

Splitting up California: State Supreme Court takes initiative off ballot

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An elections manager for the Sacramento County Registrar of Voters makes a quick inspection of some of the petitions turned in by Silicon Valley venture capitalist Tim Draper, left, that would place a ballot ...

Photo: Rich Pedroncelli / Associated Press



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Tim Draper, a Bay Area venture capitalist, drafted the measure to carve up California into three states.

Photo: Max Whittaker / Prime / Special to The Chronicle 2014



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In this June 18, 2018, photo, venture capitalist Tim Draper points to a computer screen at his offices in San Mateo, Calif., showing that an initiative to split California into three states qualified for the ...

Photo: Haven Daley / Associated Press

The state Supreme Court decided Wednesday that California will remain intact geographically, at least for now, while it decides whether the voters can consider a proposal to divide the Golden State into three new states.

The three-state initiative, Proposition 9, had gathered enough signatures to qualify for the November ballot. Nine days after opponents filed suit, the court issued a [unanimous order](#) removing the measure from the ballot and ordering further legal arguments on whether it should be placed on another ballot in 2020 or struck down altogether.

The court said it usually allows ballot measures to go to the voters before considering constitutional challenges. But in this case, the six justices said, “significant questions regarding the proposition’s validity” and the “potential harm” of allowing a public vote before those questions are resolved “outweighs the potential harm in delaying the proposition to a future election.”

Those questions include whether California voters' broad authority to enact laws by initiative, established in 1911, includes the power to break up the state, and in the process abolish its Constitution and existing laws, to be replaced by lawmaking bodies in three future states.

The narrower legal issue is whether Prop. 9, drafted as a change in the laws that define California's boundaries, would actually amount to a "revision" of the state Constitution. That cannot be done by initiative, but instead requires approval by two-thirds of both houses of the Legislature to be placed on the ballot.

"We believe it is clear that a ballot initiative may not revise the Constitution by making changes in the basic framework of government," said Carlyle Hall, a lawyer for opponents who sued to take Prop. 9 off the ballot. "And there can be no greater change in our framework of government than the total abolition of our existing Constitution."

Howard Penn, executive director of the Planning and Conservation League, lead plaintiff in the lawsuit, said Prop. 9 would have caused "chaos in our public services including safeguarding our environment ... all to satisfy the whims of one billionaire."

The billionaire is Bay Area venture capitalist Tim Draper, who drafted Prop. 9, qualified it for the ballot and has represented himself without a lawyer in the court proceedings. Draper argued that California has become ungovernable — its taxes too high, its schools and public services in disrepair, its 39 million-plus residents far too numerous to be represented democratically by 120 elected legislators.

He reacted indignantly to the court order.

"Apparently, the insiders are in cahoots and the establishment doesn't want to find out how many people don't like the way California is being governed," Draper said in a statement. He said the six justices "probably would have lost their jobs" under the three-state plan.

"The whole point of the (state's) initiative process," he added, "was to be set up as a protection from a government that was no longer representing its people. Now that protection has been corrupted."

Prop. 9 proposed creating three new states: Southern California, running from San Diego and Orange County north past Fresno to Madera County; California, from Los Angeles along the coast to Monterey; and Northern California, covering all areas from Santa Cruz north to the Oregon border.

If the measure appears on a future ballot and a majority of voters statewide approve it, the state would forward the plan to Congress, which would have the last word. Establishing three states in place of one would also authorize the election of four additional U.S. senators. California's current 55 electoral votes for president, reliably

Democratic in recent decades, would be divided among the new states, and the contours of the proposed Southern California state suggest that it could swing Republican.

California lawmakers, meanwhile, would apportion current state funds and facilities among the new states.

Draper had proposed in 2014 to divide California into six states, but was unable to collect the 585,000-plus signatures needed for a measure to amend the state Constitution. By drafting Prop. 9 as a recasting of state laws, he needed only 385,880 signatures [to make the ballot](#). He submitted more than 402,000 valid signatures in April.

The measure was challenged [in a lawsuit July 9](#) by opponents led by the Planning and Conservation League, which said it feared the environmental consequences of discarding current state laws and constitutional protections. They contended Prop. 9 is, at the very least, a constitutional revision that could not be enacted by voter initiative.

The court has considered similar arguments on other issues in the past. In 1990, it overturned a provision of a prosecution-sponsored initiative, approved by the voters, that would have barred California courts from interpreting criminal defendants' rights more broadly than the U.S. Supreme Court. The state justices said it would have required "far-reaching changes in the nature of our government plan."

The lawsuit challenging Prop. 9 said it "would not simply 'revise,' but would abolish the existing state Constitution" and all state laws.

Draper put it differently. Prop. 9, he told the court [in a filing last week](#), would result in "nullification of the California Constitution, not its 'revision.'"

Legal groups representing low-income Californians also argued that the three new states, while relatively equal in population, would be financially unequal — the new Northern California would have far more revenue available from income, sales and property taxes, and less need for spending on public assistance, than the other two new states.

"California's state government now equalizes these disparities based on need, not geography," Bob Wolfe, attorney for Public Counsel and the Western Center on Law and Poverty, told the court. "Once the state is divided, such a needs-based allocation no longer would be possible."

The court's order leaves 11 propositions on the Nov. 6 ballot. After Prop. 8, a proposed regulation of kidney dialysis clinics, the next on the ballot will be Prop. 10, which would expand local government authority to enact rent control.

The case is Planning and Conservation League vs. Padilla, S249859.

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