

California's recently-legislated ban on disposable plastic bags—the first in the nation—will not take effect on July 1, 2015 as the new law mandates. That's because industry opponents of the legislation have qualified for the November 2016 election a referendum measure that seeks to repeal the new law.



Last fall [I wrote on this site about the new legislation, and summarized its key provisions](#). Briefly, the 2014 law would ban retail distribution of single-use plastic bags to consumers by California retailers, while imposing a 10-cent charge on other types of single-use bags such as paper. The legislation was designed to be phased in gradually, with major grocery stores and big box retailers being subject to its provisions beginning on July 1, 2015, and smaller California retailers having to come into compliance a year later.

The plastic bag ban was predicated primarily on the bags' propensity to wind up in landfills, become an aesthetic blight in both land and ocean environments, and endanger terrestrial and marine creatures who become entangled in or consume the bag detritus. While a number of local governments in California and around the U.S. have adopted a variety of ordinances banning or limiting the distribution of such single-use bags, California was the first jurisdiction to do so on a statewide basis.

Plastic bag manufacturers over the past few months mounted a successful effort to collect sufficient voter signatures to qualify a referendum measure for the November 2016 ballot. If voters approve the referendum, the 2014 legislation would be nullified.

Of critical significance, under California election law, once a referendum measure qualifies for the ballot, implementation of the challenged measure is automatically suspended pending the results of the election in which the referendum is considered by state voters.

Multiple press accounts report that 98% of the \$3.2 million spent to qualify the referendum measure was contributed by three out-of-state plastic bag manufacturing companies.

This was not what California Governor Hiram Johnson and other leaders of the state's Progressive Movement envisioned when they created California's initiative and referendum system over a century ago. As a result of those political reforms, California voters were for the first time able to legislate directly through the electoral process. These days, those well-intentioned reforms have been twisted to the point where most California initiative and referendum measures are sponsored by well-financed corporate and union interests who hire professional signature gatherers to qualify measures for the California ballot. Things

have gotten so bad that, as former California Attorney General, Treasurer and legislator Bill Lockyer once mused, a political organization could qualify a MacDonald's menu for the state ballot if it had enough funds to devote to the effort.

From a purely financial perspective, the plastic bag manufacturers' successful efforts to qualify the plastic bag referendum make business sense. That's because even if the referendum loses at the polls in November 2016, the 16-month delay in the plastic bag law's implementation automatically triggered by the referendum's qualification for the ballot means that plastic bag manufacturers can continue business as usual during that time span. And over that same period, the industry will doubtless earn substantially more in profits from its bag sales to California retailers than the \$3.2 million it expended to qualify the referendum measure.

I hope and fully expect the industry's referendum will fail when it comes before California voters in November 2016. The state's electorate and media traditionally take a dim view of out-of-state efforts to manipulate California's political process. The most recent example of this trend occurred in 2010, when the Koch brothers and out-of-state oil and gas corporations colluded to fund and qualify for the California ballot an initiative that would have suspended implementation of the state's landmark Global Warming Solutions Act (AB 32). That initiative measure was opposed by virtually every major media editorial board in the state, and was resoundingly defeated by California voters. Indeed, the number of "no" votes registered against the 2010 initiative exceeded the votes cast for any candidate for office appearing on the same 2010 general election ballot.

Let's hope for a similar result in November 2016, and that the newly-qualified referendum measure constitutes but a temporary delay for California's welcome legislation banning single-use plastic bags.