

July 28, 1987

REPORT TO THE HONORABLE  
MAYOR AND CITY COUNCIL  
QUALIFICATION OF INITIATIVE PETITION  
UNDER SECTION 23 OF THE SAN DIEGO CHARTER

In a letter to the County Registrar of Voters dated July 24, 1987, Professor John Minan raises the issue of the relevant date for establishing the proper number of signatures necessary to qualify an initiative.

An analysis of San Diego City Charter section 23 and its antecedent language indicates that in our view the proper date for purposes of establishing a base number for percentage computations is the last "general City election" which was in November of 1985. Our reasoning follows.

Since 1941, Section 23 has provided in pertinent part:

SECTION 23. INITIATIVE, REFERENDUM AND RECALL.

The right to recall municipal officers and the powers of the initiative and referendum are hereby reserved to the people of the City. Ordinances may be initiated; and referendum may be exercised on any ordinance passed by the Council except an ordinance which by the provisions of this charter takes effect immediately upon its passage; and any elective officer may be recalled from office. The Council shall include in the election code ordinance required to be adopted by Section 8, Article II, of this charter, an expeditious and complete procedure for the exercise by the people of the initiative, referendum and recall, including forms of petitions; provided that the number of signatures necessary on petitions for the initiation of an ordinance for the consideration of the Council shall be

three percent of the registered voters of the City at the last general City election; that for the direct submission of a measure to the people it shall require a petition signed by ten percent of the registered voters of the City at the last general City election; ....

Emphasis added.

Prior to 1941 that section read in pertinent part as follows:

Section 23. INITIATIVE AND REFERENDUM AND RECALL. The right to recall municipal officers and the powers of the initiative and referendum on all questions which the Council is authorized to control by legislative action are hereby reserved to the people of the City; such powers shall be exercised in the manner provided by the Constitution and general laws of the State of California. Ordinances may be initiated, or the Referendum exercised on ordinances passed by the Council, and any elective official may be recalled from office, under the provisions of the Constitution and the general laws of the State, provided that the number of signatures necessary to initiate an ordinance for the consideration of the Council shall be five percent of the entire vote cast in the City at the last preceding election for the office of governor; that for the direct submission of a measure to the people it shall require a petition signed by fifteen percent of the entire vote cast in the City at the last preceding election for the office of governor; that for a referendum upon an ordinance passed by the Council it shall require a petition signed by seven percent of the entire vote cast in the City at the last preceding election for the office of governor; and that for the recall of an elected officer it shall require a petition signed by twenty-five percent of the entire vote cast in the City at the last preceding election for the office of governor. Petitions for the Initiative, Referendum, or Recall shall be on forms prescribed by an ordinance of the Council and shall state in full the ordinance to be initiated or referred or the officer to be recalled with reasons for such recall.

Emphasis added.

One can readily see that in addition to reducing the percentage for direct submission from fifteen (15) to ten (10) percent, the 1941 amendment changed the relevant election from the "last preceding election for the office of governor" to the

"last general City election." In so doing, the change clearly was intended to change the focus from an exclusively state election to an exclusively city election.

This analysis is strengthened by two (2) additional municipal election references. First, Charter section 10 describes general municipal elections and distinguishes such elections from general state elections. Secondly, the San Diego Municipal Code provides the following definitions of the standard to be used:

SEC. 27.2003 DEFINITIONS

....

VOTER means an elector who is qualified and entitled to vote under general law in San Diego Unified School District Board of Education elections or in City elections and who is validly registered at the time he seeks to exercise his right to vote. When a stated percentage of voters is required, that percentage shall be computed as of the date of the next preceding municipal general election, excepting petitions to amend the Charter, in which case that percentage shall be computed as of the date of the next preceding State general election.

Emphasis added.

Again the standard of measurement is specifically contrasted with municipal and state elections. When a percentage is required to be computed, a Charter petition is reviewed against a state standard while all others are measured against the municipal standard.

Obviously there would be no need to make these distinctions if the standard was simply the last preceding election. By contrasting and distinguishing between a state and municipal election, the standard was clearly meant to be measured differently depending on the nature of the initiative petition.

Where, as here, an initiative petition involves a subject other than a Charter matter, we find that the relevant comparison is the last general city election and not the last general state election.

Finally, with respect to the qualifications of signatories to the petition for purposes of validating the signatures, it has been suggested that the phrase "require a petition signed by ten per cent of the registered voters of the City at the last general City election" is intended to establish the qualifications of the voter eligible to sign the petition. We believe that construction of the language violates the fundamental freedoms to

petition and vote and would reach an untenable result. We believe the phrase is intended merely to establish a raw number and not any eligibility standard.

Such an interpretation flows not only from the fundamental constitutional rights above referenced, but from the procedure set out in Charter section 23 and San Diego Municipal Code sections 27.2502; 27.2503; 27.2508; 27.2511 and 27.2512. Section 23 provides for a "complete procedure" to exercise the initiative and each of the referenced Municipal Code sections uses the term "voter" or "registered voter". These references of necessity refer to those presently able to vote. Any other construction would make the validation process impossible and disenfranchise presently registered voters from participating in their own government.

We decline any such interpretation that would disenfranchise voters and advise that for all the above reasons registered voters at the time of signing the initiative petition are valid signatures.

Respectfully submitted,  
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City Attorney

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