

1978

Administrative Agencies

Follow this and additional works at: http://repository.uchastings.edu/ca_ballot_props

Recommended Citation

Administrative Agencies California Proposition 5 (1978).
http://repository.uchastings.edu/ca_ballot_props/860

This Proposition is brought to you for free and open access by the California Ballot Propositions and Initiatives at UC Hastings Scholarship Repository. It has been accepted for inclusion in Propositions by an authorized administrator of UC Hastings Scholarship Repository. For more information, please contact marcusc@uchastings.edu.

Official Title and Summary Prepared by the Attorney General

ADMINISTRATIVE AGENCIES—LEGISLATIVE CONSTITUTIONAL AMENDMENT. Adds section 3.5 to article III of Constitution to preclude administrative agency, even if created by Constitution or initiative, from (1) declaring a statute unconstitutional or (2) declaring a statute to be unenforceable or refusing to enforce a statute, because of unconstitutionality or because federal law or regulations prohibit enforcement, unless appellate court has made such determination. Financial impact: Increases or decreases in government costs or revenue during period before constitutionality or enforceability is determined by appellate court.

FINAL VOTE CAST BY LEGISLATURE ON SCA 25 (PROPOSITION 5)

Assembly—Ayes, 73
Noes, 0

Senate—Ayes, 29
Noes, 0

Analysis by Legislative Analyst

Background:

California's Constitution does not say whether an administrative agency can declare a state law unconstitutional and thus unenforceable.

Unlike most state administrative agencies, the Public Utilities Commission *is created in* the State Constitution. California's Supreme Court has held that the Commission can determine the constitutionality of state laws which affect its (the Commission's) authority, although any such determination would be subject to court review.

In another action, a Court of Appeal held that any state administrative agency *not created in* the Constitution may not determine that a state law is unconstitutional.

Proposal:

This constitutional amendment would forbid any state administrative agency, whether created in the Constitution or not, to (1) declare a state law unconstitutional or (2) refuse to enforce a state law on

the basis that it is unconstitutional or that it is prohibited by federal law unless such a determination has already been made by an appellate court.

Fiscal Effect:

When questions arise about the constitutionality or enforceability of a state statute, an administrative agency can sometimes make a decision on the matter more quickly than the courts. However, decisions of administrative agencies are always subject to review by the courts, and thus may be changed. Even if an administrative agency declares a state law to be unconstitutional or unenforceable, the courts may issue an order requiring the law to be followed until a *final* decision is made.

By eliminating the authority of administrative agencies to make an *initial* ruling on state statutes, this measure could result in a state or local fiscal impact during the period before the matter is acted on by the courts. This measure could either increase or decrease government costs or revenue.

Text of Proposed Law

This amendment proposed by Senate Constitutional Amendment No. 25 (Statutes of 1977, Resolution Chapter 48) expressly adds a section to the Constitution; therefore, provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO ARTICLE III

SEC. 3.5. An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:

(a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;

(b) To declare a statute unconstitutional;

(c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations.

Vote On Election Day

Argument in Favor of Proposition 5

Enactment of this constitutional amendment would prohibit State agencies, including any agency created by the Constitution or by initiative, from refusing to carry out its statutory duties because its members consider the statute to be unconstitutional or in conflict with federal law.

Every statute is enacted only after a long and exhaustive process, involving as many as four open legislative committee hearings, where members of the public can express their views. If the agencies question the constitutionality of a measure, they can present testimony at the public hearings during legislative consideration. Committee action is followed by full consideration by both houses of the Legislature.

Before the Governor signs or vetoes a bill, he receives analyses from the agencies which will be called upon to implement its provisions. If the Legislature has passed the bill over the objections of the agency, the Governor is not likely to ignore valid apprehensions of his departments, as he is the Chief Executive of the State and is responsible for most of its administrative functions.

Once the law has been enacted, however, it does not make sense for an administrative agency to refuse to carry out its legal responsibilities because the agency's members have decided the law is invalid. Yet, administrative agencies are so

doing with increasing frequency. These agencies are all part of the Executive Branch of government, charged with the duty of enforcing the law.

The Courts, however, constitute the proper forum for determination of the validity of State statutes. There is no justification for forcing private parties to go to Court in order to require agencies of government to perform the duties they have sworn to perform.

Proposition 5 would prohibit the State agency from refusing to act under such circumstances, unless an appellate court has ruled the statute is invalid.

We urge you to support this Proposition 5 in order to insure that appointed officials do not refuse to carry out their duties by usurping the authority of the Legislature and the Courts. Your passage of Proposition 5 will help preserve the concept of the separation of powers so wisely adopted by our founding fathers.

JOHN W. HOLMDAHL
State Senator, 8th District

JOSEPH B. MONTOYA
Member of the Assembly, 60th District

VERNON L. STURGEON
Commissioner, California Public Utilities Commission

Rebuttal to Argument in Favor of Proposition 5

The proponents ask your vote for this measure to insure that appointed officials do not refuse to carry out their duties by overriding the authority of the Legislature and the Courts. *This is a completely misleading statement.*

We agree that such officials must uphold the law. There are existing legal procedures to assure their compliance.

By contrast, Proposition 5 deals with *conflicts* between an agency's duty under a state statute, and a different duty under the Constitution or a federal law or regulation. These conflicts may arise from circumstances which were unknown or non-existent at the time a particular statute was enacted. Declaring a state statute invalid under these circumstances does *not* override the authority of the Legislature or the Courts. The California Supreme Court stated that *only* by recognizing the invalidity of the statute can an administrative agency comply with its duty to determine and follow the law. A vote against Proposition 5 will simply maintain this

long-standing ability for certain administrative agencies.

The argument for Proposition 5 attempts to create a sense of urgency by stating that administrative agencies are not enforcing statutes "with increasing frequency," yet no numbers are mentioned. In fact, this situation arises *extremely infrequently* due to an agency's respect for the Legislature and Court system. Any increase in these legal conflicts is due to underlying increases in state and federal lawmaking activity. Please vote to continue the ability for an administrative agency to deal with these conflicts. Vote no on Proposition 5.

ROBERT BATINOVICH
President, California Public Utilities Commission

PHILLIP E. BLECHER
Executive Director, California Public Utilities Commission

Argument Against Proposition 5

**VOTE AGAINST ADMINISTRATIVE DISHONESTY!
VOTE AGAINST EXPENSIVE ADMINISTRATIVE WASTE!
VOTE NO ON 5.**

Proposition 5 asks you to consider the desirability of amending the state constitution to require an administrative agency to wait until an appellate court has determined that a particular statute is unconstitutional or unenforceable before it can question the legality of that statute. But how is an administrative agency supposed to adhere to and uphold the constitution in the weeks or months which precede a court's action on a statute which may be unconstitutional or unenforceable? Should the agency be forced to ignore the conflicting laws? I think the answer is *NO*. The California Supreme Court, which considered this precise question in 1976 (*Southern Pacific Transportation Company v. Public Utilities Commission*), agreed with this position.

The Court's majority opinion in *Southern Pacific* gave the following example: Suppose that the United States Supreme Court decided that an important civil rights statute of one state was unconstitutional, but did not extend its decision to identical statutes in other states. If a state administrative board must interpret one of these "suspect" statutes, what should it do? The California Supreme Court's opinion states that *only by recognizing the invalidity of the statute can the board comply with its duty to determine and follow the law*. Passage of this measure will prevent the course of administrative action found acceptable by the Court. Moreover, Proposition 5 may unfairly burden the ability of an average citizen to get relief from a state administrative agency in proceedings where the legality of a statute is involved by requiring him to bear the time and expense of appealing to a court for a determination of the statute's validity.

Apart from the undesirable legal problems imposed by Proposition 5, it also carries a potentially high price tag. Consider the following:

Generally, a federal law or regulation will prevail over a state statute or regulation directly concerning the same matter, thereby making the state action unenforceable. Under present law, our state administrative agencies can act promptly to avoid conflicts between state and federal actions. However Proposition 5 will force an administrative agency to enforce a state statute, *even though such statute appears to conflict with a federal law or regulation*, until an appellate court has ruled on the statute's enforceability.

This provision could seriously hamper state agencies which share regulation over matters with the federal government and its agencies. The California Public Utilities Commission, for instance, has federal agency counterparts in its regulation of energy (Department of Energy), transportation (Interstate Commerce Commission), and communications (Federal Communications Commission). In instances of federal action which conflicts with a state statute, the Commission may have to continue consuming time and money of utilities, their customers, and the general tax-paying public by enforcing an invalid state statute until an appellate court decides to examine the statute. The proponents of this measure have not pointed to benefits which would offset its potential for tremendous administrative waste. I therefore urge your "NO" on Proposition 5.

ROBERT BATINOVICH

President, California Public Utilities Commission

PHILLIP E. BLECHER

Executive Director, California Public Utilities Commission

Rebuttal to Argument Against Proposition 5

If major decisions were to be made by one person, laws could be enacted quickly and efficiently. However, such a system would provide the private citizen no voice in his government and probably no court in which to appeal injustices. The people of this State and Nation long ago chose instead the democratic system. Proposition 5 is but one small way of protecting democracy and preventing its erosion in the name of efficiency.

The opponents say that a vote against this proposition is a "vote against administrative dishonesty." This clever slogan comes from—of all places—an administrative agency. Is it really more honest for an agency to ignore the lengthy process that produced a statute and to proceed as if it were never enacted?

The opposition cites a case by the California Supreme Court concerning "suspect" statutes. However, the United States Supreme Court has consistently held that "State statutes, like federal ones, are entitled to the presumption of constitutionality until their invalidity is *judicially* declared."

Under Proposition 5, the agencies themselves may challenge "suspect" statutes in the courts. Then, private citizens will save time and expense otherwise imposed on them to compel State agencies to perform their duties. Such agencies will no longer usurp the constitutional powers of the courts.

Your vote for Proposition 5 will return responsibility for making major decisions to the properly constituted authorities. No longer will bureaucratic officials, however well-intentioned, be able to make decisions properly reserved to the Courts and your elected representatives.

JOHN W. HOLMDAHL

State Senator, 8th District

JOSEPH B. MONTOYA

Member of the Assembly, 60th District

VERNON L. STURGEON

Commissioner, California Public Utilities Commission