



THIS WEEK IN SACRAMENTO

Prepared by Norwood & Mattoch

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Campaigns Wrapping Up

With only a couple of days left in the 2004 campaign, legislative and initiative campaigns are furiously rushing to make final arguments and influence voter decisions. Once again, standing first among political equals is Governor Arnold Schwarzenegger, who has staked much of his popularity and influence by taking positions on no fewer than twelve of the sixteen ballot initiatives. The Governor has also inserted himself in the legislative elections, endorsing the entire slate of republican candidates for the State Senate and State Assembly and headlining numerous republican campaign rallies.

Initiative Campaigns

In addition to raising millions of dollars for the California Republican Party and his own California Recovery Team, Governor Schwarzenegger has waged an aggressive campaign to influence the outcome of most of the initiatives on the November ballot. In the Voter Guide to ballot propositions, sent to some five million California voters, the Governor urges voters to take his lead on important ballot propositions that could affect tax rates, the safety of communities, the future of the health care system, and the success of the California recovery program.

In his initiative recommendations, Governor Schwarzenegger continues his efforts to improve the California business climate. The Governor has urged a NO vote on Proposition 72, which if passed will impose a mandate on most California businesses to provide health insurance. Schwarzenegger recommends a YES vote on Proposition 64, which would limit so-called shakedown lawsuits. Consistent with his pledge not to raise taxes, the Governor has come out against both the Proposition 67 proposal to tax telephones to fund emergency room operations and the Proposition 63 special tax on income over \$1 million to finance mental health services.

The Governor once again shows his iconoclastic political streak with his recommendations on initiatives that propose to regulate political primaries and tribal gaming. Proposition 62

proposes to establish a Louisiana-style open primary system in California. Proponents of the open-primary system argue that it would create more competitive legislative races and result in the election of more moderate candidates. Leaders of both political parties oppose Prop. 62 and the loss of party control it would bring. Rather than simply taking the easy way out and remaining silent on the issue, Schwarzenegger has weighed into the debate with an endorsement. He's also gone where few California politicians have dared to travel before in taking on tribal gaming interests. Propositions 68 and 70 would expand casino operations in California, including those operated by card rooms and race tracks, and limit the authority of the Governor to negotiate gaming compacts with individual tribes. Schwarzenegger opposes these two measures and appears to be winning, as most political analysts agree that 68 and 70 will fail convincingly. Nonetheless, Schwarzenegger has continued to raise money and speak out against the initiatives, leading some to suggest that he seeks to make a broader political point that he will not hesitate to confront even the most well-funded political interests.

Recent Polling

Start with a word of caution. Voters don't focus on election issues until the last several weeks of a campaign. As such, polls taken early in a campaign tend to be unreliable. In that same vein, trends seen in polling data often exaggerate actual movement in voter sentiment because the early data used for comparison is suspect. That said, recent polling indicates that Proposition 64 is gaining ground. Nightly polls late this week indicate that public awareness of the issue was at 70%. YES votes are in the high thirties while no votes are in the mid to low twenties, leaving a large undecided vote. At least one poll of those voters who have already submitted absentee ballots indicate 50% voted in favor of Proposition 64 while 20% voted against.

Proposition 72 also appears to be trending in favor of the business community. The most recent poll indicates that 33% of voters would vote YES while 44% would vote NO. Even more important, the number of respondents expressing opposition to Prop. 72 has grown the last 6 out of 7 nights of polling. With millions of dollars being poured into the opposition campaign during the last week, and with all major newspapers having editorialized against this initiative, the smart money is on a defeat for Prop. 72.

Late Legislative Races

There are a very limited number of very competitive legislative races shaping up. At stake is whether the Democrats retain their dominant position in both houses of the California Legislature, where current majorities stand at 48-32 in the Assembly and 26-14 in the Senate. Republicans never had a chance to win control of either chamber this legislative cycle, but party leaders expected to at least narrow the gap. It appears that Governor Schwarzenegger will be less successful in influencing the outcome of legislative races.

In the State Senate, there is only one real competitive race that is shaping up to be the most expensive campaign in California history. Governor Schwarzenegger has strongly endorsed Stockton Mayor Gary Podesto against incumbent Senator Mike Machado. Current estimates are that each side will spend up to \$10 million to elect their candidate. Governor Schwarzenegger has appeared for Republican Podesto at least twice and assisted the Mayor in raising over \$650,000/\$850,000 at one campaign event earlier this year. The latest polls indicate that Senator Machado is maintaining a slim lead and may well retain his seat for the Democratic Party.

In the Assembly, there are ten races for Assembly seats that appear very competitive at this point. Republicans are hoping to pick up at least two Assembly seats and have their sights set on at least four. However, at this writing it appears that a pick up of one or two seats is more realistic.

Republicans are defending three incumbents who could be considered vulnerable, Shirley Horton in AD 78 (San Diego), Bonnie Garcia in AD 80 (Palm Springs), and Guy Houston in AD 15 (Contra Costa). Democrats are defending seven potentially competitive seats, but in each the party holds a significant registration advantage. The California Chamber of Commerce along with numerous business and insurance interests have funded and independent expenditure effort in support of three republicans, Bob Pohl in AD 35 (Fresno), Tricia Hunter in AD 76 (San Diego), and Greg Hill in AD 53 (Long Beach). Another race meriting attention is AD 21, where wealthy Republican business Steve Poizner has spent at least \$4.8 million of his own money in a heavily democratic district to try to defeat candidate Ira Ruskin, a surprise survivor of a tough democratic primary. Steve Poizner has been endorsed by all three major newspapers in the district and may snag the GOP's biggest upset of the 2004 elections.

Secretary of State Kevin Shelley is predicting a 73% turnout of registered voters, which calculates to approximately 6.5 million voters, for next Tuesday's election.

WCIRB Defends 3.5% Recommended Premium Increase

The WCIRB disappointed legislators and many interested parties involved in the workers' compensation debate by sticking to its guns and maintaining its recommended 3.5% pure premium rate increase for policies incepting on or after January 1, 2005. The Bureau initially made its recommendation this past September but many observers, including Insurance Commissioner John Garamendi, predicted that the Bureau would alter its recommendation once the Division of Industrial Relations began to unveil its regulations implementing SB 899 (Poochigian). That optimism proved misplaced, however, as the Bureau indicated at a hearing before the Commissioner this Wednesday that it would not be making any new recommendations until a new permanent disability schedule was adopted by the administrative director of the Department of Industrial Relations.

The Bureau's position set off a wave of protest by applicant's attorneys organized labor and some business interests who are critical of the Bureau's inability to find additional savings from recently published regulations dealing with medical provider networks.

Unfortunately, the Bureau's position only adds additional fuel to efforts by applicant's attorneys and organized labor to impose a rate regulatory scheme on the insurance industry. Even Senator Charles Poochigian, a republican and author of SB 899, warned in a speech before the second annual California Workers' Compensation Conference this week that rate regulation would be the focus of a few legislators in 2005. Senator Poochigian indicated that such legislation was not out of the question if insurers failed to pass along savings that the recent legislative reforms produced. Unfortunately, Senator Poochigian failed to point out that the Legislature's own inability to enact clean up legislation -- cited as critical by the Insurance Commissioner to implementing many of the reforms of SB 899 -- delays many of the potential reform savings.

Broker Compensations Regulations

Last week Insurance Commissioner John Garamendi issued proposed regulations on disclosure of broker compensation. His action came in response to and in the wake of New York Attorney General Eliot Spitzer's investigation of industry giant Marsh & McLennan. The Insurance Commissioner's proposal would establish a new legal standard for requiring insurance brokers and agents to recommend only the "best available insurer" and require brokers and agents to disclose fully all compensation to their clients. The proposal suffers from numerous defects, particularly as it relates to over-broad definitions involving compensation and the scope of broker activity. In addition, the standard of "best available insurer" would be impossible to defend, exposing brokers to potential liability in virtually every business transaction.

The Insurance Commissioner's current proposal is scheduled for administrative hearings on January 6, 2005. Indications are, however, that these hearings could be delayed and a new superseding set of proposed regulations proposed shortly. Steve Young, General Counsel for Insurance Brokers and Agents of the West, has engaged department lawyers extensively with regard to the draft regulations. Apparently, and in large part in response to the input it received from Steve and other industry representatives, the department is considering significant revisions that may warrant a re-filing of the proposal. Expect the Department of Insurance to expand its efforts at gaining input on the proposed regulations by considering comments from working groups and the Commissioner's own agents and brokers advisory committee that is scheduled to meet in early November.

Whatever schedule emerges, Norwood & Mattoch along with IBA West, Inc. will take the lead in coordinating the information flow and input from interested parties on this subject. Daily press clips will be circulated as well as position papers and talking points on significant issues and developments. Periodic conference calls and briefings will also be convened to

exchange ideas and coordinate legislative efforts and any needed response to the proposed regulations. Parties interested in this information should email their contact information to Valarie Frinzell, of Norwood & Mattoch at vfrinzell@nmlobby.net.

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