Tim Draper’s “Three Californias” measure qualified for this November’s ballot, and it is a mortal threat to our state. We review the arguments one could use to stop this measure from appearing on the ballot.

The Measure Does Not Satisfy the Admissions Clause

The measure fails to satisfy the federal requirements for subdivision. Article IV, section 3 of the U.S. Constitution requires approval from the state legislature and Congress to create new states:

“New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.”

The measure purports to satisfy the requirement that an existing state’s legislature consent to subdivision by providing that passage represents “legislative consent ... given by the people.” That is inadequate.

The electorate and legislature are distinct political entities, and neither the California nor the U.S. high courts have interpreted their respective constitutions to equate a state’s legislature with its electorate in this context. Although the electorate exercises some legislative power through the initiative process, Professional Engineers at 1038, the electorate and the legislature are constitutionally distinct entities, and the admissions clause specifically refers to the “legislature” of a state. The measure’s attempt to sidestep this requirement fails.

Finally, the measure also violates the U.S. Constitution’s guarantee clause (Art. 4, section 4) because it commandeers constitutional authority expressly delegated to state legislatures. Cf. Morrisey v. State, 951 P.2d 911, 916-17 (Colo. 1998) (initiative directing state legislature to propose federal constitutional amendment violated guarantee clause because it “usurped the exercise of representative legislative power”).

Conclusion

This is not Draper’s first attempt to break California: First six new states (twice), and now three. It’s time for some public-spirited member of the bar to step up, and challenge this measure. Show Draper that we are one state, indivisible. Save California.

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