



## **Will The “Fourth Branch” Rewrite California’s Corporate Law?**

By Keith Paul Bishop on January 6, 2012

### **Voters – The “Fourth Branch” of Government**

In 1911, California became the tenth state to adopt three key tools of popular sovereignty – the initiative, referendum and recall. As defined by the California Constitution, the initiative is the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them; the referendum is the power of the electors to approve or reject statutes or parts of statutes (with certain exceptions); and the recall is the power of the electors to remove an elective officer. Cal. Const. Art. II, §§ 8, 9 & 13.

In the ensuing years, the voters have used the power of the initiative to effect many significant changes in California law. These include:

- adoption of a usury law in 1918 (Proposition 3);
- adoption of constitutional civil service provisions (Article VII) in 1934 (Proposition 7);
- adoption of the Political Reform Act in 1974 (Proposition 9);
- limitations on real property taxes in 1978 (Proposition 13);
- adoption of a state lottery in 1984 (Proposition 37);
- imposition of term limits in 1990 for state legislators (Proposition 140); and
- elimination of state affirmative action programs in 1996 (Proposition 209).

### **Secretary of State Clears Comprehensive Corporate Initiative**

Recently, I noted that California [Secretary of State](#) Debra Bowen has cleared for circulation a ballot initiative that would dramatically change the regulation of both domestic and foreign corporations in California. Below is the summary of the initiative prepared by Attorney General Bill Lockyer:

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Substantially replaces current California law governing corporations, to allow maximum authority over corporations permitted by federal constitution. Declares corporations are not persons or citizens, thereby eliminating corporations' state constitutional protections. Holds officers and directors personally liable for a corporation's intentional acts or crimes. Allows corporations to discriminate to maximum extent permitted by federal constitution, if supported by quantifiable, scientific link to business purpose of corporation or specific decision being made. Strips corporation's non-profit status if more than 30 percent of gross income spent on administrative costs. Alters rules governing corporate income taxes and deductions.

Wow! You can read the text of the initiative [here](#).

Of course, only a small percentage of initiatives that are titled and summarized qualify for the ballot and an even smaller percentage are adopted by the voters. According to the Secretary of State's office, a total of 1,187 initiatives were titled and summarized from 1912 to 2002. During this period, 24.4% qualified for the ballot. Of the 290 initiatives that appeared on the ballot, 34.1% were approved by the voters. This means that the voters historically have approved only 8.3% of the initiatives that are titled and summarized.

### **A Happy Hunting-Ground for Extremists and Fanatics?**

The initiative, referendum and recall were reforms of the Progressive era with roots in Europe. Not everyone thought that these foreign imports were a good idea. For example, A. Lawrence Lowell, Harvard's president from 1909 to 1933, had this to say about the initiative:

The conception is bold, but it is not likely to be of any great use to mankind; if indeed, it does not prove to be merely a happy hunting-ground for extremists and fanatics.

James Boyle, *The Initiative and Referendum: Its Folly, Fallacies, and Failure* (3rd ed. 1912) p. 74. Your view on the merits of popular sovereignty may depend upon the particular issue being presented. One person's good idea may be another's misadventure.

### **Thinking About a Nevada Corporation?**

On January 25, I will be speaking to the Business & Corporate Law Section of the [Orange County Bar Association](#) on the pros and cons of incorporating in Nevada. Registration information is available [here](#).

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