of increased costs, Prop 141 failed, but by only a 52% "no" vote.⁴⁰

Prop 132 was the only environmental initiative to pass in 1990, with a 56% "yes" vote. The initiative was sponsored by Assemblywoman Doris Allen, chairwoman of the Committee to Ban Gill Nets, and

38. *Los Angeles Daily Journal*, 7 November 1990.

39. <<http://holmes.uchastings.edu>>

40. *Ibid.*

supported by state Senator Quentin Kopp, the highly respected and non-political Marine Mammal Fund, The Dolphin Connection, a university professor of environmental biology, and an Earth Island Institute research biologist. Opponents included the fishing industry, two renown, longtime Bay Area seafood restaurants, and the Fisherman's Union of America. Prop 132 extended the legislative ban on the use of gill nets and trammel nets in coastal waters of northern California as well as in central and southern California waters in order to increase protection of marine mammals. It compensated fishers who lost their gill and trammel net permits with revenues gained from increased fees on sports fishing activities. Prop 132 was a narrowly defined law to protect marine mammals: costs to the state were minimal, compensation to commercial fishers was included, and no powerful corporate interests were involved. Even in the "vote no" climate of 1990, voters passed this animal protection act. Whereas environmental initiatives that were the product of political manipulation or were closely related to corporate interests generated a widespread "no" vote, with Prop 132 voters indicated their ability to identify and pass a simpler and seemingly fairer measure.

Not only did California voters often vote discerningly, they consistently indicated support for direct democracy and an understanding of its flaws. A 1992 study found that 66% of the public held a favorable view of the initiative process, but that 72% found that it had "gotten out of control in California elections." Voter complaints included "misleading television advertising, the dominance of moneyed special interests, and the excessive complexity of ballot measures." Some wanted more disclosure of financial contributors in initiative advertising; others suggested contribution limits on donations to campaigns.⁴¹ Yet for all their criticism of the initiative process, voters understood only too well that business interests were well able to spend the large sums of money necessary to influence decisions made by California's legislature or to contribute to its inaction. As columnist Harold Gilliam points out, "For years there have been reports on pesticides, herbicides and other toxic wastes that poison workers and water supplies and the people and animals that drink from them. However, with a few honorable exceptions, the Legislature has taken no effective action. Could it be that campaign contributions from big polluters have caused lawmakers to be timid on this subject?"⁴² For all its weaknesses and potential for abuse, in a political climate corrupted by corporate power, the initiative process remained the only method by which citizens had a chance to improve the quality of their environment.

41. California Commission on Campaign Financing, p. 19.

42. *San Francisco Chronicle*, 7 October 1990.

In *The Power Elite*, C. Wright Mills identified corporations, the U.S. President, and the military as a dangerous trilogy of power dominating American life in the 1950s. Faced with this power, he argued that “only through the initiative, the referendum, and the recall can an awakened and intelligent citizenry guaranty American democracy continuing life.” Writing in 1986, after many states had considerable postwar experience with direct democracy, Joseph Zimmerman continues where Mills left off, concluding that “the initiative generally has been a salutary adaptation of the legislative process which has educated citizens with respect to important public policy decisions... Critics notwithstanding, the general electorate has been discriminating in examining the pro and con arguments for an initiated proposition prior to deciding upon how to vote. Experience with the initiative and the referendum supports the Aristotelian concept of the “collective wisdom of the voters” and mixed election results show that voters are not “enthralled with the rhetoric of ideologues,” but pass a balance of liberal and conservative initiatives.⁴³

This does not mean that the initiative system is not in need of reform. After two years of study, in 1992 the California Commission on Campaign Financing published its findings. Its recommendations included:

- a 5,000 word limit on initiatives, which would necessarily narrow their focus;
- a series of public hearings to allow proponents to amend initiatives before a final vote, with a requirement for negotiation between proponents and the legislature in order to refine wording unchangeable once passed by voters;
- a mandatory floor vote in the legislature for measures qualified for ballot to guide voters and clarify political positions;
- amendments to initiatives by the legislature if a super-majority vote of 60% was attained; a longer time to gather signatures in order to reduce the financial significance of initially placing an initiative on the ballot;
- disclosure and limitation of campaign contributors;
- a FCC “fairness doctrine” in publicity for ballot measures;
- revisions to voter pamphlets to increase readability;
- and finally, a return to system struck down by California’s Supreme Court allowing only conflicting provisions of competing initiatives receiving fewer votes at the same election to fail, not entire competing initiatives receiving fewer votes.

43. C. Wright Mills quoted in Laura Tallian, *Direct Democracy: An Historical Analysis of the Initiative, Referendum, and Recall Process* (Los Angeles: The People’s Lobby, Inc., 1977), p. 77; Zimmerman, p. 96.

This latter recommendation was made in order to reflect the will of voters to pass as many reforms as possible, and to avoid the use of more "counter initiatives prepared and promoted for the sole purpose of invalidating an entire initiative" and "more ballot confusion and work for the courts." The Commission concluded that a modernized and reformed initiative process was a necessary "check on the potential abuses of governmental power while the need for that safeguard remains."⁴⁴ Given the record of legislative and gubernatorial foot-dragging and tremendous corporate pressures, this is certainly true in the case of environmental legislation. Hardly dazzlingly white, but by no means absolutely black, the history of direct democracy in California, as measured by the election results of environmental propositions in the late twentieth century, does indeed reveal a case for cautious optimism.



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