

Is the SAFE initiative vote safe?

By Elisabeth Semel and Charles Sevilla

The Savings, Accountability, and Full Enforcement for California Act, or as it is more popularly known, the SAFE California initiative, easily qualified for the next general election. The initiative has a broad base of support. Over 800,000 citizens signed to put it to a vote in November.

This is one of the simplest and most straightforward criminal justice initiatives in memory. There is nothing hidden from the public about its contents or purpose. Everyone knows what the SAFE California initiative will do: it replaces the death penalty with the alternative sentence of life without parole, and uses some of the resulting savings (estimated at \$100,000 million a year) to fund local law enforcement and district attorney agencies to increase the rate at which murder and rape cases are solved. The current rate of unresolved murder and rape cases — 46 percent of homicides and 56 percent of reported rapes each year — is unacceptably high. The infusion of millions of dollars to resolve these cases can only be seen as a good thing.

Funding homicide and rape investigations is directly related to the savings the SAFE California initiative will achieve from repealing the death penalty. For example, the state Supreme Court recently reported it costs the court \$19 million a year and a quarter of its work time to handle capital punishment cases. Even larger savings will derive from reductions in funding to the local and state agencies that defend and prosecute these cases.

Recently, a pro-death penalty advocacy group, the Criminal Justice Legal Foundation, filed a suit to prevent the electorate from voting on the initiative. (Recent polls show it is favored to pass.) The suit argues that the SAFE California initiative violates the "single subject" rule of the state constitution. Article II, Section 8(d) reads: "An initiative measure embracing more than one subject may not be submitted to the electors or have any effect."

Last week, the California Court of Appeal summarily tossed out the lawsuit. *Loya et al. v. Bowen*, DCA3-C071040. It remains to be seen whether the group will ask the state's highest court to review the dismissal. Here is why the court order ought to put an end to efforts to keep the initiative off the ballot.

The single subject rule only requires that provisions of an initiative be reasonably germane to one another and to the initiative's general purpose. California's courts faced with single subject challenges on far more complicated criminal justice initiatives have repeatedly rejected them. Indeed, the more recent initiatives that have been upheld in the face of single subject challenges were lengthy and covered a multitude of diverse subjects.

In 1982, 1990 and 2002, California voters passed "victim's rights" initiatives (Propositions 8, 115 and 21 respectively). Each initiative faced lawsuits arguing that they violated the single subject rule. They all failed.

In 1982, in *Brosnahan v. Brown*, 32 Cal. 3d 236 (1982), the Victims Bill of Rights initiative was upheld under the single subject rule despite having assorted provisions that: created a right to safe schools, expanded rights to victim restitution in criminal cases, diminished the constitutional right to bail, broadened the admission at trial of prior felonies for impeachment or sentence enhancement, reduced mental state defenses, changed the definition of legal insanity, added a five-year sentence enhancement for each prior conviction of a serious felony, granted rights to victims of crime, or next of kin of deceased victims, to attend sentencing and parole hearings, and altered plea bargaining rules in serious felony cases.

In 1990 and 2002, the Criminal Justice Legal Foundation filed briefs in the state Supreme Court arguing that the initiatives (Propositions 115 and 21) complied with the single subject rule despite their breadth.

Proposition 115, the Crime Victims Justice Reform Act of 1990, encompassed a diverse array of topics including: altering the preliminary hearing process in felony cases, changing the circumstances under which defendants may obtain a trial postponement, working a wholesale revision of discovery in criminal cases, eliminating the right of counsel in criminal cases to question prospective jurors, and expanding the number of offenses eligible for the death penalty. In *Raven v. Deukmejian*, 52 Cal. 3d 336 (1990), the court upheld the initiative against the single subject challenge, ruling that the single subject that encompassed all these issues was the "promotion of the rights of actual and potential crime victims." The dissent urged that, with "single subject" so broadly defined, almost anything related to criminal law would satisfy the rule. And it has.

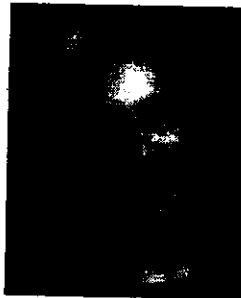
In 2002, Proposition 21, the Gang Violence and Juvenile Crime Prevention Act of 1998, prevailed in a lawsuit arguing that it covered three distinct subjects: the juvenile justice system, criminal gang activity and sentencing provisions unrelated to either of these topics. The measure made defendants convicted of gang-related murder eligible for the death penalty while also addressing minor crimes like graffiti. It effectuated major revisions to the juvenile justice system, such as allowing minors accused of specific offenses be charged directly in criminal court, limiting the confidentiality of juvenile criminal records, restricting the prehearing release of minors and altering procedures and evidentiary rules in juvenile wardship cases. In *Manduley v. Superior Court*, 27 Cal. 4th 537 (2002), consistent with its rulings in the Propositions 8 and 115 cases, the state Supreme Court held that the various provisions were "germane," relying in great measure on the sponsors' stated goal of addressing crimes committed by juveniles and gangs.

In each of these three decisions, the court was not persuaded by arguments that the initiatives were unduly complex (they were), would bring about far-ranging changes in the state's criminal justice system (they did) or that they covered unrelated issues (they did). As far as the court was concerned, the single subject rule was satisfied because each initiative had a "consistent theme or purpose." Rejecting the challenges, the court emphasized that doubts about whether an initiative runs afoul of the rule must be resolved in favor of allowing the electorate to decide through the democratic process.

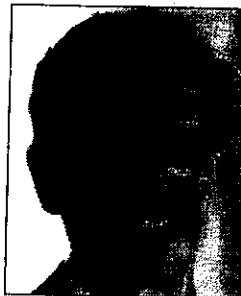
There is thus great irony in the interest groups that promoted the expansive and multi-pronged criminal justice initiatives in 1982, 1992 and 2002, arguing that the far more limited SAFE California initiative violates the "single subject" rule. They championed and won the broadest and most accommodating interpretation of the "single subject" rule in the area of criminal justice. Now they want to avoid the consequences of their legal handiwork.

They did not succeed in the Court of Appeal. If they go to the Supreme Court, they should get the same summary denial.

The right of the people of this state to vote on how they are to be governed is a sacred one that cannot be eliminated for trivial or ideological reasons. As our Supreme Court stated with regard to both the 1982 and 1990 initiatives, "In our democratic society in the absence of some compelling, overriding constitutional imperative, we should not prohibit the sovereign people from either expressing or implementing their own will on matters of such direct and immediate importance to them as their own perceived safety." The SAFE California initiative is the electorate's rational choice to enhance public safety by eliminating a hugely wasteful and demonstrably failed punishment and to use the savings to protect itself.



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