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civil rights

By Joshua Dyck and Edward Lascher, Jr.

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Collecting signatures outside of a Safeway grocery store in Novato, Calif., on Wednesday, February 5, 2020.

Photo: Scott Strazzante / The Chronicle

Encouraged by the wave of recent Black Lives Matter protests, people are scrutinizing all variety of institutions for bias against minority groups.

In California, an institution that needs to be up for scrutiny is the state ballot initiative.

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pertain to minority rights and opportunities, their authors almost always aim to curtail rights and opportunities rather than expand them.

A study from UCLA's Williams Institute indicated that many measures were aimed at restricting gay rights, including bans on same-sex marriages. (The 2015 U.S. Supreme Court decision legalizing these marriages put a stop to this trend.) Additional studies found that such restrictive measures were more likely to pass in states with the ballot initiative process.

Our own research examined state ballot initiatives in California from 1946 through 2016.

Past California initiatives have commonly been used to restrict desegregation efforts and limit services to undocumented immigrants.

We identified 15 measures aimed at restricting the rights of racial, ethnic, language, sexual, or ideological minorities. For example, voters passed multiple measures to restrict busing in the service of school desegregation.

By contrast, we identified only a single measure aimed at expanding civil rights — a 1951 measure sponsored by prominent Black California political leader Augustus Hawkins to establish a state equal opportunity policy. It was resoundingly defeated at the polls.

The initiative process is not the only way Californians have limited minority rights and opportunities. For instance, there is a sordid history of restrictive zoning laws passed by legislatures, city councils, and other bodies which were aimed at Blacks and others.

Yet the ballot initiative process is strikingly one-sided.

As far back as 1963, the California Legislature enacted a fair housing law aimed at reducing racial discrimination in that sector. Opponents succeeded in getting an initiative to overturn the measure on the ballot in 1964; that measure passed and was subsequently ruled unconstitutional by the U.S. Supreme Court.

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Decisions to sign an initiative petition tend to be made quickly with little reflection, and may be especially subject to emotional appeals (“Stop forced busing!”) There is no filter for measures that are inconsistent with established rights.

The voting process does a poor job of reflecting the intense concerns of those directly affected by a measure. The views of those who think their rights are being violated are weighted exactly the same as those who have not given a topic much thought. By contrast, the representative process is better equipped to take account of the needs and concerns of smaller groups.

The initiative process is also conducive to those who wish to mobilize single-issue voters by creating wedge issues, especially members of dominant groups. Our recent book provides evidence that this is why voter turnout is somewhat higher in states that make heavy use of the initiative process, even though that process is not associated with greater general feelings of political efficacy or interest in politics.

California voters and legislators need to consider ways to adopt subject matter limits on ballot initiatives. At a bare minimum, it should not be possible to limit the rights of a minority group via a simple majority vote at the ballot.

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