Each day last week came with a new twist in the saga that is Governor Brown’s parole ballot initiative.

Before diving into the recent judicial actions, we need to go back to legislation from 2014 with SB 1253, authored by then Senator Steinberg. Under SB 1253, initiatives are subject to a 30-day public review period, during which the proponents of an initiative can amend their initiative with amendments that are “reasonably germane to the theme” of the original initiative. In short, the law was written to prevent initiative “gut and amends” while allowing for the proponents of an initiative to strengthen or improve their original initiatives. After the 30-day public review period, the Attorney General is charged with issuing a title and summary, which allows the proponents to begin collecting the necessary number of signatures needed to qualify their ballot initiative for the state-wide ballot.

Fast forward a year to December 22nd 2015 when The Justice and Rehabilitation Act was filed by juvenile diversion proponents to the Attorney General’s office. The initiative, as originally drafted, dealt with the filing of juvenile criminal cases. However, on the last day of the 30-day public review period, the initiative was drastically amended to be The Public Safety and Rehabilitation Act of 2016, championed by Governor Brown. Instead of submitting an independent initiative, the Governor persuaded the sponsor of the Justice and Rehabilitation Act to incorporate his much more extensive proposal as an amendment. In his initiative, the Governor added provisions to increase sentencing credits and allow “non-violent” felons to seek parole after they have completed the base sentence for the original crime. By “piggybacking” with a preexisting initiative, the Governor’s language was not subject to the usual 65-day waiting period that allows interested parties, like Cal Chiefs, to review and comment on the title and summary.

As law enforcement associations lined up in opposition to the Governor’s recently introduced initiative, the California District Attorneys Association filed a lawsuit on February 12th against Attorney General Kamala Harris, arguing that the initiative was improperly amended into an existing ballot measure and should not be eligible for title and summary. Their argument was grounded in the belief that the amendments filed by Governor Brown on January 25th were not “reasonably germane” to the theme of the original initiative.

Last Tuesday a Sacramento Superior Court judge ruled in favor of the DAs, temporarily blocking the Governor’s initiative. The courtroom success, however, was short-lived. On Friday, California’s Supreme Court put a hold on the earlier lower court ruling, allowing Governor Brown to continue his bid to put his initiative before voters in November. The Supreme Court acted merely a day after Governor Brown filed an emergency request that warned any further delay could push voters’ consideration to 2018.

The Governor’s actions, and future related court rulings, will set a precedent for what type of language the courts consider to be “reasonably germane to the theme” of an initiative. Depending on the final ruling, the courts could open the floodgates for more ballot Trojan Horses, where
contentious language is amended into an initiative during the final hours of review to bypass public scrutiny.

As always, please do not hesitate to ask us any questions.