

BILL LOCKYER VS. BRUCE MCPHERSON, ET AL.

Case No. 05CS00998

July 21, 2005

1:30 P.M.

Department 11

Judge Gail Ohanesian

Petition for Writ of Mandate and

Cross-complaint for Declaratory Relief

Ruling on Submitted Matter

RPI proponents of Prop. 77 circulated for signature petitions that differed from the text of the petition that was submitted to the AG for title and summary.

Respondent AG is mandated by law to prepare the official title and summary for every initiative measure submitted to the voters.

Substantial compliance as a basis for relief in pre-election disputes concerning a failure to comply with the initiative election procedure set forth in Section 10(d) of Article II of the Calif. Constitution and the Elections Code may apply in certain limited situations.

The fact that one version of Prop. 77 was submitted to the AG for title and summary purposes and another version was circulated to the electorate for signature was a result of an inadvertent mistake by RPI proponents.

The evidence in this case does not support a finding that RPI proponents have substantially complied with the subject initiative election procedures. The differences in the 2 versions of Prop. 77 at issue are differences found in the text itself. The differences are not simply typographical errors. They are not merely about the format of the measure. They are not simply technical. Instead, they go to the substantive terms of the measure. For example, the Findings and Purposes section of the initiative is substantially different in the 2 versions. RPI's argument that the Findings and Purposes section is of no significance is not persuasive. Time requirements are different in the 2 versions. There are numerous other substantive differences between the 2 versions as well.

There is insufficient evidence to find that RPI had actual notice of these differences as of May 5, 2005, when they submitted their petitions to county elections officials. The courts finds, however, that in the exercise of ordinary care they should have known.

RPI did not disclose the differences between the 2 versions until June 13, after Respondent Secretary of State had certified their measure on June 10, 2005. There is insufficient evidence to find whether or not RPI knew of the differences on a particular date before June 10 and intentionally withheld this information.

Intervenor's Objection to a portion of the Declaration of Kolkey is overruled.

RPI's objections to the declaration of Atkinson and the declaration of Lowenstein are overruled.

Respondent Secretary of State's request for a stay pending appeal is denied. Any aggrieved party may apply to the appellate court for a stay.

Petitioner AG's Request for Judicial Notice is granted.

MHC Financing Limited Partnership Two vs. City of Santee (2005) 125 Cal. App. 4th 1372 is distinguishable and not dispositive in this case. One significant difference is that in *MHC Financing* the proponents of the measure did everything required of them by law to have their proposed ordinance adopted by the City Council or submitted to the voters in compliance with the election procedures and were not at fault for the City's errors that resulted in the City Council's adoption of an incorrect version of the initiative. The mistake was entirely on the part of the City. Here, the one party who could have and should have avoided the confusion created by having 2 different versions of Prop 77 is RPI. The procedures in question are clear and well known and easily followed. There is no good reason to put the courts in the position of having to decide what is good enough for qualifying an initiative measure for the ballot when actual compliance is easily attainable. The initiative process is too important to so broadly apply the doctrine of substantial compliance as RPI has requested. To rule otherwise would run the risk of the court inappropriately interjecting itself into the "political thicket." The court finds that the purposes of the constitutional and statutory requirements at issue would be frustrated if the court were to apply the substantial compliance doctrine to excuse the clear defects in this situation.

Moreover, the electors who signed the petitions that RPI seek to have certified are not being disenfranchised. RPI can still re-circulate petitions in proper compliance with the election procedures and qualify the measure for the next general election in June 2006.

Whether or not Petitioner AG may have given the same title and summary to each of the 2 versions of Prop 77, had both been presented to him, is not dispositive. The version that was submitted to the AG for title and summary was made available by web site and was also submitted to the legislature and other government officials. The public and the government officials are entitled to rely on that official version. RPI's argument that no one was misled by the title and summary is unpersuasive and unsupported.

All parties have been very adept in their arguments at mincing words to their barest of letters. RPI's argument that "copy" does not necessary mean "exact copy" is one example of mincing and then stretching the meaning of words beyond reason.

Respondent Secretary of State's duties are ministerial. That does not mean that he must certify initiatives that have the requisite number of signatures regardless of compliance

with other requirements. McPherson's knowledge of this principle and his duties in that regard is shown by the fact that he properly rejected petitions for Prop 77 that contained the language of other 2004 versions.

Accordingly, the court finds that the substantial compliance doctrine must be applied with reservation and in very limited circumstances not present here. Even if the court applied the substantial compliance test here, the court finds that there has not been substantial compliance with the constitutional and statutory election procedures at issue. The petitions for writ of mandate filed by Lockyer and by intervenor are granted. A writ shall issue providing that Respondent Secretary of State shall not place either version of Prop 77 on the ballot or in the voter election materials for the November 8, 2005 election. Declaratory Judgment shall issue consistent with this ruling. Petitioner shall prepare a Judgment for the court's signature and a separate form of writ for issuance by the clerk. The Judgment shall also include a declaratory judgment on the cross-complaint. This shall be deemed to be the court's statement of decision.