Earlier this month, my colleague Beth Kent wrote a thorough overview of the referendum seeking to reverse SB 1137, a bill passed by the California Legislature establishing a 3,200-foot setback between new oil and gas wells and sensitive receptors, including homes, schools, and hospitals. That referendum (Ballot Measure 22-0006) will appear on the November 2024 ballot. While Californians patiently wait until then to cast their votes, SB 1137's critical setback provisions are suspended.

But as Beth noted, Big Oil's well-funded signature-gathering campaign has been tainted amid reports of petition circulators telling 'blatant lies' to secure signatures. These alleged lies range from the spurious claim that the petition exists "to lower gas prices," to the outright false assertion that the referendum would *prohibit* neighborhood oil and gas operations (probably a successful strategy, considering Californians' overwhelming support for buffer zones between residences and oil extraction sites).

On the claim that the petition would merely lower gas prices, there's evidence that this is a formal talking point developed and encouraged by at least some of the referendum's financial backers. A now-closed job posting solicited "energetic and conscientious" people to collect signatures supporting a referendum "to help reduce gas prices and prevent prices from increasing to $10/gallon." There's some irony there, considering this week's special session proposal to hold Big Oil accountable for price gouging over the last year.

Other misleading statements can be attributed directly to the California Independent Petroleum Association (CIPA), the oil industry trade association that sponsored the legislation. In a press release, CIPA lobbyists claimed that SB 1137 "instituted a statewide 3,200-foot oil well setback *without any scientific basis*." This claim, unsurprisingly, is incorrect. A group of researchers composing the California Oil and Gas Public Health Rulemaking Scientific Advisory Panel concluded that "studies consistently demonstrate evidence of harm at distances less than 1 km, and some studies also show evidence of harm linked to [oil and gas development] activity at distances greater than 1 km." (One kilometer clocks in at 3,280 feet).

Of course, Big Oil's resistance to new setback rules, safety regulations, and climate goals is neither new nor unexpected. The industry has aggressively litigated local prohibitions on oil and gas activities––as well as local setback requirements––under a wide variety of theories, including takings, preemption, CEQA, estoppel, state planning law, and so on. And while this referendum is simply another tool in the industry's toolbox, the use of the ballot measure here feels particularly flagrant. That's because it represents the capture of a system explicitly designed to put power back into the hands of the people, and away from special interests.

As Beth mentioned in her post, this $20 million ballot measure conjures shades of the American Progressive Bag Alliance (now the American Recyclable Plastic Bag Alliance), an association of plastic industry members that paid $3.2 million to buy their way onto the California ballot in 2016 in an attempt to veto a statewide plastic bag ban.

But it also conjures shades of the $7 million that Working Families for Jobs and Energy Independence (aka Chevron, Aera Energy, and CIPA) spent to block a local measure enacting setback and health protections in Ventura County earlier in 2022.

And the $10 million that Save Local Restaurants (the International Franchise Association) raised to challenge AB 257, which would have raised wages for fast food workers.

Save Local Restaurants’ referendum to overturn the wage and worker protections outlined in AB 257 will feature on the November 2024 ballot. Credit: Fibonacci Blue (CC BY 2.0)

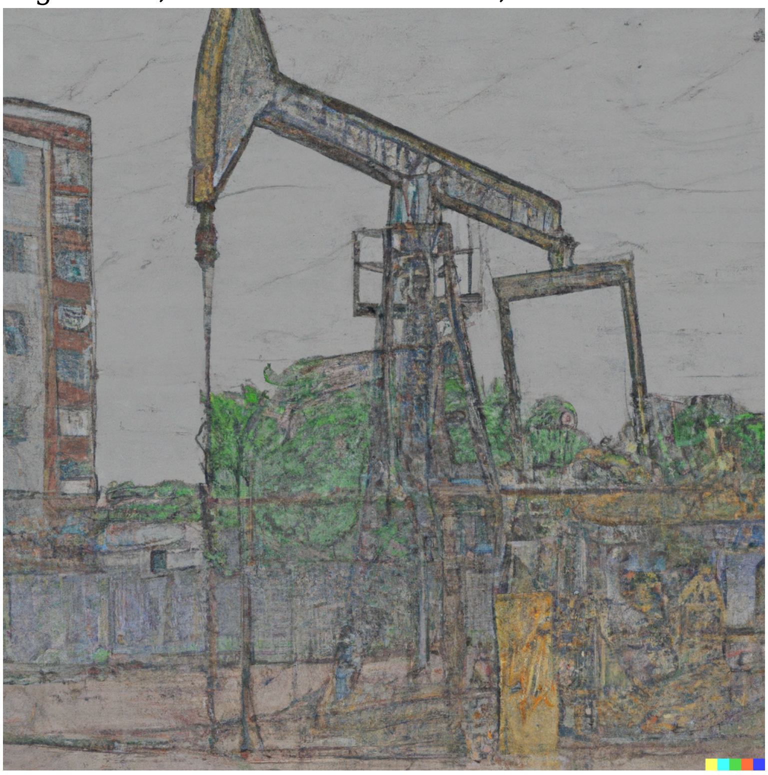
And the $23 million that tobacco companies and trade associations spent to try to overturn SB 793, which banned the sale of flavored tobacco products.

The recent parade of industry trade organizations funding signature-collecting “bounty hunters” has drawn the attention of “labor unions, government watchdogs, and environmental advocates.” These advocates argue that industry referendums subvert the direct democracy process––largely born out of progressive-era reforms––and serve the very interests that referendums were meant to protect against. Indeed, recent referendums have made clear that money is a necessary precondition for access to the electoral ballot. Or, to go a step further, recent referendums have made clear that money *alone* can buy access to the ballot, even in the absence of a popular platform. Numerous articles catalogue instances of paid-per-signature petition circulators (many of whom travel here from out-of-state) duping trusting voters with misleading claims or outright lies.

In a bid to combat this abuse of the referendum process, Assemblymember Isaac Bryan announced a new bill this week, AB 421, that would reform California’s referendum law by increasing transparency and establishing new government oversight mechanisms. The bill would require signature gatherers to register with the California Secretary of State, wear a badge displaying their name, photograph, and an identification number, and attend a mandatory training program. AB 421 would also require referendum petitions to prominently display the top three funders of the referendum campaign on the petition’s first page, ostensibly to offset the slew of pithy-yet-uninformative coalition names that attach themselves to these petitions. Finally, the bill would require 10 percent of petition signatures to be obtained by unpaid volunteers, hopefully meaning that successful ballot measures will have at least some grassroots support. Could the California Independent Petroleum Association really find enough volunteers––volunteers who feel passionately about drilling new oil and gas wells close to hospitals, schools, and homes––to stand outside of grocery stores for hours on end gathering signatures without paying them?

It remains to be seen whether the bill will go anywhere. Former Governor Jerry Brown twice vetoed legislation that would have prohibited payment of signature gatherers on a per-signature basis. Despite calling Big Oil's ballot referendum "another push to continue harmful drilling near daycares and schools and our homes," Governor Newsom vetoed a similar bill that would have banned pay-per-signature compensation in 2021.

Regardless, even if the voters defeat the referendum in November 2024, Big Oil has already bought itself nearly two years of applying for––and probably receiving––long-term oil and gas permits within the proposed setback radius. The neighborhood drilling operations that the state permits between now and then are likely to continue poisoning communities for many years, and the referendum has undermined the work of numerous grassroots organizers, frontline communities, and environmental justice organizations.



As a final note, there may be another path forward while we wait for November 2024. In a recent CalMatters article, Center for Biological Diversity attorney Hollin Kretzmann noted that if Governor Newsom is serious about instituting the statewide setback requirement, he could conceivably push the California Geological Energy Management Division (CalGEM) to resume its own previous setback rulemaking, which has been on pause for more than a year. CalGEM has "long faced criticism that it was too cozy with the industry it regulated." While a legislative approach to a setback requirement would be preferable for a host of reasons, Governor Newsom could conceivably take executive action now to protect the health and welfare of California's most vulnerable communities. The timing might be right for this; Uduak-Joe Ntuk, CalGEM's embattled supervisor (and former Chevron engineer), recently stepped down as leader of the agency. Ntuk's resignation came following a spike in CalGEM's issuance of oil and gas permit approvals. Newsom has not yet selected a permanent replacement for Ntuk, and the appointment process may serve as an opportunity to secure a new supervisor that will stand up to industry pressure.