

8/5/2010

BILL BRANCH'S PRELIMINARY CONCERNS ABOUT LOOMIS TERM LIMITS BALLOT MEASURE

It appears to create an illegal "ex post facto" (retroactive) law, in at least three ways:

1. **In calculating when an elected person is "termed out," the Loomis measure would start the clock tolling EIGHT YEARS before the new law passes. And it specifies that the new law would take full effect THREE MONTHS before the up-coming election.** We believe this very likely constitutes an illegal ex post facto or "retroactive" law.

The Loomis ballot measure states that "Any council member, who has served two consecutive four-year terms as of August 1, 2010 [three months before the election] shall be ineligible to serve...." In contrast, California's Proposition 140 which established legislative term limits and which became the national model for subsequent term limits measures, didn't start the clock tolling until the day after the 1990 election when Proposition 140 was passed. Thus, Willie Brown (the primary target of term limits) was allowed to serve three more terms (six more years) after the passage of Prop 140 before he was finally forced from office. Since Assembly Speaker Willie Brown was the primary target of Prop 140, we believe the inventors of Prop 140 would have ousted Brown the day after the election, if they thought it was possible. But we believe they deliberately had the clock begin tolling on legislative term limits the day after the election, specifically to avoid any risk of having Prop 140 thrown out by the courts as an ex post facto law.

2. **The Loomis measure, by it's retroactivity, forces some candidates (but not others) to spend significant amounts of money, time and effort campaigning for office, without any way to know whether they will be allowed to serve, even if they win by a landslide.** The gross unfairness of this retroactive feature to some candidates (but not others) should be clear to anyone. In contrast, termed-out state legislators know years in advance precisely when they will be termed out, so they can stop campaigning at the appropriate time.
3. **The retroactive feature of the Loomis measure would instantly "un-elect" some candidates on the same day they are elected.** In an extreme, worst-case scenario, if one incumbent received 3,000 votes and his challenger received only one vote, the passage of this term limits measure would automatically award the election to the person who received only a single vote (his own). The absurdity, gross unfairness and blatantly undemocratic nature of this situation is obvious, and the anger

and outrage it would trigger in the community can only be imagined.

Because the courts will almost certainly be asked, after the election, to determine whether it is an illegal ex post facto law (if it wins), it could cost the town government a significant amount of money in legal expenses, at a time when the town budget is already severely strained because of the Great Recession.

If it passes, this sloppily drafted measure could leave the outcome of the town's election in doubt for weeks or months, while the courts determine whether it is an ex post facto law – a localized version of the uncertainty that gripped the nation in Bush v. Gore, when the nation for weeks didn't know who had been elected president.

This glaring error in the Loomis measure appears to have resulted largely because the proponents were too lazy to correct and recirculate their initiative petition when it failed to get on last June's ballot. It is my understanding that the August 1, 2010 effective date was originally written that way because it would be two months after the June election – thus avoiding any ex post facto problem. But when it failed to get on the June ballot and was held over until the November ballot, the drafters of the measure failed to re-draft and re-circulate the initiative petition to correct the effective date – thus changing it from a prospective (future) effective date to a retroactive date in the past. Their inexcusable failure to correct it when the date of the election was changed could be very expensive for the town, could throw Loomis government into turmoil and uncertainty for weeks or months, and could cause a political uproar in the town if a retroactive law “un-elects” any candidates who win by a landslide – all totally avoidable if the initiative had been drafted correctly.

[NOTE: There are numerous other major reasons why I believe the Loomis term limits initiative is a very bad idea – such as the fact that term limits may be inappropriate for a town as tiny as Loomis (population 6,000) where the pool of potential candidates is extremely limited, the fact that for the past 25 years Loomis has elected an average of ~~one~~ ⁵⁻⁶ new council members every election with a rather high turnover rate, and the fact that this measure was deliberately targeted at two incumbents who defeated the main proponent of this measure. But this document deals only with concerns about the ex post facto nature of the measure.)

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