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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

INDEPENDENT ENERGY PRODUCERS ASSOCIATION et al., Petitioners, v. BRUCE McPHERSON, as Secretary of State, etc., Respondent; ROBERT FINKELSTEIN et al., Real Parties in Interest.	C050115

ORIGINAL PROCEEDINGS. Petition for writ of mandate. Writ issued.

Nielsen, Merksamer, Parrinello, Mueller & Naylor, James R. Parrinello and Richard D. Martland for Petitioners.

Bill Lockyer, Attorney General, Louis R. Mauro, Senior Assistant Attorney General, Christopher E. Krueger, Supervising Deputy Attorney General, Vickie P. Whitney and Hiren Patel, Deputy Attorneys General, for Respondent.

Remcho, Johansen & Purcell, Robin B. Johansen, Thomas A. Willis; Utility Reform Network and Michel Peter Florio for Real Parties in Interest.

Petitioners, the Independent Energy Producers Association, California Retailers Association, and Steven Kelly, filed this original proceeding in this court seeking a writ of mandate to restrain respondent, California's Secretary of State, from placing an initiative measure on the ballot and in the ballot pamphlet for the special election to be held on November 8, 2005. We take judicial notice that the initiative, certified by the Secretary of State, is designated as Proposition 80. (<http://www.ss.ca.gov/elections/elections_j.htm> [as of July 21, 2005].)

The proponents of the challenged initiative, The Utility Reform Network, Robert Finkelstein, and Michel Peter Florio, are named as real parties in interest. We will refer to them collectively as TURN.

Petitioners contend that Proposition 80 is invalid because it usurps the Legislature's plenary power to confer additional authority and jurisdiction on the Public Utilities Commission (PUC). We agree and shall grant the relief requested.

As we will explain, court review of the validity of an initiative measure ordinarily is more appropriate after the election so as not to unduly prevent the exercise of the voters' power. However, this general rule does not apply when it is shown that an initiative measure is unquestionably invalid on its face. As the California Supreme Court has explained, there is no value in allowing an invalid measure to be on the ballot. To do so would be a disservice to the voters because it could unjustifiably divert attention, time, and resources away from

valid measures on the same ballot, and it ultimately could cause voter frustration and distrust if the invalid measure nonetheless is approved by the electorate but then must be struck down by the courts. (*American Federation of Labor v. Eu* (1984) 36 Cal.3d 687, 697.) In fact, it would wrongly deceive the voters "to permit a measure to remain on the ballot knowing that most of its provisions, including those provisions which are most likely to excite the interest and attention of the voters, are invalid." (*Id*. at p. 716, fn. 27.)

Proposition 80 is such an unquestionably invalid initiative measure. Its primary purpose is to confer additional authority and jurisdiction on the PUC with respect to the electricity market in our state. It would do so by statutory amendment if enacted by the voters. However, Proposition 80 runs afoul of the voters' decision years ago to give the Legislature the exclusive authority to effect such change. Article XII, section 5 of California's Constitution explicitly states the Legislature has the "plenary power, unlimited by the other provisions of [the] constitution but consistent with this article, to confer additional authority and jurisdiction upon the [PUC] . . . ." Plenary means full, absolute, and unqualified. Thus, in giving the Legislature such plenary authority, "unlimited" by other provisions of the Constitution (including the electorate's power to enact laws by initiative), the voters chose to prevent the use of the initiative process to effect such change.

Of course, times have changed, and voters can change the state Constitution to allow use of the initiative process to achieve what

the proponents of Proposition 80 want concerning the electricity market in California. But Proposition 80 does not seek to amend our state Constitution to eliminate the Legislature's plenary authority to confer additional authority and jurisdiction on the PUC. Without such an amendment, Proposition 80 attempts to do what the voters many years ago said an initiative measure cannot do. In other words, Proposition 80 is invalid on its face.

Bound by the will of the voters when they passed Article XII, section 5 of our state Constitution, we must direct the Secretary of State not to place Proposition 80 on the ballot or in the ballot pamphlet for the special election of November 8, 2005.

FACTS AND PROCEDURAL BACKGROUND

In 1996, the Legislature began the process of deregulating the electricity market in California by adding to the Public Utilities Code an "Electrical Restructuring" chapter. (Stats. 1996, ch. 854, § 10, p. 4505; Pub. Util. Code, §§ 330 et seq.; further section references are to this code unless otherwise specified.) Its intent, said the Legislature, was to, among other things, allow competition in the supply of electric power by permitting customers to choose from among competing suppliers of electric power. (§ 330, subds. (d),(k)(2).)

As an apparent means of effectuating its intent, the Legislature authorized "electric service providers" to sell electricity directly to customers without PUC regulation of the providers' rates or terms and conditions of service. An "electric service provider" is defined as an entity offering electrical service to customers within the territory of an electrical corporation, including the unregulated

affiliates and subsidiaries of electrical corporations, but not including electrical corporations, certain entities offering electrical service solely to serve customer load, and certain public agencies offering electrical service. (§§ 218.3, 394, subd. (a).) The PUC was directed to take actions as needed to facilitate "direct transactions" between electricity suppliers and end-use customers. (§ 366, subd. (a).) Although it requires electric service providers to register with the PUC (§ 394, subd. (b)), the Legislature stated explicitly that registration with the PUC is an exercise of the PUC's licensing function and does not constitute regulation of the electric service providers' rates or terms and conditions of service, and that "[n]othing in this part authorizes the [PUC] to regulate the rates or terms and conditions of service offered by electric service providers" (§ 394, subd. (f)).[1]

On June 20, 2005, the Secretary of State certified for the special election on November 8, 2005, an initiative measure now

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[1] The legislation in 1996 referred to a direct seller of electricity as an "entity." (Former § 394, subd. (a); Stats. 1996, ch. 854, § 10, p. 4536.) In 1997, the Legislature repealed and reenacted section 394 to, among other things, add the provision that an entity's registration with the PUC is an exercise of PUC's licensing function and does not constitute regulation of the entity's rates or terms and conditions of service, and that "[n]othing in this part" authorizes the PUC to regulate an entity's rates or terms and conditions of service. (Stats. 1997, ch. 275, §§ 12 & 13.) In 1999, the Legislature added section 218.3, which defines an electric service provider, and amended section 394 to replace the term "entity" with the term "electric service provider." (Stats. 1999, ch. 1005, §§ 4 & 10.) In 2002, the Legislature amended the definition of electric service provider. (Stats. 2002, ch. 838, §§ 1 & 6.)

designated Proposition 80. The first two sections of Proposition 80 contain its title and legislative intent. The next five sections, through the repeal and addition of Public Utilities Code provisions, propose four substantive changes to the statutory law of California regarding the electricity market as follows:

Sections 3 and 5 of Proposition 80 would, by two methods, subject electric service providers to the PUC's "jurisdiction, control, and regulation": through an amendment to the definition of electric service provider in section 218.3, and through a new subdivision (f) of section 394, stating that an electric service provider's registration with the PUC constitutes the provider's agreement to PUC jurisdiction, control, and regulation of its rates and terms and conditions of service in the same manner as the PUC's jurisdiction, control, and regulation of electrical corporations.

Section 4 of Proposition 80 would prohibit new direct transactions for retail electric service, by repealing and replacing section 366, and by repealing sections 330, 365, and 365.5, which, among other things, express the Legislature's intent to allow electric service providers to sell electricity directly to customers.

Section 6 of Proposition 80 would amend section 399.15, subdivision (b)(1) to require all retail sellers of electricity to increase procurement of eligible renewable energy resources so that 20 percent of their retail sales are procured from eligible renewable energy resources by December 31, 2010.

Section 7 of Proposition 80 would add chapter 2.4 (§§ 400, 400.1, 400.2, 400.3 & 400.4), the "Reliable Electric Service Act," to the Public Utilities Code, directing the PUC (1) to establish

a process to ensure each electrical corporation achieves the best value for its ratepayers by maintaining a diversified portfolio of generation, taking into account various specified factors, and (2) to establish resource adequacy requirements to ensure that "all load serving entities" maintain adequate physical generating capacity to meet peak demand.

In addition to these four substantive statutory changes, Proposition 80, in section 8, also provides that the Legislature may amend "this act" only to achieve its purposes and intent and by at least a two-thirds vote. And in section 9, Proposition 80 contains a standard severability clause.

TURN, the proponent of Proposition 80, has obtained from the California Attorney General a title and summary for its proposed initiative measure. We take judicial notice of the title and summary, which emphasizes the provisions of Proposition 80 that would place electric service providers under PUC's jurisdiction. (<http://www.ss.ca.gov/elections/elections_j.htm#circulating> [as of July 21, 2005].)) The Attorney General's title states: "Electric Service Providers. Regulation. Initiative Statute." The summary states in pertinent part: "Subjects electric service providers, as defined, to control and regulation by California Public Utilities Commission. Imposes restrictions on electricity customers' ability to switch from private utilities to other electric providers. Provides that registration by electric service providers with Commission constitutes providers' consent to regulation. Requires all retail electric sellers, instead of just private utilities, to increase renewable energy resource procurement by at least 1% each

year, with 20% of retail sales procured from renewable energy by 2010, instead of current requirement of 2017. Imposes duties on Commission, Legislature and electrical providers."

Petitioners filed their original petition for writ of mandate in this court on June 29, 2005. We issued an alternative writ of mandate on July 5, 2005, and expedited briefing and oral argument, to permit this court to resolve the matter prior to August 15, 2005, the date that the ballot pamphlet is scheduled to be submitted to the State Printer for the special election on November 8, 2005. We directed TURN to file its return to the writ by July 11, 2005, and petitioners to file a replication, if any, by July 15, 2005. And we set the matter for oral argument on July 20, 2005.

DISCUSSION

I

As a general rule, absent a clear showing of invalidity, court review of an initiative measure is more appropriate after the election to avoid disrupting the electoral process by preventing the exercise of the voters' power. (*American Federation of Labor v. Eu, supra,* 36 Cal.3d at p. 695.) However, this general rule applies only to a claim that a substantive provision of the initiative is unconstitutional; it does not apply where the electorate lacks the power to adopt the proposal in the first instance. (*Id*. at pp. 695-696; see also *Senate of the State of Cal. v. Jones* (1999) 21 Cal.4th 1142, 1153.) "[T]he principles of popular sovereignty which led to the establishment of the initiative and referendum in California . . . do not disclose any value in putting before the people a measure which they have no power to enact. The presence of an

invalid measure on the ballot steals attention, time and money from the numerous valid propositions on the same ballot. It will confuse some voters and frustrate others, and an ultimate decision that the measure is invalid, coming after the voters have voted in favor of the measure, tends to denigrate the legitimate use of the initiative procedure." (*American Federation of Labor v. Eu, supra*, 36 Cal.3d at p. 697.)

Proposition 80 is unquestionably invalid on its face because, as expressed in greater detail in part II of this opinion, *post*, it runs afoul of a plain and unambiguous provision of our state Constitution, adopted by the voters many years ago, that effectively precludes use of the initiative process to accomplish what Proposition 80 proposes to do. Consequently, preelection review is proper, indeed essential.

We pause to note that petitioners have not filed this petition for writ of mandate in the superior court in the first instance. We have discretion to decline to consider a writ petition when the petitioner has not sought relief in the superior court. (*County of Sacramento v. Hastings* (1955) 132 Cal.App.2d 419, 420.) The reasons for this rule are obvious. The orderly processes of justice favor initiating proceedings in the superior court, which is equipped to resolve any factual disputes that might arise. The superior court may more easily shorten its time for briefing and hearing. And the superior court may grant relief in the nature of an injunction which is immediately final as to that court and subject to immediate review in an appellate court.

Nevertheless, because Proposition 80 so plainly violates the California Constitution, we exercise our discretion to review the

writ petition in the first instance. To deny the petition without prejudice to its filing in the superior court might do a disservice to the voters, as explained above, by delaying the resolution of this matter such that relief could not be granted in time to prevent this obviously invalid initiative from being placed on the ballot for the special election on November 8, 2005.

II

The PUC is "a regulatory body of constitutional origin, deriving certain of its powers by direct grant from the Constitution which created it." (*People v. Western Air Lines, Inc.* (1954) 42 Cal.2d 621, 634.) California's Constitution also authorizes the Legislature to confer other powers on the PUC. (*Ibid*.)

Article XII, section 5 of the California Constitution provides: "The Legislature has plenary power, unlimited by the other provisions of this constitution but consistent with this article, to confer additional authority and jurisdiction upon the [PUC], to establish the manner and scope of review of [PUC] action in a court of record, and to enable it to fix just compensation for utility property taken by eminent domain." (Hereafter article XII, section 5.)

Whether an initiative measure, like Proposition 80, can confer additional authority and jurisdiction on the PUC turns on the meaning of language in article XII, section 5, which gives "plenary power" to the Legislature, "unlimited" by other provisions of California's state Constitution, to effect such change as long as the additional authority and jurisdiction is consistent with article XII.

In construing a constitutional provision, such as article XII, section 5, that was adopted by the voters, a court's primary task is

to determine the voters' intent in adopting the provision. (*Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798.) "In undertaking this determination, we are mindful of this court's limited role in the process of interpreting [a provision of the Constitution]"; we must "follow the [electorate's] intent" regardless of what we may think of the wisdom, expedience, or policy of the provision. (*California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist.* (1997) 14 Cal.4th 627, 632.) This is so because "'the judicial role in a democratic society is fundamentally to interpret laws, not to write them. The latter power belongs primarily to the people and the political branches of government . . . .' [Citation.] It cannot be too often repeated that due respect for the political branches of our government requires [courts] to interpret the laws in accordance with the expressed intention of the Legislature [or the electorate that adopted the laws]." (*Id.* at p. 633.)

To ascertain the electorate's intent in adopting a provision of our state Constitution, we "'turn[] first to the [provision's] words themselves for the answer.'" (*Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230.) We do so because the words "are the most reliable indicator of [the provision's] intent." (*People v. Lopez* (2003) 31 Cal.4th 1051, 1056.) The words must be considered in context and given their "ordinary" meaning. (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735; accord, *DaFonte v. Up-Right, Inc.* (1992) 2 Cal.4th 593, 601 [words are given "their usual and ordinary meaning"].) If the language is unambiguous, we presume that the electorate "meant what it said, and the plain meaning of the

[provision] governs." (*People v. Robles* (2000) 23 Cal.4th 1106, 1111.)

Thus, when the language of the provision is unambiguous, courts will not look to legislative history for the purpose of ascertaining the intent of the provision. (*People v. Robles, supra,* 23 Cal.4th at p. 1111.) "Where the [language] is clear, courts will not 'interpret away clear language in favor of an ambiguity that does not exist.' [Citation.]" (*Hartford Fire Ins. Co. v. Macri* (1992) 4 Cal.4th 318, 326.)

Article XII, section 5 plainly and unambiguously states that the Legislature's power "to confer additional authority and jurisdiction" on the PUC is "plenary" and "unlimited by the other provisions of this constitution." The usual and ordinary meaning of "plenary" is "complete, entire, perfect, not deficient in any element or respect: FULL . . . absolute, unqualified." (7 Oxford English Dict. (1st ed. 1978) p. 991; accord, Webster's 3d New Internat. Dict. (1986) p. 1739.) Therefore, the usual and ordinary meaning of the phrase "plenary power" connotes total power, to the exclusion of all others.

In an exceptionally well-written, indeed alluring, brief that is nonetheless unpersuasive upon close inspection, TURN claims we must construe the words of article XII, section 5 "'liberally in favor of the people's right to exercise the powers of initiative . . . .'" Thus, TURN would have us read the words "plenary power" as simply "remov[ing] any doubts that additional authority could be conferred on the PUC by statute, without the necessity of a constitutional amendment." In TURN's view, the words plenary power "had nothing to do with exempting this area of law from the initiative power."

Such a reading of the phrase "plenary power" not only would be inconsistent with the ordinary, plain meaning of the phrase, it would require us to ignore that article XII, section 5 goes on to say that the Legislature's plenary power is "unlimited by the other provisions of this constitution." The People's right to enact laws through the initiative process is one of those other provisions of our state Constitution. The usual, ordinary meaning of the word "unlimited" is "not bounded by exceptions." (Webster's 3d New Internat. Dict. at p. 2503.) Thus, to say the Legislature's power not only is "plenary," i.e., absolute, but also "unlimited" by other provisions of the Constitution (which include the People's initiative power), is to say that only the Legislature has power to confer additional authority and jurisdiction on the PUC, provided as specified by article XII, section 5 that the additional authority and jurisdiction is consistent with article XII.

TURN's argument is premised on its view that "constitutional references to the 'Legislature' include the People acting by initiative" (caps. omitted). It is true that the People's initiative power is legislative in nature and coextensive with the legislative power of the Legislature. However, it does not follow that article XII, section 5 must be interpreted to mean that the People, too, have plenary power via initiative to expand the PUC's authority and jurisdiction. "Significance should be given, if possible, to every word of [a constitutional provision]. [Citation.] Conversely, a construction that renders a word surplusage should be avoided. [Citations.]" (*Delaney v. Superior Court, supra*, 50 Cal.3d at pp. 798-799.) Article XII, section 5 uses the word "Legislature,"

not “legislative.” Consequently, we would impermissibly rewrite the constitutional provision if we were to construe it to give the People the power by initiative to expand the PUC’s authority and jurisdiction. This is particularly so because, as we have emphasized, section 5 of article XII explicitly states that the Legislature’s plenary power is “unlimited by the other provisions of this constitution,” which includes the constitutional provision that reserves to the People the initiative power.

For nearly a century, California’s Supreme Court has recognized the plenary power conferred on the Legislature with respect to the PUC by article XII, section 5, and by the same language contained in former article XII, sections 22 and 23.

In *Pacific Telephone etc. Co. v. Eshleman* (1913) 166 Cal. 640, the Supreme Court described the Legislature’s power under former sections 22 and 23 (now section 5) of article XII as “perhaps the first instance where a constitution itself has declared that a legislative enactment shall be supreme over all constitutional provisions, [but] nevertheless this is but a reversion to the English form of government which makes an act of parliament the supreme law of the land.” (*Id.* at p. 658.)

In *County of Sonoma v. State Energy Resources Conservation etc. Com.* (1985) 40 Cal.3d 361, the Supreme Court observed that section 5 of article XII, adopted in 1974, “in effect restates provisions in former sections 22 and 23 of article XII,” originally adopted in 1911, which gave the Legislature “comprehensive powers over PUC matters.” (*Id*. at p. 367.) Noting that the powers are “‘plenary’ and ‘unlimited by any provision of [the] Constitution,’” the court

concluded that they "empower the Legislature not only to restrict judicial review of PUC decisions, as by eliminating the jurisdiction of courts other than this one to conduct such review [citation], but also to expand the scope of this court's review powers beyond the jurisdiction provided in article VI of the Constitution [citation]." (*Id*. at p. 368.)

Nevertheless, TURN argues that California courts have routinely concluded that constitutional provisions which give the Legislature authority must be interpreted to recognize the People's coextensive legislative authority through initiative. But the cases upon which TURN relies are readily distinguishable.

Kennedy Wholesale, Inc. v. State Bd. of Equalization (1991) 53 Cal.3d 245 involved a voter passed initiative that raised taxes on tobacco products. It was challenged on the ground that it conflicted with article XIII A, section 3 of the California Constitution, which states that tax increases "must be imposed by an Act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature . . . ." (*Id*. at p. 248.) The Supreme Court explained that the constitutional provision was susceptible to two reasonable interpretations: (1) only the Legislature can raise taxes, or (2) when the Legislature raises taxes, it must do so by a supermajority. (*Id.* at pp. 249, 253.) Concluding that the former interpretation would implicitly repeal the initiative power reserved by the People to themselves in article IV, section 1 of California's Constitution, the court noted that any doubt in interpreting the Constitution must be resolved in favor of the exercise of the initiative power. (*Id.* at pp. 249-250.)

However, article XII, section 5 is not reasonably susceptible to an interpretation other than that the Legislature alone has exclusive power to confer additional authority and jurisdiction upon the PUC. As we have explained, because article XII, section 5 grants this plenary power to the Legislature, "unlimited by the other provisions of this constitution," it necessarily limits the initiative power recognized in article IV, section 1. TURN's contention, taken to its logical conclusion, is that the Constitution can never limit the initiative power. Not so. A constitution that creates the initiative power obviously can impose limitations on that power. Article XII, section 5 plainly and unambiguously does so.

Other cases cited by TURN simply stand for the proposition that constitutional provisions authorizing the Legislature to act do not implicitly repeal the People's power through initiative to undertake the same legislative act. (E.g., *State Comp. Ins. Fund v. State Bd. of Equalization* (1993) 14 Cal.App.4th 1295, 1300; *Carlson v. Cory* (1983) 139 Cal.App.3d 724, 728-729.) However, in contrast to the provisions at issue in those cases, article XII, section 5 does not simply authorize the Legislature to act; it plainly provides that only the Legislature may act.

In disputing our conclusion that the wording of article XII, section 5 unambiguously prevents use of the initiative to confer on the PUC additional authority and jurisdiction, TURN argues that we "place far more weight on the language of [the provision] than it can possibly be expected to bear." Arguing the words of article XII, section 5 were intended to "make sure that the Legislature had the authority to enlarge the jurisdiction of the PUC, *while at*

the same time reserving to themselves the power to exercise that authority themselves if the Legislature refused to do so" (italics added), TURN directs us to cases (*Board of Retirement v. Santa Barbara County Grand Jury* (1997) 58 Cal.App.4th 1185 and *Westly v. Board of Administration* (2003) 105 Cal.App.4th 1095) construing language in article XVI, section 17 of the California Constitution, which provides: "Notwithstanding any other provisions of law or this Constitution to the contrary," pension retirement boards have "plenary authority and fiduciary responsibility for investment of moneys and administration of the system," subject to specified requirements. (Hereafter article XVI, section 17.)

TURN misses the point of those cases. *Board of Retirement v. Santa Barbara County Grand Jury, supra,* 58 Cal.App.4th 1185 concluded that article XVI, section 17 cannot be read to "insulate pension boards from judicial oversight" and thus does not preclude a county grand jury from investigating complaints regarding board delays in processing disability retirement applications of county employees. (*Id*. at pp. 1188, 1192-1193.) *Westly v. Board of Administration, supra,* 105 Cal.App.4th 1095 concluded that the plenary authority granted by article XVI, section 17 to the board to administer the system does not extend to "the remuneration of those who administer [the system]"; rather it is "limited to actuarial services and to the protection and delivery of the assets, benefits, and services for which the Board has a fiduciary responsibility," and thus does not preclude the state controller from issuing warrants to employees of the board and auditing payments to ensure that expenditures are authorized by law. (*Id*. at pp. 1099, 1110, 1113.)

Those cases simply (1) interpreted what it is that the board has plenary authority over, i.e., what the words "investment of moneys and administration of the system" encompass, and (2) concluded that such plenary authority does not preclude action by other entities when the action does not intrude upon the specific subject matter reserved to the plenary authority of the board. The cases cannot be construed to say that plenary authority over a specific subject does not really mean plenary authority.

With respect to article XII, section 5, the constitutional provision at issue in this case, there is no question about the nature of the plenary power it gives to the Legislature, i.e., "to confer additional authority and jurisdiction upon the [PUC], to establish the manner and scope of review of [PUC] action in a court of record, and to enable it to fix just compensation for utility property taken by eminent domain."

And there is no question the action sought by Proposition 80 would intrude upon this subject matter reserved to the plenary power of the Legislature. A main purpose of Proposition 80 (in sections 3 and 5) is to place electric service providers' rates and terms and conditions of service under the PUC's jurisdiction. However, the Legislature alone has plenary power to confer jurisdiction on the PUC over rates and terms and conditions of service of electric service providers; indeed, the Legislature has decreed the PUC may *not* "regulate the rates or terms and conditions of service offered by electric service providers." (§ 394, subd. (f).) Moreover, Proposition 80's "Reliable Electric Service Act" provisions (in section 7) would confer additional authority on the PUC,

requiring it to establish a process for ensuring that electrical corporations maintain diversified portfolios, and to establish requirements to ensure that all load serving entities can meet peak demand. Again, only the Legislature may confer such additional authority on the PUC. And Proposition 80's amendment provision (in section 8) would impermissibly limit the plenary power of the Legislature to amend the above statutory changes by allowing it to amend the statutes only by a two-thirds vote and only to achieve the statutes' purposes and intent.

In a last gasp effort to save Proposition 80, TURN urges us to look past the plain, unambiguous wording of article XII, section 5, and to focus instead on other indicia of intent when the provision was first adopted in 1911. In TURN's view, because the predecessor to article XII, section 5 was adopted by the voters at the election in which they also adopted the initiative power, it "begs disbelief" to conclude "the same voters who approved Hiram Johnson's legislative reforms would cede to the Legislature exclusive jurisdiction over anything, much less the railroads and other public utilities . . . . As every student of California history knows, the hallmark of that election was the voters' thorough distrust of a legislature caught in the grip of special interests, particularly those of the railroad companies."

The problem with this argument is it seeks to evade the well-settled rule that when the language of a constitutional provision is unambiguous, courts will not look to extrinsic evidence for the purpose of ascertaining the intent of the provision. (*People v. Robles, supra,* 23 Cal.4th at p. 1111.) Rather, we presume that

the electorate "meant what it said, and the plain meaning of the [provision] governs." (*Ibid.*)

We also reject TURN's argument to the extent it could be read to assert that the plain, unambiguous language of article XII, section 5 should not be given its literal meaning because to do so would result in an absurd consequence the voters did not intend. (*People v. Pieters* (1991) 52 Cal.3d 894, 898.) The extrinsic evidence on which TURN relies does not lead to an inescapable conclusion that when the voters gave "plenary power" to the Legislature, "unlimited" by other constitutional provisions, to confer additional authority and jurisdiction on the PUC, they nonetheless intended to retain the initiative power to do the same thing. For example, nothing in the extrinsic evidence unquestionably supports TURN's claim that the grant of plenary power, unlimited by other constitutional provisions, refers to then-existing provisions, not to new provisions adopted at the same election. And we cannot say it is an absurd result that follows from giving literal meaning to the plain, unambiguous language of article XII, section 5, even in light of the nature of California politics at the time the provision was adopted.

For the reasons stated above, we are compelled to conclude that Proposition 80 would usurp the plenary power that the voters gave to the Legislature when they adopted article XII, section 5 of our state Constitution.

As we already have noted, the voters can change our state Constitution to allow use of the initiative process to achieve what the proponents of Proposition 80 want regarding the electricity

market in California. However, Proposition 80 does not seek to amend our Constitution to eliminate the Legislature's plenary authority to confer additional authority and jurisdiction on the PUC. Without such an amendment, Proposition 80 attempts to do what the voters many years ago said an initiative measure cannot do. In other words, Proposition 80 is invalid on its face.

III

Contrary to TURN's claim, the existence of a severability clause in section 9 of Proposition 80 does not save the initiative.

In affirming the issuance of a writ of mandate compelling a registrar of voters to remove from the ballot a local proposition that exceeded the initiative power of the People, *City and County of San Francisco v. Patterson* (1988) 202 Cal.App.3d 95 rejected the proponent's argument that the existence of a severability clause saved the proposition. The Court of Appeal explained:

"A similar claim was raised and summarily rejected in *City of Atascadero v. Daly* (1982) 135 Cal.App.3d 466, 470 [185 Cal.Rptr. 228]: 'Appellants advanced the argument that the presence of the severability clause in the proposed initiative ordinance might save it. Such is not the law. [Citations.]' [¶] As the Supreme Court explained in *American Federation of Labor v. Eu, supra*, 36 Cal.3d 687, 716, fn. 27: 'Our decision in *Santa Barbara Sch. Dist. v. Superior Court, supra*, 13 Cal.3d 315, rejected the argument that a different test of severability applies to initiative measures than to ordinary statutes passed by the Legislature. (See p. 332, fn. 7.) That case, however, involved postelection review of an initiative, and used language which left open the test of severability in

preelection review. (See *ibid*.) On this matter, we think the timing does make a difference. After the election, no harm ensues if the court upholds a mechanically severable provision of an initiative, even if most of the provisions of the act are invalid. In a preelection opinion, however, it would constitute a deception on the voters for a court to permit a measure to remain on the ballot knowing that most of its provisions, including those provisions which are most likely to excite the interest and attention of the voters, are invalid.' [Citation.]" (*City and County of San Francisco v. Patterson, supra*, 202 Cal.App.3d at pp. 105-106; see also *Citizens for Responsible Behavior v. Superior Court* (1991) 1 Cal.App.4th 1013, 1035 [where primary provisions of a proposed initiative are invalid, its severability clause will not save the valid portions].)

Here, the primary provisions of Proposition 80 are invalid, i.e., sections 3 and 5, which would confer jurisdiction on the PUC over rates and terms and conditions of service of electric service providers; section 7, which would impose additional authority on the PUC; and section 8, which would limit the Legislature's plenary power to amend the above provisions.

Because the other substantive provisions of Proposition 80 (sections 4 and 6) are interrelated with its invalid provisions in that section 4 would preclude direct transactions by electric service providers, and section 6 would require such providers to purchase a specified percentage of renewable energy by a specified date, we cannot rely on Proposition 80's severability clause to save other parts of the proposed initiative.

DISPOSITION

Let a peremptory writ of mandate issue commanding the respondent Secretary of State to refrain from taking any steps to place Proposition 80 in the ballot pamphlet or on the ballot of the special election to be held on November 8, 2005. This decision is final forthwith as to this court. (See Cal. Rules of Court, rule 24(b)(3).) Pending the finality of this decision, the respondent Secretary of State is stayed from taking any steps to place Proposition 80 in the ballot pamphlet or on the ballot of the special election to be held on November 8, 2005. Real parties in interest are ordered to reimburse petitioners for their costs in this original proceeding. (Cal. Rules of Court, rule 56(*l*).)

SCOTLAND, P.J.

We concur:

BUTZ, J.

CANTIL-SAKAUYE, J.