



PLANNING AND CONSERVATION LEAGUE



PCL INSIDER: NEWS FROM THE CAPITAL

PCL STEPPED INTO THE BREACH AND FORCED AN INITIATIVE OFF THE BALLOT THAT WOULD HAVE CREATED CONSTITUTIONAL CHAOS IN CALIFORNIA

By Board Member Jan Chatten-Brown

In late June, I was contacted by a former PCL Board member, Carlyle Hall, who has long practiced public interest law and is committed to good governance in California. He described Proposition 9, the initiative financed by billionaire Tim Draper, who, for the second time, was proposing to split up the State of California.

The first time Draper had proposed splitting California in six parts, while his current 2018 initiative -- for which he had gathered sufficient signatures to qualify for the November ballot -- would split the state into three new states. Carlyle questioned

whether PCL had considered bringing a legal challenge to Prop 9.

My initial reaction was that it was very unlikely that the initiative would pass. But, Carlyle reminded me that the vast majority of the country said the same thing about the election of President Trump. At the very least, the presence of the measure would drain energy and money from more pressing issues. So I asked PCL's legal committee their views.

Participation in legal proceedings (most of which are *amicus briefs*) by PCL is determined by the PCL Legal Committee, which is composed of all the Board members who are also lawyers. To my delight, everyone agreed that it was important for PCL to ask for a direct review in the California Supreme Court, the only reasonable method of judicial review under the circumstances. While there were certainly questions about the legal basis of the challenge, the Committee quickly agreed that leaving the measure on the ballot would at the very least be a major distraction, and would, if passed, create a constitutional crisis for California.

Understandably, there were also questions about what other groups would join this challenge. Carlyle reported that numerous well known and respected groups were considering authorizing litigation. But, the time frame for acting was very short. Because of the deadline for the State to begin printing ballot materials, we had to give a response right after July 4. Due to the high profile that would be created by serving as the lead Petitioner in this kind of litigation, I checked in with the full Board and everyone that responded was in support of proceeding.

As it turned out, we were the sole petitioners in the California Supreme Court, though several other respected groups filed *amicus* briefs. The basic argument

made was that the essential “gutting” or “*revision*” of the California Constitution could not be done by initiative measure. *Amendments* to the Constitution can be made by initiative, but this was, at the least, a major “revision” of the Constitution, creating three separate states that would adopt their own constitutions and create their own governmental bodies. Further, Draper had collected sufficient signatures to qualify only a statute for the ballot, hardly an appropriate means to abolish the existing state of California and its constitution and laws.

PCL’s board was extremely concerned that the initiative measure if passed, could quickly lead to the unraveling of the many environmental protection initiatives that PCL has spent the last 50 years fostering. But more was at stake than California’s environmental regulatory program. Our state’s education programs, social services, and law enforcement and emergency services would all be upended by the passage of the initiative, even if it did withstand constitutional challenge. But PCL’s petition to the Supreme Court made it clear that there were such grave constitutional issues that the measure should not be allowed to be on the November ballot without full briefing and a decision by the Court.

The Petition and supporting briefs were submitted by Carlyle and the firm of McKool, Smith, and Henningan, which joined Carlyle in a pro bono effort to remove the initiative. Draper’s opposition brief did not persuasively address the merits of the case, and our counsel filed a short but persuasive reply.

In an extraordinary development, major newspapers throughout the State ran editorials urging the California Supreme Court to grant relief and take the Draper Initiative off the ballot. Public Counsel, the Western Center for Law and Poverty, and others filed amicus briefs.

To our surprise and delight, on July 18, the California Supreme Court, without further argument, ordered that the Draper Initiative immediately be removed from the November ballot. The Court did not make a final ruling on the legality of the Initiative, but its Order made it clear that the Initiative faced major legal hurdles and would not be allowed to be placed on the ballot without further careful Supreme Court review. On August 9, however, Draper “threw in the towel,” stating that the “removal of Proposition 9 from the November ballot has effectively put an end to [his] movement” to “reboot” California” that Draper saw as part of the broader “political environment for radical change” that is currently “sweeping the globe.” Accordingly, Draper informed the Court that he does not “object to the Court making its order permanent,” thereby keeping Prop 9 off any future ballots, too.

PCL is proud to have played an important role in preventing the needless expenditure of resources to fight a flawed initiative and to avoid the possible passage of an initiative that would have caused chaos in California for years to come.

We continue to appreciate the fact that PCL retains its ability to respond quickly when there is an urgent matter confronting us, but always in a thoughtful way. Your continuing support of PCL makes that possible.

Note from the Executive Director:

I want to give a special thank you to Jan, a current PCL board member, and Carlyle, a past PCL board member for all their diligence and expertise on this case. You have done a great service for all Californians and saved the state and the voters time, energy, and money. You both are truly appreciated.

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