

## GUEST COMMENTARY: CALIFORNIA'S GREENHOUSE GAS PROP 23 UP FOR A VOTE NOVEMBER 2ND

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October 28, 2010

Once again, on November 2nd we will see one of California's most unique legislative processes in action. Since 1911, California's ballot initiatives have afforded voters the chance to amend the state constitution or state law directly, and, not surprisingly, interest groups have used them regularly as a means to affect significant shifts in state policies. At issue on November 2nd is a challenge funded by out-of-state oil and gas interests to California's landmark climate change legislation signed into law by Governor Schwarzenegger. The outcome of the initiative will have repercussions not only on the state's environmental policies, but also throughout the United States.

The ease with which one may propose a ballot initiative is what makes it most dangerous: one enters in a "Proposition" by submitting it to the Attorney General's office, along with a fee and voter signatures. Eight percent of registered voters must sign the petition in order to put a proposed amendment to the state constitution on the ballot, while only five percent is needed to put a potential amendment or repeal on the ballot.<sup>1</sup> It is possible to pass an initiative in twenty-four states and the District of Columbia, but nowhere is the legislative action affected by the ballot initiative more significant, newsworthy and far-reaching as it is in California.

This time, on November 2nd one proposal would stop some of California's most significant environmental measures. Historically, California has been known as the cutting-edge, progressive leader in the realm of environmental policies and climate change legislation.<sup>2</sup> This may change, however, with the passage of Proposition 23. This ballot initiative would suspend the Global Warming Solutions Act of 2006 (AB 32), a key environmental law pushed through by Governor Schwarzenegger which requires that the state's greenhouse gas emissions levels in 2020 be reduced to those that were emitted in 1990. AB 32 would remain suspended until the unemployment rate in California reaches 5.5% for four consecutive quarters, which, some note, is effectively a permanent suspension of AB 32 since this has only occurred three times since 1970. Moreover, California's current unemployment rate of 12.4% means a long haul before this stipulation is reached. Further, the ballot itself is confusing because voting "yes" would repeal the AB 32 (as opposed to supporting the environment), while voting "no" would keep the climate change legislation in place.

The crux of both arguments for and against Prop 23 involves unemployment and the creation—or dissemination—of jobs. Proponents of the initiative argue that AB 32 will increase energy costs, shrink already existing business, and detract new businesses from entering California. Detractors of the initiative offer the reverse argument: they argue that the passage of Prop 23 will cause cleantech and clean energy firms to flee California, and that the passage of the initiative will stifle innovation and investment in cleantech and clean energy in California, resulting in fewer jobs for Californians. Speaking at a Reuters climate summit in San Francisco on October 19th, Bill Weihl, Google's "green energy czar" stated, "these are the next big industries—cleantech and clean energy. If AB 32 is put on hold, they will not be in California. I'd hate to see all that innovation go elsewhere."<sup>3</sup> Weihl's view transcends party lines, and Proposition 23 is opposed by both Republican Governor Schwarzenegger and Gerry Brown, who is the current Attorney General and Democratic gubernatorial candidate on November 2nd. Meg Whitman, the state's Republican gubernatorial candidate who made her fortune in Silicon Valley, also opposes Prop 23.

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<sup>1</sup> Considering that interest groups have paid students up to \$2 for each signature collected, it is deceptively easy to put a measure on a ballot.

<sup>2</sup> For example, California's legislation on motor vehicle emissions was ground breaking in that it allowed the state to promulgate more stringent regulations than the EPA regarding motor vehicle emissions.

<sup>3</sup> See *Delaying AB 32 will destroy jobs: Google*, Carbon Market North America (Point Carbon), Oct. 15, 2010, at 4, [http://www.pointcarbon.com/polopoly\\_fs/1.1479916!CMNA20101015.pdf](http://www.pointcarbon.com/polopoly_fs/1.1479916!CMNA20101015.pdf).

As the public has seen with other California initiatives, funding is key in the passage of even the most seemingly unpopular initiatives, one of the most notable examples being Proposition 8, which amended the state constitution to provide that “only marriage between a man and a woman is valid or recognized in the state of California.” Proposition 8 had massive financial support from conservative Christian groups, and this funding was largely the reason for the initiative’s success. Spending on another ballot initiative, Proposition 87, which would have imposed a tax on oil production in California and used the revenue to fund alternative energy programs, set an all-time record, with both sides raising a total of \$154.3 million. Funding from large oil companies, totaling \$93.2 million, was chiefly responsible for the initiative’s failure.

A recent *Los Angeles Times* article explains that voters now oppose Prop 23 48% to 37%. This increase in voter opposition mirrors the increase in anti-Prop 23 funding: in the past two weeks, anti-Prop 23 funding (mostly from Silicon Valley investors) has increased dramatically, with detractors raising \$8 million, compared to the \$560,000 raised by supporters of the initiative.<sup>4</sup> Steve Maviglio, a spokesman for the “No on 23” campaign said, “we are girding for what the oil companies traditionally have done on California ballot measures, when they’ve dumped millions of dollars into the campaign in the final stretch.”<sup>5</sup> Overall, detractors have outspent supporters of the initiative, spending \$19.6 million, while supporters have spent \$9 million. Thus, although the ballot initiative, specifically the California ballot initiative, is seen as a populist vehicle capable of bringing about extraordinary change, the passage of an initiative is many times directly related to the amount of funding that special interests pour into campaigning. The fate of Proposition 23, then, may lay in the hands of the oil and gas companies who have funded it thus far.

Governor Schwarzenegger, perhaps protecting the most significant and far-reaching legislation of his time in office, has personally called California businesses asking them to support AB 32 and vote “no” on Prop 23. Thus far, no California businesses (even those with a lot at stake under the legislation) have broken ranks to support Prop 23. Chief supporters of the initiative are [Tesoro Corporation](#) and [Valero Energy Corporation](#), both Texas-based oil companies, and [Koch Industries](#), a Kansas-based oil conglomerate.

Voters’ decision on November 2nd will have a significant impact on climate change initiatives in California and, generally, in other states around the country. Just as the state’s legacy of leadership has deeply influenced other local and state governments, California’s misstep may cause country-wide climate change policy initiatives to stumble, exactly as it had helped moved things forward in the past.

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<sup>4</sup> Margot Roosevelt, Prop 23 Foes Pouring Money into Campaign, *Los Angeles Times*, Oct. 15, 2010.

<sup>5</sup> *Id.*

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