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You asked whether the Governor may rescind the proclamation calling for a special statewide election for an initiative measure. As discussed below, we conclude that the Governor may rescind the proclamation until the date of the election.

Section 8 of Article II of the California Constitution (hereafter Section 8) reserves to the electors the power of initiative, providing as follows:

**"SEC. 8. (a) The initiative is the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them.**

"(h) An initiative measure may be proposed by presenting to the Secretary of State a petition that sets forth the text of the proposed statute or amendment to the Constitution and is certified to have been signed by electors equal in number to 5 percent in the case of a statute, and 8 percent in the case of an amendment to the Constitution, of the votes for all candidates for Governor at the last gubernatorial election.

"(c) The Secretary of State shall then submit the measure at the next general election held at least 131 days after it qualifies or at any special statewide election held prior to that general election. The Governor may call a special statewide election for the measure.

"(d) An initiative measure embracing more than one subject may not be submitted to the electors or have any effect.

"(e) An initiative measure shall not include or exclude any political subdivision of the State from the application or effect of its provisions based upon approval or disapproval of the initiative measure, or based upon the casting of a specified percentage of votes in favor of the measure, by the electors of that political subdivision.

"(f) An initiative measure shall not contain alternative or cumulative provisions wherein one or more of those provisions would become law depending upon the casting of a specified percentage of votes for or against the measure." (Emphasis added.)

Subdivision (c) of Section 8 authorizes the Governor, once an initiative qualifies, to call a special statewide election for the measure.

Authority is not expressly granted the Governor to rescind a proclamation calling for a special election on an initiative measure. However, in *DeWitt v. Board of Supervisors* (1960) 53 Cal.2d 419, the California Supreme Court held that, where a statute granted discretionary authority to a board of supervisors to order an election on a proposed change to school district boundaries, the board could rescind that order pursuant to its inherent "unquestioned power to rescind prior acts and votes at any time thereafter until the act or vote is complete, provided vested rights are not violated" (*Id.*, at p. 424). This decision followed the rule of other California Supreme Court decisions that allow "the rescission of a decision by any public officer or public body which is not quasi-judicial in nature and which remains unexecuted so long as not to affect vested rights" (see *Burkett v. Board of Supervisors* (1861) 18 Cal. 702; *Guy F. Atkinson Co. v. Offner* (1948) 86 Cal.App.2d 92).

Because the Governor's authority to call a special election under subdivision (c) of Section 8 is discretionary rather than quasi-judicial, and because, as the chief executive of the state (Sec. 1, Art. V, Cal. Const.), the Governor is no more bound, within the limits of his or her discretion, than is a board of supervisors, we conclude that the Governor may rescind the proclamation calling for a special election so long as no vested rights are violated.

On the question of what would constitute vested rights, the United States Supreme Court case *Board of Regents v. Roth* (1972) 408 U.S. 564, at page 577, stated as follows:

"To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it. It is a purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined. It is a purpose of the constitutional right to a hearing to provide an opportunity for a person to vindicate those claims."

This rule, which the California Supreme Court has followed (see, e.g., *Salisbury v. State Bar* (1985) 39 Cal.3d 547, 564; *Civil Service Assn. v. City and County of San Francisco* (1978) 22 Cal.3d 552, 559), is necessarily applied according to the specific factual circumstances of each case. For a vested right to accrue with respect to the calling of a special election, a person must clearly have more than an abstract need or desire for the election to be held. In addition, as the court noted in *Young v. Governing Board* (1974) 40 Cal.App.3d 769, at page 777, courts have experienced difficulty in determining what "vested rights" are.

We distinguish between the proclamation calling for the election and the results of the election itself. The fact that a measure has qualified for the ballot and the conditions precedent for the inclusion of such measure on the next ballot have been satisfied does not create, in our view, a vested right in the proponents to have the measure included on the ballot for a special statewide election, in that the California Constitution grants to the Governor the discretion to determine whether or not to call such an election. If, having called a special election, the Governor rescinds that decision, the result would be that any affected initiative measures would be placed on the ballot at the next general statewide election; we can identify no basis under the case law cited above pursuant to which this result would impair a vested right.

This rule has been well established in California cases. "Remedial statutes which are retrospective but do not impair contracts or disturb vested rights are not unconstitutional, and the legislature may from time to time alter, change or modify the remedy provided that in so doing they do not affect the right; but whenever they so far alter the remedy and impair property rights or change or render the right scarcely worth pursuing, they necessarily impair the obligation of the contract upon which such right is founded" (*Buck v. Canty* (1912) 162 Cal. 226, 234-235, quoting *Teralta Land etc. Co. v. Shaffer* (1897) 116 Cal. 518, 523).

The California Supreme Court has not specifically addressed this point. But in *Brown v. Curb* (1979) 26 Cal.3d 110, the California Supreme Court held that the Governor has the authority to withdraw a judicial appointment before the appointee is confirmed by the Commission on Judicial Appointments. "[E]ven though submission for commission confirmation completes the gubernatorial action necessary for an appointment to an appellate judgeship, it does not complete the appointive process or confer even an interim right to assume office" (*Id.*, at p. 122). The court further noted that other states follow the rule that "nominations may be changed at the will of the executive until title to the office has vested" (*Ibid.*).

Thus, in the exercise of the discretionary executive authority to appoint judges, the Governor may change his or her mind and withdraw an appointment until the process has completed and the rights of the appointee have vested. We think that this holding, by analogy, supports a similar conclusion with respect to the Governor's exercise of the discretion in this case.<sup>1</sup>

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<sup>1</sup> The question presented here is distinguishable, in our view, from the question of whether the Governor may rescind, for example, a proclamation calling the Legislature into extraordinary session. If the Legislature has already convened, to hold that the Governor may rescind a proclamation would grant to the Governor the power to adjourn the Legislature contrary to the methods specified in the California Constitution.

Further, we think that the Governor lacks the authority to rescind the proclamation even prior to the time the Legislature convenes. In *Rayster v. Brock* (Ky.Ct.App. 1935) 79 S.W. 707, the Court of Appeals of Kentucky considered whether the Governor, upon his return to the

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In light of the above, we conclude that the Governor may rescind the proclamation calling for a special statewide election for an initiative measure absent a violation of the vested rights of persons interested in the outcome of the election, and, moreover, we cannot identify a situation in which such rights would vest prior to the date of the election. Consequently, it is our opinion that the Governor may rescind the proclamation calling for a statewide special election until the date of the election.

Very truly yours,

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state, had the authority to rescind a proclamation made by the acting Governor calling the Legislature into special session. The court held that the Governor did not have the authority to rescind the proclamation because the state constitution did not expressly authorize the Governor to do so (*Id.* at p. 709), and there was no basis for concluding that the authority was necessarily implied.

Like the Kentucky Constitution, the California Constitution does not expressly give the Governor the power to rescind a special session proclamation. As contrasted with the circumstances in question here, where the Governor acts in the legislative sphere the authority granted the Governor constitutes an exception to the limitations otherwise imposed by the separation of powers; therefore, in such cases the Governor acts as a special agent with limited powers and may act only as the California Constitution clearly authorizes (*Harbor v. Deukmejian* (1987) 43 Cal.3d 1078, 1087-88).