

CITY ATTORNEY UPDATE

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CA POLITICAL REVIEW: BROWN STANDS BY WHILE PERB MEDDLES IN SAN DIEGO CITIZENS' INITIATIVE

One of the state's longest-running and most-respected public policy organizations has turned its focus on San Diego's battle with the Public Employment Relations Board (PERB) over that agency's trampling of a local citizens' initiative.

California Political Review is featuring a scathing [article](#) on its website today that calls out Gov. Jerry Brown for allowing a state agency under his control, PERB, to "actively sabotage meaningful pension reform" in San Diego. The article asks why it's OK for Brown to actively campaign for a statewide citizens' initiative while PERB persecutes San Diego Mayor Jerry Sanders for supporting the local Comprehensive Pension Reform initiative.

Again, for our office, this is not about whether this initiative should be supported or opposed. It is about a state agency accusing the City of wrongdoing for simply recognizing the constitutional rights of our citizens to place an initiative on the ballot. We received a petition from 116,000 registered voters that qualified this initiative for the ballot. As required by the California Constitution, we placed it on the ballot. Ever since, we have been in legal battles with PERB's lawyer – a former labor union activist – who has taken a legal position that is not and never has been the law.

Here is the article in its entirety:

Brown Hypocrisy on Pension Reform

March 13, 2012 By Jon Coupal



In his State of the State Address, Governor Brown acknowledged the dire need for pension reform in California. But the immediate question on the minds of political insiders was two-fold: First, whether the Governor would support substantive reform (as opposed to just window dressing) and, second, how much, if any, political capital he would expend to see his plan enacted into law.

On the first point, Brown surprised us by proposing a fairly detailed 12-point plan that even his most harsh critics had to concede was substantive. But, regrettably, as HJTA predicted, the answer to the second question of how much effort he would use to see the plan to fruition was, simply, not much.

That Governor Brown would not push pension reform is really not all that surprising. First, labor brought him to the Governor's office and he is on a short leash. Second, the Democrat dominated legislature isn't about to do anything that hurts the primary source of their political power and campaign funds.

But it is one thing to say that you are for pension reform and not really mean it and entirely another thing to actively sabotage meaningful pension reform in those places where it is actually happening — at the local level.

In February, the California Public Employee Relations Board (PERB) ruled that a pension reform measure that is to appear on the June ballot in San Diego is an unfair labor practice. Over 115,000 voters signed petitions to qualify an initiative, which would provide a private sector style 401(k) plan to new employees. Government employee union bosses, objecting to any change to the guaranteed benefit system that has nearly bankrupted the city, sent out "goon squads" to try to "influence" petition signers, but voters refused to be intimidated.

Failing to block reform from going the ballot, the unions sought the help of the friendly PERB that is stacked with Brown appointees. Their argument, with which the Board agreed, is that because the ballot measure is supported by San Diego Mayor Jerry Sanders and City Council members Kevin Faulconer and Carl DeMaio, the measure is de facto City sponsored, and therefore San Diego is violating the requirement that officials meet and confer — negotiate with the unions — prior to any changes to the pension system.

Fortunately, the unions' move to prevent the pension reform initiative from going before the voters was rejected by Judge William Dato, who said there is no established case law that would allow him to block the measure from going to the ballot based on the PERB's findings. (Kudos to City Attorney Jan Goldsmith who vigorously fought the union effort).

The upshot is that San Diego voters will indeed have the opportunity to vote on pension reform this June, assuming that any further legal challenges by the unions and Brown's handpicked PERB members get the judicial rebuff they so richly deserve.

But, hypothetically, what if the governor's cronies on PERB succeeded in their legal challenge so that Sanders and the City Council members were found to be officially representing the City rather than themselves as private citizens? Wouldn't this also mean that Governor Brown is actually representing the State of California, rather than himself, as an advocate for his tax increase initiative? After all, not only is he listed as the official "proponent" of his plan to increase both the income and sales tax, he readily admits that he has been working the phones to raise money for the proposal and also to dissuade competing measures from appearing on the ballot.

The Constitution, as amended by Proposition 13, is clear. For the State to raise taxes, it must receive approval from two-thirds of each house of the Legislature. Even to place the measure on the ballot for voter approval requires a two-thirds vote. But Brown is totally bypassing the Legislature and, therefore, by the logic of the PERB members that he appointed, isn't he in violation of the law?

The Howard Jarvis Taxpayers Association has never maintained that an elected official gives up his or her right to endorse or support a ballot measure by virtue of holding office. However, if the governor's appointees persist in maintaining that a legitimate local ballot measure, qualified through the efforts of over a hundred-thousand voters, is null and void because it is also supported by local officials, we might have to rethink our position.

In the end, Governor Brown can do what he wants, as can the local officials in San Diego and other municipalities where officials are actually demonstrating leadership to address a serious issue. But the actions of his PERB members make it abundantly clear: Jerry is a labor guy and he, like the Democrats in the legislature, will do nothing to anger or upset their most valued constituency.

(Jon Coupal is president of the Howard Jarvis Taxpayers Association — California's largest grass-roots taxpayer organization dedicated to the protection of Proposition 13 and the advancement of taxpayers' rights. Originally posted on [HJTA](#).)