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Timing Is Everything! When to Bring Challenges to Land Use Initiatives and Referenda

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I. INTRODUCTION

Local "ballot box planning" and the growth management it often proposes are again in the news. Popular in the 1970s and 1980s, growth management was overshadowed by the recession of the early 1990s. However, the return of a strong economy over the last few years resulted in explosive property development. In reaction, popular support for growth management has been rekindled. As evidenced by the 2000 local elections—featuring local initiatives with such names as "CAPP" (Citizens Alliance for Public Participation) and "SOAR" (Save Our Agricultural Resources)—growth management through the initiative process is again one of California's hottest land use topics.

Yet not all members of the public support such ballot box planning efforts. Many view such measures as poorly conceived and unworkable. For those considering judicial action against such measures, timing is critical. This article reviews the legal standards and judicial attitudes regarding pre-election and post-election challenges. This article was excerpted from the author's upcoming Solano Press publication, *Ballot Box Navigator.*

II. DISCUSSION

A. Pre-election Challenges to the Initiative or Referendum

1. Procedural or Technical Challenges Must Be Commenced Prior to the Election.

Challenges alleging technical defects relating to the petition or other pre-election activity must be brought prior to the election or will be deemed moot.[1] In *Chase v. Brooks*, for example, the court determined that the petitions were "fatally defective for not including the complete text of the ordinance [an exhibit to the ordinance] on which the referendum was sought," but held that "the controversy has become moot by virtue of the election."[2] The court reasoned that once "the election is held and the electorate has spoken, it becomes moot whether the referendum petitions failed to comply with the requirements of [Elections Code] section 4052 [now 9238]. The challenger's remedy of injunctive relief does not survive the election, but is replaced by the potential remedy of an election contest."[3]

On the other hand, courts recognize that challenges concerning whether the initiative or referendum petition is procedurally or technically defective merit pre-election judicial attention:

> [P]opular sovereignty . . . [does] not disclose any value in putting before the people a measure which they have no power to enact. The presence of any invalid measure on the ballot steals attention, time and money from the numerous valid propositions on the same ballot. It will confuse some voters and frustrate others, and an ultimate decision that the measure is invalid, coming after the voters have voted in favor of the measure, tends to denigrate the legitimate use of the initiative procedure.[4]

The Elections Code contains a variety of technical requirements relating to the processing of an initiative or referendum petition. When deficiencies in the exercise of the people's franchise threaten the proper operation of the election process, the courts have been willing to enforce statutory safeguards enacted to protect that process. For example, the Elections Code sets forth requirements relating to a specific format for the signature blocks on referendum and initiative petitions (including the voter's printed name, signature and residence address) and requirements relating to the attachment of the text of the measure to be enacted or repealed.[5] In charter cities, these or similar requirements are contained in the city charter.

If such procedural requirements are not satisfied, the city or county has the legal duty to reject the petition,[6] which, in turn, will likely force a pre-election challenge by the proponents of the measure. (In contrast, it is not the duty of the agency attorney or elections official to advise the proponent of the petition or correct the petition's errors.) Under this rule, pre-election challenges to initiatives and referenda have been upheld because: (i) a referendum petition contained only the number and title of the challenged ordinance rather than its complete text;[7] (ii) a referendum petition failed to include an exhibit to the challenged ordinance setting forth the technical legal description and location of the affected real property;[8] and (iii) an initiative petition was signed after notice of intent to circulate the petition was published, but prior to that notice being posted.[9]

Appellate decisions have been fairly exacting regarding a petition's technical accuracy and compliance, the primary inquiry being "whether the purpose of the technical requirement is frustrated by the defective form of the petition."[10]

2. *Pre-Elections Substantive Challenges Traditionally Not Favored by Courts.*

In contrast to procedural/technical challenges (which must be brought pre-election), courts have been reluctant to grant pre-election review of substantive challenges. For example, in *Legislature v. Deukmejian* the court stated:[11]

> As we have frequently observed, it is usually more appropriate to review constitutional and other [substantive] challenges to ballot propositions or initiative measures after an election rather than to disrupt the electoral process by preventing the exercise of the people's franchise, in the absence of some clear showing of invalidity . . . .
>
> The general rule favoring post-election review contemplates that no serious consequences will result if consideration of the validity of a measure is delayed until after an election. Under those circumstances, the normal arguments in favor of the "passive virtues" suggest that a court not adjudicate an issue until it is clearly required to do so. If the measure passes, there will be ample time to rule on its validity. If it fails, judicial action will not be required.[12]

3. *Some Substantive Challenges Allowed Pre-Election.*

Although courts have traditionally observed that it is more appropriate to review constitutional and other substantive challenges to ballot propositions or initiative measures after an election rather than disrupt the electoral process, this is not an inflexible rule;[13] courts are willing to review substantive pre-election challenges under appropriate circumstances.[14] For example, where the invalidity appears on the face of the measure, courts are sometimes willing to step in and prevent the measure from being placed on—or remove it from—the ballot. In situations where the invalidity is not so clear, it is difficult to anticipate whether the court will accept a pre-election challenge.

Thus, in *Senate v. Jones*,[15] the California Supreme Court held that where, in "the case of a challenge based upon the single-subject rule, it is clear from the text of the relevant constitutional provision itself that, in an appropriate instance, preelection relief not only is permissible but is expressly contemplated."[16] Likewise, in *deBottari v. Norco City Council*,[17] the court noted two exceptions to the general rule that post-election review of substantive claims is preferred. First, a court may review challenges to initiative measures prior to an election where the electorate "lacks the power to adopt the proposal," as when the initiative proposed would affect an administrative, rather than a legislative, matter.[18] Second, a court may review a measure prior to a vote when "the substantive provisions of the proposed measure are [clearly] invalid."[19] Analyzing the referendum at issue under the second exception, the court held that the repeal of the zoning ordinance would result in the property being zoned in a manner inconsistent with the City's general plan. Thus, the "invalidity of the proposed referendum [had] been clearly and compellingly demonstrated," and the "referendum, if successful, would enact a clearly invalid zoning ordinance."[20] The court noted that "[j]udicial deference to the electoral process does not compel judicial apathy towards patently invalid legislative acts" and refused to order the referendum placed on the ballot.[21]

In *Committee of Seven Thousand v. Superior Court*,[22] the California Supreme Court confirmed the *deBottari* holding in a somewhat different context. In *COST*, the court determined that the initiative was invalid and should be kept off the ballot because it both addressed a "matter of statewide concern" and conflicted with state law. The court reasoned that the Legislature had specifically delegated exclusive discretionary authority over the disputed matter to the county board of supervisors and to city councils alone. Although the decision in *COST* did not discuss pre-election challenges, the case demonstrates the courts' willingness to keep voter-sponsored measures off the ballot if they clearly conflict with state law or are otherwise invalid.

In *Citizens for Responsible Behavior v. Superior Court*,[23] the court recognized the general preference for post-election review, but stated, "Invalidity, like pregnancy, admits of no half-measures. If an ordinance proposed by initiative is invalid, routine deference to the process will often require the charade of a pointless election." Following *deBottari*, the court recognized that the "people's right to directly legislate through the initiative process is to be respected and cherished does not require the useless expenditure of money and creation of emotional community divisions concerning a measure which is for any reason legally invalid."[24] In another case applying the *deBottari* rule, the court permitted a city to bring a pre-election challenge to keep a referendum of a pre-zoning ordinance off the ballot in order to protect consistency with the general plan.[25]

In *City and County of San Francisco v. Patterson*,[26] the court held that "preelection review was eminently appropriate" when the proposed measure was beyond the scope of the initiative power. Therefore, although courts generally will refrain from pre-election review "when a challenge rests upon the alleged unconstitutionality of the substance of the proposed initiative . . . the rule does not preclude pre-election review when the challenge is based upon a claim, for example, that the proposed measure may not properly be submitted to the voters because the measure is not legislative in character or because it amounts to a constitutional revision rather an amendment."[27]

In *Citizens for Responsible Behavior v. Superior Court*,[28] the court undertook pre-election review to determine that a proposed ordinance—argued as "anti-gay"—violated the constitutional principles of equal protection and due process and was an improper attempt to amend the city charter. In this case, the city had refused to place the initiative on the ballot, and the proponents sued to compel the city to place the initiative on the ballot. The court accepted pre-election review of these constitutional issues and determined that the proposed ordinance was both "substantively invalid and beyond the power of the electorate to enact."[29]

Pre-election challenges to the substantive provisions of an initiative petition also will be countenanced by the courts where the petition contains false or misleading information. For example, in *San Francisco 49ers v. Nishioka*,[30] opponents of the San Francisco 49ers' proposed new stadium attempted to circulate an initiative petition which, if adopted by the voters, would repeal earlier voter-approved measures approving the construction of the new stadium. In the repealer petitions, the stadium opponents included a statement of reasons pursuant to Elections Code section 9104 that were false and misleading. Intoning that "the ballot box is the sword of democracy," the court easily supported the disqualification of the infected petition from the ballot due to its "substantial, as opposed to technical, statutory defect which directly affects the quality of the information provided to the voters."[31] The court further found that the stadium opponents had violated Elections Code section 18600 by making intentionally false representations as to the invalidity of the previous measures approved by the voters, to induce the voters into now signing the anti-stadium petition. Finally, embracing the principles articulated by the court in *Patterson v. Board of Supervisors*[32] in enjoining publication of false statements in ballot arguments, the *Nishioka* court ruled that there is no First Amendment right to include false and misleading information in an initiative petition.

4. Consider Bringing Mixed Procedural/Substantive Challenges Pre-Election.

Often, when an opponent of a measure believes the petition contains both procedural and substantive deficiencies, the opponent will challenge the measure prior to the election. As discussed above, challenges alleging technical defects relating to the petition or other pre-election activity must be brought prior to the election or they will be deemed moot. In addition, as the section immediately above reveals, courts are sometimes willing to entertain pre-election challenges to substantive defects. As such, a court may be more willing to recognize the procedural defect and halt the election when it realizes that substantive defects likewise exist which would doom the measure. In such circumstances, the court may recognize the "efficiency" of killing the measure early instead of incurring an expensive, time-consuming election only to kill the measure later.

In an unusual twist, the California Supreme Court, when recently faced with a mixed challenge, resolved the substantive claims to avoid reaching those based on technical non-compliance with the Elections Code. In *Senate v. Jones*,[33] the petitioner asserted (prior to the election) that the initiative was "procedurally defective and unconstitutional" because it constituted a constitutional revision, violated the single-subject rule, and contained misleading statements and omissions.[34] The California Supreme Court concluded that the initiative violated the single-subject rule and therefore elected not to address the other bases of the challenge.[35]

To recap, the following chart contains examples of pre-election challenges that were permitted by the courts:

TECHNICAL IRREGULARITIES
Inaccurate and misleading Title of referendum.[36]
Circulating petition without including Notice of Intention.[37]
Failure to include complete text of the initiative measure.[38]
Inaccurate short Title.[39]
Initiative contains clearly misleading information.[40]
Title and Summary exceeded word limit.[41]
Failure to carry Title.[42]

SUBSTANTIVE GROUNDS
Single-subject rule violation.[43]
Initiative beyond power of voters to adopt since it amounted to a revision of the Constitution instead of an amendment.[44]
Violation of State Constitution.[45]
Initiative is beyond the power of the voters to adopt since subject matter not a municipal affair.[46]
Initiative constituted a de facto constitutional amendment without following procedures properly.[47]
Initiative is beyond the power of the voters to adopt since not legislative in character.[48]
Referendum would create zoning ordinance that is clearly inconsistent with the city's general plan.[49]

As illustrated by this table, the subject matter of the challenge is not always determinative of whether a pre-election or post-election challenge is permitted. Judges also employ other factors and preferences, such as: a general preference for post-election challenges in the absence of a clear showing of invalidity;[50] the "complexity of the issues presented and the time available to decide them";[51] and whether the measure is beyond the power of the voters to adopt or is not legislative in character.[52]

B. Election Contests

Election contests are a creature of statute. In California, the exclusive grounds for bringing an election contest are specified in section 16100.[53] They include the misconduct of a precinct board, the casting of illegal votes, and the bribing of a precinct board member. In other words, willful misconduct and activities that rise to the level of crimes.

By their nature, such offenses lead themselves to post-election challenges. Indeed, where a pre-election challenge has been mooted by the challenged election actually taking place, the only recourse the challenger may have is a post-election contest.[54]

Election contests are relatively rare in the initiative and referenda context, because the bases set forth in section 16100 are predicated on illegal activity or substantial errors in the voting process. However, section 16100(c) provides that an election contest can be based on any offense defined in Sections 18000 through 18700, the criminal penal provisions of the

Elections Code. Section 18002 makes it a criminal offense for any person charged with responsibility under the Elections Code to willfully neglect or refuse to perform such duty. In *Horwath v. City of East Palo Alto*,[55] the court held that a city attorney's failure to properly render his/her impartial analysis pursuant to section 9280, if willful or intentional, could provide the grounds upon which to invalidate an initiative election if it were proven that the flawed impartial analysis affected the outcome of the election. Such a burden of proof is not easily met, however.

C. Burden of Proof Shifted for Ordinances Proposing to Limit Certain Types of Housing

Evidence Code section 669.5 shifts the burden of proof to the public agency to show the reasonable character of an initiative ordinance (or other measure) which limits by number how many housing units can be built per year. This is contrary to the general rule that land-use regulations and actions adopted or taken by the legislative body (or by the people through their power of initiative) are presumed valid, with the burden of proving the contrary resting with the challenging party.[56] Pursuant to section 669.5, in any action which challenges the validity of an ordinance limiting by number how many housing units can be built per year, the burden is on the city or county to prove that the ordinance is necessary for the protection of and reasonably related to the public health, safety, or welfare. "With the enactment of section 669.5 in 1980, the Legislature intended as a matter of public policy to shift the burden of proof in actions challenging the validity of certain growth control ordinances to the proponents of those ordinances, to counteract unjustified limitations on the supply of local housing sufficient to meet the local entity's share of regional housing needs."[57] A 1988 amendment made this burden also apply to, among other things, any initiative measure which changes the standards for residential development on vacant land the measure conflicts with the housing needs identified in the general plan and if the measure does not exempt low-income housing.[58] However, in *Hernandez v. City of Encinitas*,[59] the court ruled in the context of a housing element challenge that Evidence Code section 669.5 is not applicable unless there is a violation of the "least cost zoning law" codified in Government Code section 65913.1.

The California Supreme Court has determined that section 669.5 also applies to ordinances enacted by the initiative process.[60] The court stated that pursuant to section 669.5, "if the electorate exercises its initiative power, the local government must bear the burden of showing that the ordinance is reasonably related to the protection of the public health, safety, or welfare of the affected population."[61] In other words, section 669.5 applies to all ordinances, whether enacted by a legislative body or by voters.[62]

D. Duty To Defend

Whether a city or county has a duty to defend a local measure being challenged in the courts remains unanswered. Unfortunately, the case that comes closest to resolving this question, *Patterson v. County of Tehama*,[63] was decertified by the California Supreme Court.[64] Even though it may not be cited as legal precedent, the *Patterson* case may provide arguments relating to this issue.

In *Patterson*, a court of appeal upheld several minor provisions of an initiative, entitled "The Property Owners Bill of Rights," which attempted to repeal most of the planning authority of the County government. The successful plaintiffs previously waived attorney's fees as to the County defendant, but sought them from the intervenors. The court rejected this request:

> Intervenors entered this case by invitation of the court after the county, as the nominal defendant, agreed to a stipulated judgment invalidating the initiative. Their position has been partially vindicated. To hold intervenors financially responsible for defending the people's power of initiative when the nominal defendant has aligned itself with plaintiffs would have a serious chilling effect upon the initiative power.

The court then went on to grant the intervenors' request for attorney's fees against the County, observing that because the intervenors shouldered the County's "burden of defending the ordinance," an award of fees against the County, but not against the plaintiffs, was appropriate.[65] Again, the *Patterson* case is not binding precedent and cannot be cited.

One of the earliest cases to make some reference to this question was *Arnel Development Co. v. City of Costa Mesa*,[66] in which the court stated:

> Apparently believing that his duty is to represent the city council instead of the voters of Costa Mesa, the city attorney did not defend the initiative. When the Court of Appeal held the initiative invalid, he did not petition this court for hearing. Because a hearing here appeared necessary to secure uniformity of decision and settle an important question of law, we transferred the cause to this court.[67]

Whether this statement is simply an explanation of how the case came before the court, or an indication of the court's belief that a city must defend an initiative, remains the topic of many a discussion between city attorneys and initiative proponents.

III. CONCLUSION

Understanding the rules regarding the "timing" of judicial challenges to ballot measures is critical. The difference between success and failure often hinges on an understanding of what challenges can be brought, when.

> If you trap the moment before it's ripe,
> The tears of repentance you'll certainly wipe;
> But if once you let the right moment go
> You can never wipe off the tears of woe.
>
> – *William Blake*

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ENDNOTES

1. Mapstead v. Anchundo, 63 Cal. App. 4th 246, 275 (1998); Chase v. Brooks, 187 Cal. App. 3d 657 (1986); CAL. ELEC. CODE §§ 9380, 9295.
2. *Id.* at 660.
3. *Id.* at 662.
4. American Fed'n of Labor v. Eu, 36 Cal. 3d 687, 697 (1984); *see also* Yes On Measure A v. City of Lake Forest, 60 Cal. App. 4th 620, 626 (1997) (citing *Eu* and stating that the electorate does not have "an inalienable right to vote on an unconstitutional or invalid measure").
5. *See, e.g.*, CAL. ELEC. CODE §§ 9101, 9146, 9147 (counties); CAL. ELEC. CODE §§ 9201, 9209, 9238 (cities).
6. Myers v. Patterson, 196 Cal. App. 3d 130 (1987).
7. Creighton v. Reviczky, 171 Cal. App. 3d 1225, 1229 (1985); CAL. ELEC. CODE § 9238.
8. Chase v. Brooks, 187 Cal. App. 3d 657, 664 (1986); CAL. ELEC. CODE § 9238.
9. Ibarra v. City of Carson, 214 Cal. App. 3d (1989); CAL. ELEC. CODE § 9202; *see also* Boyd v. Jorda, 1 Cal. 2d 468 (1934) (granting pre-election relief when initiative petition failed to contain accurate short title as required by statute); Clark v. Jordan, 7 Cal. 2d 248 (1936) (granting pre-election relief in circumstances similar to Boyd v. Jordan).
10. Assembly v. Deukmejian, 30 Cal. 3d 638, 652 (1982); *see* Mervyn's v. Reyes, 69 Cal. App. 4th 93 (1998) (failure to attach copies of proposed general plan provisions to the petition violated "full text" requirement of CAL. ELEC. CODE 9201); Hebard v. Bybee, 65 Cal. App. 4th 1331 (1998) (although "technical deficiencies in referendum petitions will not invalidate the petitions if they are in 'substantial compliance' with statutory and constitutional requirements," an incomplete title creates an ambiguity concerning the substance of the ordinance and therefore does not comply with CAL. ELEC. CODE 9238); Ibarra v. City of Carson, supra, 214 Cal. App. 3d 657 (1989) (City Clerk's refusal to accept an initiative petition because it lacked a sufficient number of signatures to qualify it for the ballot upheld by the court: certain signatures disqualified because collected after "notice of intent" to circulate the petition published, but prior to that notice being posted in the City, as required by CAL. ELEC. CODE 9202(a)); Chase v. Brooks, 187 Cal. App. 3d 657 (1986) (failure to include an exhibit which set forth the technical legal description and location of the affected real property rendered the referendum petition invalid); Creighton v. Reviczky, 171 Cal. App. 3d 1225 (1985) (referendum petition which contained only the number and title of the protested ordinance instead of its full text, as required by CAL. ELEC. CODE 9238, invalidated by the court because it failed to provide the electors with the information they needed to intelligently exercise their rights under the referendum law); *but see* Holmes v. Jones, 83 Cal. App. 4th 882 (2000) (title and summary did not violate CAL. ELEC. CODE 9002 even though it exceeded 100 words, because financial estimate or opinion should not be counted as part of word limit); Horwath v. City of East Palo Alto, 212 Cal. App. 3d 766 (1989) (City Attorney's failure to comply with the "impartial analysis" requirements of CAL. ELEC. CODE 9280 did not render a local rent control initiative invalid because other materials available to the public provided that information).
11. 34 Cal. 3d 658, 665-666 (1983) (stating the general rule).
12. Brosnahan v. Eu, 31 Cal. 3d 1, 4 (1982); deBottari v. Norco City Council, 171 Cal. App. 3d 1204, 1209 (1985); People's Lobby, Inc. v. Board of Supervisors, 30 Cal. App. 3d 869, 872 (1973).
13. Citizens for Responsible Behavior v. Superior Court, 1 Cal. App. 4th 1013, 1022 (1991).
14. *See, e.g.,* Senate v. Jones, 21 Cal. 4th 1142 (1999); City and County of San Francisco v. Patterson, 202 Cal. App. 3d 95 (1988); Builders Ass'n of Santa Clara—Santa Cruz Counties v. Superior Court, 13 Cal. 3d 225 (1974); Associated Home Builders, etc., Inc. v. City of Livermore, 41 Cal. App. 3d 677 (1974).
15. 21 Cal. 4th 1142 (1999).
16. *Id.* at 1142.
17. 171 Cal. App. 3d 1204 (1985).
18. *Id.* at 1209.
19. *Id.* at 1210.
20. *Id.* at 1212-13.
21. *Id.*
22. 45 Cal. 3d 491 (1988) [hereinafter *COST*]
23. 1 Cal. App. 4th 1013, 1022 (1991).
24. *Id.* at 1023.
25. City of Irvine v. Citizens Against Overdevelopment, 25 Cal. App. 4th 868 (1994).
26. 202 Cal. App. 3d 95 (1988).
27. Senate v. Jones, 21 Cal. 4th 1142, 1153 (1999); *see also* American Fed'n of Labor v. Eu, 36 Cal. 3d 687, 695-97 (1984) (granting pre-election relief when initiative measure violated Article V of the federal Constitution and exceeded the scope of the initiative power); Legislature v. Deukmejian, 34 Cal. 3d 658, 665-67 (1983) (granting pre-election relief when initiative measure violated one-reapportionment-per-decade rule); see also McFadden v. Jordan, 32 Cal. 2d 330 (1948) (granting pre-election relief when initiative measure in its entirety constituted a constitutional revision rather than an amendment).

28. 1 Cal. App. 4th 1013 (1991).
29. *Id.* at 1024.
30. 75 Cal. App. 4th 637 (1999).
31. *Id.* at 643-44.
32. Myers v. Patterson, 196 Cal. App. 3d 130 (1987).
33. 21 Cal. 4th 1142, 1153 (1999).
34. *Id.* at 1150-51.
35. *Id.* at 1152-53.
36. Hebard v. Bybee, 65 Cal. App. 4th 1331 (1998).
37. Myers v. Patterson, 196 Cal. App. 3d 130 (1987).
38. Mervyn's v. Reyes, 69 Cal. App. 4th 93 (1998).
39. Clark v. Jordan, 7 Cal. 2d 248 (1936); Boyd v. Jordan, 1 Cal. 2d 468 (1934).
40. San Francisco Forty-Niners v. Nishioka, 75 Cal. App. 4th 637 (2000).
41. Holmes v. Jones, 83 Cal. App. 4th 882 (2000).
42. Hayward Area Planning Ass'n. v. Superior Court, 218 Cal. App. 3d 53 (1990).
43. Senate v. Jones, 21 Cal. 4th 1142 (1999); California Trial Lawyers Ass'n. v. Eu, 200 Cal. App. 3d 351 (1988); Perry v. Jordan, 34 Cal. 2d 87 (1949). In Brosnahan v. Eu, 31 Cal. 3d 1 (1982), the California Supreme Court did not permit pre-election review on a single-subject rule challenge.
44. McFadden v. Jordan, 32 Cal. 2d 330 (1948).
45. Legislature v. Deukmejian, 34 Cal. 3d 658 (1983) (measure violated one-apportionment-per-decade rule).
46. Mervynne v. Acker, 189 Cal. App. 2d 558 (1961); Riedman v. Brison, 217 Cal. 383 (1933).
47. McFadden v. Jordan, 32 Cal. 2d 330 (1948).
48. American Fed'n of Labor v. Eu, 36 Cal. 3d 687 (1984) (required the legislature to adopt a resolution asking Congress to pass a balanced-budget amendment); Memorial Hosps. Ass'n v. Randol, 38 Cal. App. 4th 1300 (1995) (mere advisory action); City and County of San Francisco v. Patterson, 202 Cal. App. 3d 95 (1988) (initiative preempted by state law); W.W. Dean & Assoc. v. City of South San Francisco, 190 Cal. App. 3d 1368 (1987) (amendment to development plan an administrative act); Simpson v. Hite, 36 Cal. 2d 125 (1950); Fishman v. City of Palo Alto, 86 Cal. App. 3d (1978).
49. deBottari v. City Council of the City of Norco, 171 Cal. App. 3d 1204.
50. Brosnahan v. Eu, 31 Cal. 3d 1 (1982).
51. Senate v. Jones, 21 Cal. 4th 1142 (1999) (dissent).
52. American Fed'n of Labor v. Eu, 36 Cal. 3d 687 (1984).
53. Friends of Sierra Madre v. City of Sierra Madre, 25 Cal. App. 4th 165, (2001).
54. Chase v. Brooks, 187 Cal. App. 3d 657, 662 (1986).
55. 212 Cal. App. 3d 766 (1989).
56. CAL. EVID. CODE § 664.
57. Murphy v. City of Alameda, 11 Cal. App. 4th 906, 910 (1993).
58. CAL. EVID. CODE § 669.5(a) and (d) (as amended by Chapter 541, Statutes of 1988).
59. 28 Cal. App. 4th 1048 (1994).
60. *See* Building Indus. Ass'n of S. Cal., Inc. v. City of Camarillo, 41 Cal. 3d 810 (1986).
61. *Id.* at 822.
62. Lee v. City of Monterey Park, 173 Cal. App. 3d 798 (1985).
63. 229 Cal. Rptr. 696 (1986).
64. 190 Cal. App. 3d 1298 (1987).
65. *Id.*
66. 28 Cal. 3d 511 (1980).
67. *Id.* at 514, n. 3 (citations omitted).