

Prop 49, and the Supreme Court's Order to Show Cause (Aug. 11, 2014)

The CA Supreme Court's ruling on Proposition 49 is important to understand for two key reasons. First, the Supreme Court's stay order has denied California voters the chance to express an opinion on the important and controversial Citizens United decision this November. Second, you will soon vote yes or no on reconfirmation of two justices, Liu and Werdegar, who voted to take Prop 49 off the ballot.

Background

The CA legislature recently passed a bill (SBI272) to put an advisory question on the November ballot. The measure would instruct the CA legislature and the US Congress to ratify an amendment overturning the Citizens United decision and related rulings, allowing regulation of campaign contributions and spending, and clarifying that constitutional rights are rights of natural persons only. The measure was put on the ballot as Prop 49. The Howard Jarvis Taxpayers Association sued against it, lost in one court, and appealed to the CA Supreme Court. The CA Supreme Court, in a 5 to 1 ruling, has ordered a stay taking Prop 49 off the November ballot, pending their final ruling after the November election. Chief Justice Cantil-Sakauye was the sole dissenting vote in the ruling ordering the stay.

Political Viewpoint in the Ruling

The comments on the ruling from the majority and particularly from Justice Goodwin Liu show a transparent political bias throughout; the ruling is clearly not based on a straightforward interpretation of the constitution, precedents or other legal standards as you might expect. The political viewpoint is especially clear in their evaluation of potential harm from allowing an invalid measure on the ballot in comparison with the potential harm from keeping a valid measure off the ballot.

In the remarks from Justice Liu, one of the most troubling is his comment that if we have Prop 49 on the ballot, and the court later determines that it should not have been on the ballot, there will be significant harm to the petitioners (Howard Jarvis group) because the Legislature would know what the people think, and you could not then take that knowledge away from the legislators. Chief Justice Cantil-Sakauye does not see that as significant harm, and I don't think most voters would either.

Other remarks from Liu and the majority imply that delaying the vote to 2016 would cause no significant harm. Liu states: "There appears to be nothing urgent on the state or federal political landscape that makes the electorate's input on Citizens United any more salient or timely now than it will be in, say, 2016." Well, that may be true if you see nothing wrong with having more and more big money dominate our government and political processes! Chief Justice Cantil-Sakauye points out that the issue at the heart of Prop 49 is being hotly debated in our country at this time, and depriving voters of the ability to vote on an issue while it remains current constitutes a real and present harm to voters. I suspect most California voters would side with the Chief Justice and strongly disagree with Justice Liu's assessment.

Now Have Your Say

There are numerous points where Liu disagrees with the Chief Justice. I expect most California voters would agree with the Chief Justice and strongly disagree with Liu and the majority on most of these points. Please make a well-informed decision on how you will vote this November on the reconfirmation of Goodwin Liu and Kathryn M. Werdegar on the California Supreme Court.

To research further, see the attached PDF showing the text of the Supreme Court's Order to Show Cause, with highlighting added for convenience on sections of particular interest. You can also see: http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=0&doc_id=2083887&doc_no=S220289