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Raven v. Deukmejian: A Modern Guide to the Voter Initiative Process and State Constitutional Independence

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Raven v. Deukmejian: A Modern Guide to the Voter Initiative Process and State Constitutional Independence

I. INTRODUCTION

In *Raven v. Deukmejian*,[1] the California Supreme Court held that a voters' initiative measure which purported to vest all judicial interpretive power as to fundamental criminal defense rights in the United States Supreme Court to be a revision of the California Constitution. By holding that the measure constituted a revision as opposed to an amendment, the measure could not be proposed in the initiative form by the sovereign people. Instead, the initiative had to be sponsored by the legislature.[2] Since this is only the second time in modern history that the court has held an initiative to constitute a revision,[3] the analysis in *Raven* will have a profound impact on the initiative process. The California court has indicated that in the future it will strictly scrutinize any constitutional initiative that "substantially alters the preexisting constitutional scheme."[4] In the future, California courts will look to *Raven* as a modern guide to the voter initiative process.

Raven is as much a case about state constitutional independence as it is a case about the initiative process. By holding that mandatory deference to the United States Supreme Court constitutes a revision, the court in *Raven* has sent a strong message that state constitutional independence is alive and well in California. The California Supreme Court will stand firm against any attempt by the voters *or* the legislature to limit the independent force and effect of the California Constitution. The *Raven* court's holding protected the inde-

1. 52 Cal. 3d 336, 801 P.2d 1077, 276 Cal. Rptr. 326 (1990) (rehearing denied).
2. CAL. CONST. art. XVIII.
3. In McFadden v. Jordan, 32 Cal. 2d 330, 196 P.2d 787 (1948), *cert. denied*, 336 U.S. 918 (1949), the court enjoined the vote on an initiative constitutional amendment which would have repealed and replaced the bulk of the California Constitution. Although there was no single-subject rule at the time, the court held that the provisions were so extensive as to constitute an impermissible revision. *Id.* at 345-46, 196 P.2d at 796-97. *See also* Livermore v. Waite, 102 Cal. 113, 36 P. 424 (1894).
4. *Raven*, 52 Cal. 3d at 354, 801 P.2d at 1089, 276 Cal. Rtpr. at 338.

pendence of the State of California by preserving the intended purpose of having separate constitutions for federal and state courts. The purpose of this separation is to allow the state the right to offer greater protections than those limited or granted by the United States Constitution.[5]

II. BACKGROUND

A. Proposition 115

In June 1990, the voters of California adopted a variety of changes and additions to the California Constitution and statutes by adopting Proposition 115, an initiative measure. The various elements of Proposition 115 unite to form a comprehensive criminal reform package. The initiative addresses a significant number of different aspects of the criminal justice system. Procedurally, Proposition 115 imposes restrictions on the rights of defendants during the discovery stage,[6] the preliminary examination stage,[7] and the trial stage.[8] Substantively, the measure creates the new offense of torture, and also revises the felony-murder and special circumstances statute to achieve more severe punishment for criminal defendants whose offense or conduct falls within those provisions.[9]

The section of Proposition 115 that has the greatest impact is section 3 of the initiative which amended article I, section 24 of the state constitution. Previously, this portion of the constitution provided that rights therein guaranteed were not dependent on those guaranteed by the United States Constitution.[10] Proposition 115 modified this constitutional provision, providing that with respect to a number of enumerated rights of criminal defendants, those rights are to be construed in a manner consistent with and limited by the United States Constitution.[11] Further, the initiative mandated that the state constitution is not to afford criminal defendants greater rights than are afforded under the federal constitution.[12]

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5. Pruneyard Shopping Center v. Robins, 447 U.S. 74 (1980) (affirming the authority of states, in the exercise of police power or sovereign right, to adopt in their own constitution individual liberties more expansive than those conferred by the federal Constitution).

6. Allowing reciprocal discovery and codifying discovery rules. STATE OF CALIFORNIA, PRIMARY ELECTION PAMPHLET, *Proposition 115*, § 30(c), at 65 (1990) [hereinafter *Proposition 115*].

7. Prohibiting postindictment preliminary hearings and allowing the use of hearsay testimony at preliminary hearings. *Id.* § 30(b), at 33.

8. Promoting joinder and limiting severance, restricting voir dire by counsel, regulating appointment of counsel, and limiting continuances. *Id.* § 30, at 65.

9. *Id.* § 9, at 66.

10. "Rights guaranteed by this Constitution are not dependent on those guaranteed by the United States Constitution." CAL. CONST. art. I, § 24.

11. Proposition 115, *supra* note 6, § 3, at 33.

12. *Id.*

B. The Initiative Process

The initiative process allows "people to propose bills and laws, and to enact or reject them at the polls, independent of legislative assembly."[13] The citizens of California frequently use their power of initiative,[14] often making sweeping changes in the powers and duties of the government and of the people.[15] This power of initiative is subject to various requirements that must be met in order for the initiative to be found valid. After drafting an initiative measure, the proponents submit it to the Attorney General who reviews its form and prepares the petition to be circulated.[16] The proponents then circulate the petitions and obtain the requisite number of voters' signatures.[17] A state official subsequently verifies the signatures collected.[18] At some point during this process, the Office of the Attorney General prepares a title and summary, which appear on both the petition and the ballot.[19] Aside from the form and title requirements, there are requirements that the initiative consist of one subject[20] only and not amount to a revision of the constitution.[21]

13. BLACK'S LAW DICTIONARY 401 (5th ed. 1983).

14. The power of initiative, currently CAL. CONST. art. II, § 8, was adopted in 1911.

15. For example, see the comprehensive tax limitation adopted in 1978, CAL. CONST. art. XIIIA ("Proposition 13"), and the comprehensive governmental spending limitation adopted in 1979, CAL. CONST. art. XIIIB ("Proposition 4").

16. CAL. ELEC. CODE § 3502 (West 1977).

17. *See* CAL. CONST. art. II, § 8(b); CAL. ELEC. CODE § 3524 (West Supp. 1991) (requiring eight percent of votes cast in the prior gubernatorial election to qualify initiative constitutional amendments, and five percent to qualify an initiative statute).

18. CAL. ELEC. CODE § 3520(d) (West Supp. 1991). When petitions are submitted for verification by state officials, these items are checked against voter registration records. The clerk will use a random sampling technique, as determined by the Secretary of State, for verification of the signatures. *Id.* at § 3521(b).

19. *Id.* at § 3502.

20. The California Constitution expressly states that no initiative may contain more than one subject. CAL. CONST. art. II, § 8(d).

21. Amador Valley Joint Unified High School Dist. v. State Bd. of Equalization, 22 Cal. 3d 208, 221, 583 P.2d 1281, 1284, 149 Cal. Rptr. 239, 242 (1978) (holding that Proposition 13, amending Art. XIIIA of the California Constitution, imposing limitations upon the assessment and taxing powers of the state and local governments, was a constitutional amendment, not a revision, and thus could be enacted by initiative).

III. THE CHALLENGE: *RAVEN V. DEUKMEJIAN*

In *Raven v. Deukmejian*,[22] petitioners[23] challenged the validity of Proposition 115, contending that it violated the single subject rule[24] and the rule requiring constitutional "revisions"[25] to be accomplished by more formal procedures than are required for mere constitutional initiative measures.[26] Opponents of Proposition 115 petitioned the court of appeal for a writ of mandate or prohibition, and the California Supreme Court granted the Attorney General's motion to transfer the case, concluding that the issues of this case were of great public importance and required prompt resolution.[27]

The California Supreme Court held that the provisions of Proposition 115, though somewhat disparate, reflected a consistent theme or purpose to nullify particular decisions and statutes of the criminal justice system. Therefore, the initiative was not a violation of the single subject rule.[28] However, the court also held that, with respect to the change made to article I, section 24, which required certain criminal defendants' rights to be construed consistent with the United States Constitution, the effect of the measure would be so far-reaching as to amount to a qualitative constitutional revision beyond the scope of the initiative process.[29] The invalidation of section 3 of Proposition 115 did not affect the remaining provisions, because Proposition contained a severance clause.[30] The court concluded that by applying Proposition 115's severability clause, the remaining portions of the measure were valid.[31]

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22. 52 Cal.3d 336, 801 P.2d 1077, 276 Cal. Rptr. 326 (1990).

23. Petitioners were taxpayers and voters asserting a challenge to the manner in which Proposition 115 was presented to the voters.

24. *See supra* note 20 and accompanying text.

25. "Although '[t]he electors may amend the Constitution by initiative' (CAL. CONST. art. XVIII, § 3), a 'revision' of the Constitution may be accomplished only by convening a constitutional convention and obtaining popular ratification (*Id.* at § 2), or by legislative submission of the measure to the voters (*Id.* at § 1)." *Raven*, 52 Cal. 3d at 349, 801 P.2d at 1085, 276 Cal. Rptr. at 334 (1990).

26. *Id.* at 340, 801 P.2d at 1079, 276 Cal. Rptr. at 328.

27. *Id.* At the outset, the court was careful to note that its opinion was directed to the manner in which the initiative was presented to the voters, not to other possible attacks that might be directed at the various substantive and procedural changes accomplished by the measure. *Id.* at 340-41, 801 P.2d at 1079, 276 Cal. Rptr. at 328. Similarly, the court did not consider interpretive or analytical questions likely to arise later. *Id.* at 340-41, 801 P.2d at 1079-80, 276 Cal. Rptr. at 328-29.

28. *Id.* at 348-49, 801 P.2d at 1084, 276 Cal. Rptr. at 333.

29. *Id.* at 354-55, 801 P.2d at 1089, 276 Cal. Rptr. at 338.

30. "If any provision of this measure or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the measure which can be given effect without the invalid provision or application, and to this end the provisions of this measure are severable." Proposition 115, *supra* note 6; § 29, at 69. A severability clause allows the remaining portion of a proposition to maintain its validity even though a portion of the bill has been struck by the court. BLACK'S LAW DICTIONARY 714 (5th ed. 1983).

31. *Raven*, 52 Cal. 3d at 356, 801 P.2d at 1089-90, 276 Cal. Rptr. at 339.

A. Single Subject Rule

The California Supreme Court first addressed the contention that Proposition 115 violated the single subject rule. Under the California Constitution, "[a]n initiative measure embracing more than one subject may not be submitted to the electors or have any effect."[32] In its discussion of the single subject rule, the court relied on the analysis it used in *Brosnahan v. Brown*.[33] According to *Brosnahan*, "an initiative measure does not violate the single-subject requirement 'if, despite its varied collateral effects, *all of its parts are "reasonably germane"* to each other,' and to the general purpose or object of the initiative."[34]

In *Brosnahan*,[35] the court held that, despite the measure's varied topics, it was readily apparent that it met the 'reasonably germane' standard.[36] Since "[e]ach of [its] several facets bears a common concern, 'general object' or 'general subject,' promoting the rights of actual or potential crime victims," this goal constitutes a readily discernible common thread which unites all of the initiative's provisions

32. CAL. CONST., art. II, § 8 (d). There are two purposes behind this requirement. The first is to prevent voter confusion. Amador Valley Joint Union High School Dist. v. State Bd. of Equalization, 22 Cal. 3d 208, 231, 583 P.2d 1281, 1291, 149 Cal. Rptr. 239, 249 (1978). The second purpose is prevention of logrolling, which is the combination of several propositions within a single initiative. A logrolling measure could receive majority approval when some of the component measures would not have been approved if submitted individually. Brosnahan v. Brown, 32 Cal. 3d 236, 250, 651 P.2d 274, 282, 186 Cal. Rptr. 30, 38 (1982). Thus, the single-subject rule protects voters from implicitly approving laws or constitutional amendments of which they are unaware, or of which they disapprove, in pursuit of others which they desire.

33. 32 Cal. 3d 236, 651 P.2d 274, 186 Cal. Rptr. 30. In *Brosnahan*, a "single-subject rule" challenge was raised to Proposition 8 - a multi-farious criminal justice reform initiative quite similar in purpose, scope and effect to Proposition 115. Proposition 8 called for a variety of constitutional and statutory provisions and amendments, including: a right to restitution by crime victims; an "inalienable right" to safeschools; a "truth-in-evidence" provision which essentially abrogates most of the state's evidentiary exclusionary rules; restrictions on bail; unlimited use of prior convictions for impeachment or sentence enhancement purposes; abolition of the diminished capacity defense; sentence enhancement for habitual criminals; consideration at sentencing of statements of crime victim or their families; limitations on bargaining; restrictions on commitment to the California Youth Authority; and repeal of provisions governing mentally disordered sex offenders. *Id.* at 242-45, 651 P.2d at 277-79, 186 Cal. Rptr. at 33-35.

34. *Raven*, 52 Cal. 3d at 346, 801 P.2d at 1083, 276 Cal. Rptr. at 331 (quoting *Brosnahan*, 32 Cal. 3d at 245, 651 P.2d at 279, 186 Cal. Rptr. at 35 (emphasis in original)). *See also* Calfarm Ins. Co. v. Deukmejian, 48 Cal. 3d 805, 771 P.2d 1247, 258 Cal. Rptr. 161 (1989); Harbor v. Deukmejian, 43 Cal. 3d 1078, 742 P.2d 1290, 240 Cal. Rptr. 569 (1987); Fair Political Practices Comm. v. Superior Court, 25 Cal. 3d 33, 599 P.2d 46, 157 Cal. Rptr. 855 (1979).

35. *See supra* note 33.

36. *Brosnahan*, 32 Cal. 3d at 247, 651 P.2d at 280, 186 Cal. Rptr. at 36.

in advancing its common purpose."[37]

The court felt that *Brosnahan* was controlling in *Raven* because "[a]s with [the measure in issue], the various elements of Proposition 115 unite to form a comprehensive criminal justice reform package."[38] As in *Brosnahan*, Proposition 115 was "designed to strengthen procedural and substantive safeguards for victims in our criminal justice system."[39]

The court also noted that a unifying theme of Proposition 115 was the abrogation of particular holdings of the court that, in the view of the proposition's framers, were "unduly expansive of criminal defendants' rights."[40] Again, *Brosnahan* applied because "[i]n our democratic society in the absence of some compelling, overriding constitutional imperative, we should not prohibit the sovereign people from either expressing or implementing their own will on matters of such direct and immediate importance to them as their own perceived safety."[41] Thus, although Proposition 115 appears to contain disparate provisions, these provisions were held to reflect a consistent theme or purpose of promoting rights of actual or potential crime victims and of nullifying particular judicial decisions affecting various aspects of the criminal justice system.[42] Therefore, the court concluded that Proposition 115 did not violate the single subject requirement of the California Constitution.[43]

B. Constitutional Revision or Amendment

Petitioners' second major contention was that Proposition 115 amounted to a constitutional revision rather than simply an amend-

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37. *Id.*

38. *Raven*, 52 Cal. 3d at 347, 801 P.2d at 1083, 276 Cal. Rptr. at 332-33.

39. *Id.* (quoting *Brosnahan*, 32 Cal. 3d at 247, 651 P.2d at 280, 186 Cal. Rptr. at 36); *see supra* notes 6-8 and accompanying text and *supra* note 28.

40. *Raven*, 52 Cal. 3d at 347, 801 P.2d at 803, 276 Cal. Rptr. 332-33. Examples given were the restrictions on postindictment preliminary hearings (Hawkins v. Superior Court, 22 Cal. 3d 584, 586 P.2d 916, 150 Cal. Rptr. 435 (1978)) and the changes in special circumstances statutes (People v. Spears, 33 Cal. 3d 279, 655 P.2d 1289, 188 Cal. Rptr. 454 (1983)).

41. *Raven*, 52 Cal. 3d at 347-48, 801 P.2d at 1084, 276 Cal. Rptr. at 333 (quoting *Brosnahan*, 32 Cal. 3d at 248, 651 P.2d at 281, 186 Cal. Rptr. at 37).

42. *Raven*, 52 Cal. 3d at 347-48, 801 P.2d at 1084, 276 Cal. Rptr. at 333.

43. *Id.* at 349, 801 P.2d at 1085, 276 Cal. Rptr. at 33. The court rejected an argument that the broad diversity of the initiative's provision suggested logrolling. *Id.* at 348-49, 801 P.2d at 1085, 276 Cal. Rptr. at 334. The court also rejected contentions that the diversity of the provisions was a challenge to voters' sophistication or that effectuating Proposition 115 would cause delays and soaring financial costs. *Raven*, 52 Cal. 3d at 349, 801 P.2d at 1085, 276 Cal. Rptr. at 334.

Justice Mosk concurred on the revision issue but argued that the measure should have been invalidated in its entirety as violative of the single-subject rule. *Id.* at 356, 801 P.2d at 1089, 276 Cal. Rptr. at 339. "The single-subject rule establishes . . . a requirement of *substance* rather than *label* . . . ." *Id.* at 360, 801 P.2d at 1093, 276 Cal. Rptr. at 342 (Mosk, J., concurring and dissenting) (emphasis added).

ment.[44] "Although '[t]he electors may amend the constitution by initiative,' a 'revision' of the constitution may be accomplished only by convening a constitutional convention and obtaining popular ratification, or by submitting the measure to the voters through the legislature."[45] In contrast to the single subject requirement, which is intended to protect the voters from confusion and deception,[46] the nonrevision requirement is based on the theory that comprehensive changes in the state's fundamental law require more discussion and deliberation than is available through the initiative process.[47] Thus, even the most simple and clearly worded initiative proposing a constitutional amendment might constitute a revision.[48]

Petitioners' argument focused on section 3 of Proposition 115, which would amend article I, section 24 of the state constitution relating to the independent nature of certain rights guaranteed by the constitution. Article I, section 24 provides that "Rights guaranteed by this Constitution are not dependent on those guaranteed by the United states Constitution."[49] Proposition 115 would change this and prevent California from offering greater rights than those afforded to criminal defendants by the United States Constitution. Proposition 115 called for California to construe rights of criminal defendants in a manner consistent with the federal constitution.[50] Petitioners

44. *Raven*, 52 Cal. 3d at 349, 801 P.2d at 1085, 276 Cal. Rptr. at 334.
45. *Id.* (citing CAL. CONST. art. XVIII).
46. *See supra* note 32.
47. "[R]evision contemplates deliberative action of either the Legislature or a convention duly assembled in order to accomplish harmony in language and purpose between articles and to produce as nearly as possible a document free of doubts and inconsistencies." Adams v. Gunter, 238 So. 2d 824, 829 (Fla. 1970).
48. "[A]n enactment which purported to vest all judicial power in the Legislature would amount to a revision without regard either to the length or complexity of the measure or the number of existing articles or sections affected by such change." Amador Valley Joint Union High School Dist. v. State Bd. of Equalization, 22 Cal. 3d 208, 223, 583 P.2d 1281, 1286, 149 Cal. Rptr. 239, 244 (1978).
49. CAL. CONST. art I, § 24.
50. "In criminal cases the rights of a defendant to equal protection of the laws, to due process of the law, to the assistance of counsel, to be personally present with counsel, to a speedy and public trial, to compel the attendance of witnesses, to confront the witness against him or her, to be free from unreasonable searches and seizures, to privacy, to not be compelled to be a witness against himself or herself, to not be placed twice in jeopardy for the same offense, and not to suffer the imposition of cruel and unusual punishment, shall be construed in a manner consistent with the Constitution of the United States. This Constitution shall not be construed by the courts of this state to afford greater rights to criminal defendants than those afforded by the Constitution of the United States, nor shall it be construed to afford greater rights to minors in juvenile proceedings on criminal causes than those afforded by the Constitution of the United States."

claimed that Proposition 115 "ha[d] in essence 'vested' or 'delegated' all judicial interpretive power respecting [the criminal defendants' rights listed] in or to the *federal* courts."[51]

1. What Constitutes a Revision?

California courts have established that inappropriate or extensive changes in the constitution could constitute a revision.[52] The court has incorporated this principle into a quantitative-qualitative test that measures the effects the proposition will have on the constitutional scheme.[53]

Quantitatively, Proposition 115 does not constitute a revision.[54] Proposition 115 is "not so extensive . . . as to change the 'substantial entirety' of the Constitution by the deletion or alteration of numerous existing provisions. . . ."[55] The measure does not delete any constitutional language and only affects one article.[56] Therefore, the court found that the measure is no more extensive than those presented in previous cases that upheld initiative measures challenged as revisions.[57]

Qualitatively, however, Proposition 115 does constitute a revision,[58] which was prohibited by the court in *Brosnahan.*

> [E]ven a relatively simple enactment may accomplish such far reaching changes in the nature of our basic governmental plan as to amount to a revision also . . . . *[A]n enactment which purported to vest all judicial power in the legislature would amount to a revision* without regard either to the length or complexity of the measure or the number of existing articles or sections affected by such change.[59]

Proposition 115 sought to cause this similar type of qualitative change. The change in article I, section 24, would vest all judicial

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Raven, 52 Cal. 3d at 350, 801, P.2d at 1086, 276 Cal. Rptr. at 335 (1990) (quoting Proposition 115).

51. *Id.* at 351, 801 P.2d at 1086, 276 Cal. Rptr. at 335 (1990) (emphasis in original).

52. *See supra* note 3.

53. *Amador*, 22 Cal. 3d at 223, 583 P.2d at 1286, 149 Cal. Rptr. at 244. (followed in Brosnahan v. Brown, 32 Cal. 3d 236, 260, 651 P.2d 274, 288, 186 Cal. Rptr. 30, 44 (1982)).

54. *Raven*, 52 Cal. 3d at 351, 801 P.2d at 1086-87, 276 Cal. Rptr. at 335-36.

55. *Id.* (citing *Amador*, 22 Cal. 3d at 223, 583 P.2d at 1286, 149 Cal. Rptr. at 244).

56. *Raven*, 52 Cal. 3d at 351, 801 P.2d at 1086-87, 276 Cal. Rptr. at 335-36.

57. *Id. See Brosnahan*, 32 Cal. 3d at 260, 651 P.2d at 288, 186 Cal. Rptr. at 44 (upholding measure affecting only CAL. CONST. art. I); *Amador*, 22 Cal. 3d at 224, 583 P.2d at 1287, 149 Cal. Rptr. at 245 (upholding measure affecting only a few articles dealing with taxation). *Cf.* McFadden v. Jordon, 32 Cal. 2d 330, 334-35, 196 P.2d 787, 790 (1948) (invalidating measure adding 21,000 words to Constitution and affecting 15 of its 25 articles).

58. *Raven*, 52 Cal. 3d at 354-55, 801 P.2d at 1089, 276 Cal. Rptr. at 338.

59. *Id.* at 352, 801 P.2d at 1087, 276 Cal. Rptr. at 336 (quoting *Amador*, 22 Cal. 3d at 223, 583 P.2d at 1286, 149 Cal. Rptr. at 244) (emphasis added by *Raven*).

interpretive power, as to fundamental criminal rights, in the United States Supreme Court.[60]

2. *Effects of a Constitutional Revision*

Under Section 3 of Proposition 115, California courts would no longer be able to interpret the state constitution in a manner more protective of defendants' rights than the federal Constitution, as interpreted by the United States Supreme Court.[61] The California court described an extreme hypothetical illustrating the possible results of such a scheme. For example, if the United States Supreme Court held that public torture or maiming of a defendant convicted of a misdemeanor did not violate the "cruel and unusual punishment" clause of the federal constitution, then the California courts would be compelled to agree and impose such punishment.[62] The protection of criminal defendants against violations of their constitutional rights would be left in the hands of the United States Supreme Court.[63]

This makes it seem as though state courts do not have autonomy in regards to interpreting laws. "In effect, [Proposition 115] would substantially alter the substance and integrity of the state constitution as a document of independent force and effect."[64] The court acknowledged that the idea of deferring to the federal high court was not new[65] but remarked: "It is one thing voluntarily to defer to high court decisions, but quite another to *mandate* the state courts' blind obedience thereto despite 'cogent reasons,' 'independent state interests' or 'strong countervailing circumstances' that might lead our courts to construe similar state constitutional language differently from the federal approach."[66]

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60. *Raven*, 52 Cal. 3d at 352, 801 P.2d at 1087, 276 Cal. Rptr. at 336.

61. *Id.* Decisions of the lower federal courts interpreting federal law, though persuasive, are not binding on the state courts. People v. Bradley, 1 Cal. 3d 80, 86, 460 P.2d 129, 132, 81 Cal. Rptr. 457, 460 (1969).

62. *Raven*, 52 Cal. 3d at 352, 801 P.2d at 1087, 276 Cal. Rptr. at 336.

63. *Id.* The court pointed out that another problem was that "the nature and extent of state constitutional guarantees would remain uncertain and underdeveloped unless and until the high court had spoken and clarified the *federal* constitutional law." *Id.* (emphasis in original).

64. *Id.*

65. *Id.* at 353, 801 P.2d at 1088, 276 Cal. Rptr. at 337. "[C]ogent reasons must exist before a state court in construing a provision of the state Constitution will depart from the construction placed by the Supreme Court of the United States on a similar provision in the federal Constitution." *Id.* (quoting Gabrielli v. Knickerbocker, 12 Cal. 2d 85, 89, 82 P.2d 391, 393 (1938)).

66. *Raven*, 52 Cal. 3d at 353, 801 P.2d at 1088, 276 Cal. Rptr. at 337.

California courts presently do have the authority to adopt an independent interpretation of the state constitution. Article I, section 24 states, "Rights guaranteed by this Constitution are not dependent on those guaranteed by the United States Constitution."[67] The California Supreme Court sits "as the court of last resort [in interpreting constitutional guarantees], subject only to the qualification that our interpretations may not restrict the guarantees accorded the national citizenry under the federal charter."[68] Thus, California courts may grant criminal defendants greater rights than those granted by the United States Constitution. However, Proposition 115 would impose deference as a matter of constitutional imperative for the first time in the state's history.[69]

> It substantially alters the preexisting constitutional scheme or framework heretofore extensively and repeatedly used by courts in interpreting and enforcing state constitutional protections. It directly contradicts the well-established jurisprudential principle, 'that the judiciary, from the very nature of its powers and means given it by the Constitution, must possess the right to construe the Constitution in the last resort'. . . .[70]

The court found that Proposition 115 was too fundamental a change in the preexisting governmental plan to be made through the initiative process.[71] Therefore, section 3 of Proposition 115 represented an invalid revision of the California Constitution.[72]

IV. IMPLICATIONS

By holding Proposition 115 to constitute a revision, the court in *Raven* effectively denied the power of the people to enact their will to limit judicial power through the initiative process. However, *Raven* does not stand for the proposition that any time the voters express their will to limit the power of the court, the enactment will be deemed a revision. The court will only find the measure to constitute a revision when broad fundamental changes in the governmental plan are the result of the measure. *Raven* will now be the standard by which future challenges to the initiative process will be reviewed.

Once the measure is deemed to be a revision, only the legislature may enact the initiative. However, even if the measure proposed in Proposition 115 was initiated by the legislature, it probably would violate the doctrine of state constitutional independence. State constitutional independence, a doctrine heavily relied upon in *Raven*, al-

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67. CAL. CONST. art. I, § 24 (adopted in 1974).

68. *Raven*, 52 Cal. 3d at 354, 801 P.2d at 1088-89, 276 Cal. Rptr. at 337-38. (quoting People v. Longwill, 14 Cal. 3d 943, 951, n.4, 583 P.2d 753, 758 n.4, 123 Cal. Rptr. 297, 302 n.4 (1975)).

69. *Raven*, 52 Cal. 3d at 354, 801 P.2d at 1088-89, 276 Cal. Rptr. at 337-38.

70. *Id.* (quoting Norgues v. Douglas, 7 Cal. 65, 69-70 (1858)).

71. *Raven*, 52 Cal. 3d at 355, 801 P.2d at 1089, 276 Cal. Rptr. at 338.

72. *Id.*

lows the state court to interpret the state constitution in a way that permits the court to allow greater rights than those guaranteed by the federal Constitution.[73] Any broad attack on state constitutional independence by the voters *or* the legislature will probably be found unconstitutional. In *Raven*, the broad attack on state constitutional independence was that Proposition 115 deprived the state judiciary of its fundamental power to decide cases by independently interpreting provisions of the state constitution.[74] Therefore, *Raven* is an important case for determining the type of initiative the legislature may propose while the doctrine of state constitutional independence is in effect.

A. What Is Left of the Voters' Initiative Process After Raven?

According to the California Constitution, "the people reserve to themselves the power of initiative and referendum."[75] It is the duty of the judiciary "to zealously guard" the sovereign people's initiative process because it is "one of the most precious rights of [the] democratic process."[76] Yet, in *Raven*, the court refused to enforce an initiative in which the sovereign people expressed their will on a matter of great importance to them. By holding that Proposition 115 constituted a revision, as opposed to an amendment, the court precluded the people from expressing their will to restrict judicial power. A concern that arises is whether any time the people try to restrict judicial power, the court will hold the initiative to constitute a revision.

Such a concern is unwarranted. For example, in *In re Lance W.*,[77] the court upheld a provision limiting the state exclusionary rule for search and seizure violations to the boundaries fixed by the fourth amendment to the federal Constitution. In *People v. Frierson*,[78] the court upheld a provision which, in essence, required California courts deciding capital cases to apply the state's "cruel and unusual punishment" clause consistently with the federal Constitution. In both cases, the court deferred to the United States Supreme Court. However, these cases can be reconciled with *Raven*.

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73. Pruneyard Shopping Center v. Robbins, 447 U.S. 74 (1980). *See supra* note 5.
74. *Raven*, 52 Cal. 3d at 352-55, 801 P.2d at 1086-89, 276 Cal. Rptr. at 335-38.
75. CAL. CONST. art. IV, § 1.
76. Amador Valley Joint Union High School Dist. v. State Bd. of Equalization, 22 Cal. 3d 208, 248, 583 P.2d 1281, 1302, 149 Cal. Rptr. 239, 259 (1978).
77. 37 Cal. 3d 873, 694 P.2d 744, 210 Cal. Rptr. 631 (1985).
78. 25 Cal. 3d 142, 599 P.2d 587, 158 Cal. Rptr. 281 (1979).

Both *Lance W.* and *Frierson* concluded that no constitutional revision was involved because the isolated provision at issue in both cases achieved no far-reaching, fundamental change in the governmental plan. In contrast to *Raven*, neither *Lance W.* nor *Frierson* involved a broad attack on the state court's authority to exercise independent judgment in construing a wide spectrum of important rights under the California Constitution. Proposition 115, on the other hand, would create far-reaching fundamental changes in the preexisting governmental plan by vesting a critical portion of state judicial power in the United States Supreme Court. Thus, *Raven* has not destroyed the people's sovereign right to impose restrictions on the judiciary. Only when those restrictions are such broad and fundamental changes that they amount to a revision will the people lose this right.

Allowing the judiciary to review the possibility that a voter initiative constitutes a revision is necessary because of inherent flaws in the initiative process. In order for the initiative process to work properly, voters must be informed. Lack of knowledge and interest in the initiative measure will prevent rational voting.[79] Many times the subject matter and language of the initiative are so complex or lengthy that it may never be thoroughly read or completely understood.

This is not to say that the court should fall prey to the elitist argument that most people do not know what is best for them and therefore need someone else to provide direction. Instead, the court must adhere to the principle that initiative provisions of the constitution should be broadly construed so as to maintain the power of the people.[80] However, on occasion, the court must, as in *Raven*, step in and review the constitutionality of a voters' initiative. So far, the court has not abused this power. *Raven* marks only the second time in modern history that the court has found a voter's initiative to constitute a revision.[81]

B. State Constitutional Independence

Raven is as much a case about state constitutional independence as it is a case about the initiative process. The California Constitution is a document of independent force and the California Supreme Court is the final interpreter of the meaning of that document.[82] Because United States Supreme Court decisions interpreting the Bill of

79. Brestoff, *The California Initiative Process: A Suggestion for Reform*, 48 S. CAL. L. REV. 922, 934 (1975).

80. Raven v. Deukmejian, 52 Cal. 3d 336, 341, 801 P.2d 1077, 1080, 276 Cal. Rptr. 326, 329 (1990). "The initiative power must be liberally construed . . . to promote the democratic process." *Id.*

81. *See supra* note 3.

82. 7 B. WITKIN, SUMMARY OF CALIFORNIA LAW § 90 (9th ed. 1988).

Rights and the fourteenth amendment mark the minimum guarantees of individual rights, state courts that give truly independent force to their own constitutions generally reach decisions which provide more protection of citizens' rights than Supreme Court rulings.[83] California has led the nation in the development of independent interpretation.[84]

A definitive statement of California's willingness to give independent force of its own constitution was given in *People v. Brisendine*,[85] which held that a warrantless search by deputy sheriffs was invalid under California precedents, despite its possible validity under United States Supreme Court decisions. The court found that

> the California Constitution is, and always has been, a document of independent force. Any other result would contradict not only the most fundamental principles of federalism but also the historic basis of state charters. It is fiction too long accepted that provisions in state constitutions textually identical to the Bill of Rights were intended to mirror their federal counterpart. The lesson of history is otherwise; the Bill of Rights was based upon the corresponding provisions of the first state constitutions, rather than the reverse.[86]

By granting California citizens greater protection under the California Constitution from unlawful search and seizures, the court was not "embarking" on a revolutionary course," but, instead, the court was "reaffirming a basic principle of federalism."[87] The court in *Raven* relied on this precedent to support is authority to independently interpret the California Constitution.[88]

The court in *Raven* not only found support for its authority to

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83. Brennan, *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489, 495 (1977).

84. For example, California adopted the exclusionary rule for illegal search and seizure six years before the Supreme Court made it binding on the states. People v. Cahan, 44 Cal. 2d 434, 282 P.2d 905 (1955). California invalidated the death penalty four months before the United States Supreme Court. People v. Anderson, 6 Cal. 3d 628, 493 P.2d 880, 100 Cal. Rptr. 153, *cert. denied*, 406 U.S. 958 (1972). Also, in the area of equal protection, the California Supreme Court has declared education a fundamental interest in Serrano v. Priest, 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601, *cert. denied*, 432 U.S. 907 (1977), and found, contrary to the United States Supreme Court, that sex is a suspect classification. Sail'er Inn, Inc. v. Kirby, 5 Cal. 3d 1, 485 P.2d 529, 95 Cal. Rptr. 329 (1971).

85. 13 Cal. 3d 528, 531 P.2d 1099, 119 Cal. Rptr. 315 (1975). Defendant was arrested for the citation offense of building a campfire in a restricted area. *Id.* at 533, 531 P.2d at 1101, 119 Cal. Rptr. at 317. The police officer opened defendant's knapsack, removed several opaque bottles and envelopes, and confiscated drugs contained therein. *Id.* at 533, 531 P.2d at 1102, 119 Cal. Rptr. at 318.

86. *Id.* at 549-50, 531 P.2d at 1113, 119 Cal. Rptr. at 329.

87. *Id.* at 551-52, 531 P.2d at 113, 119 Cal. Rptr. at 329.

88. *Raven*, 52 Cal. 3d at 353, 801 P.2d at 1087, 276 Cal. Rptr. at 337 (1990).

adopt an independent interpretation of the state constitution from case law, but also found support in the "current" article I, section 24 of the state constitution.[89] The section, adopted in 1974, reads, "[r]ights guaranteed by this Constitution *are not* dependent on those guaranteed by the United States Constitution."[90] However, the court in *Brisendine* was quick to point out that "this declaration of constitutional independence did not originate at the recent election; indeed the voters were told the provision was a mere reaffirmation of existing law."[91] In subsequent cases, the California Supreme Court has reiterated that the provision was simply a reaffirmation of existing law.[92]

Perhaps the most that can be said is that "current" article I, section 24 represents a public ratification of the court's past decisions that independently interpret the California Constitution. Thus, "current" article I, section 24 does not grant any additional power to the court in *Raven*. This is important because it shows that state constitutional independence is inherent in the document and not specifically granted by one article. If state constitutional independence is inherent in the constitution, then it is a question whether the legislature can, by use of a constitutional convention, initiate a measure that will vest all judicial interpretive power, as relating to criminal defendants' rights, in the United States Supreme Court.

1. Effects of Inherent State Constitutional Independence

The court in *Raven* held that the "proposed" article I, section 24 constituted a revision and, therefore, could only be changed by convening a constitutional convention and obtaining popular ratification, or by submitting the measure to the voters through the legislature.[93] One can ask whether the legislature can revise the state constitution to eliminate state constitutional independence, when state constitutional independence is inherent in the state constitution. In other words, one can ask whether the legislature can adopt a legislative initiative similar to the "proposed" article I, section 24.

The answer must be the same for legislative initiatives as it is for voters' initiatives.[94] Even though the court in *Raven* found that the "proposed" article I, section 24 constituted a revision, the legislature, likewise, will not be able to adopt such a fundamental change in the

89. *Id.*
90. CAL. CONST. art. I, § 24 (emphasis added).
91. *Brisendine*, 13 Cal. 3d at 551, 531 P.2d at 114, 119 Cal. Rptr. at 330.
92. *See, e.g.*, People v. Norman, 14 Cal. 3d 929, 939 n.10, 583 P.2d 237, 245 n.10, 123 Cal. Rptr. 109, 117 n.10 (1975).
93. *See supra* notes 45-48 and accompanying text.
94. *See supra* notes 75-81 and accompanying text.

governmental scheme. If the legislature were to mandate the state court to defer to the United States Supreme Court on issues of fundamental rights of criminal defendants, it would usurp the powers of the judiciary. Any broad attempt by the legislature to alter fundamental judicial power would be found unconstitutional, for "[i]t is emphatically the province and duty of the judicial department to say what the law is."[95]

2. *State Constitutional Independence: Necessary or Repugnant?*

The United States Supreme Court has squarely confronted and accepted the fact that a state may grant its citizens rights greater than those they have under the federal Constitution.[96] No one questions the right of the state courts to engage in independent interpretation; rather, the debate thus far has focused primarily on the propriety of such interpretations. One must ask whether state constitutional independence is such a pernicious doctrine in light of the Burger and Rehnquist Courts' retreat from some of the Warren Court's interpretation of the federal Bill of Rights. One only has to look to the trend in recent Supreme Court decisions in the area of criminal procedure to determine how important it is to invalidate the type of initiative challenged in *Raven*. For example, recently, the United States Supreme Court held that a coerced admission of guilt could be used if it amounts to a "harmless error."[97]

This is not to say that the United States Supreme Court is wrong in interpreting the federal Constitution, but "[i]t is simply that the decisions of the Court are not, and should not be, dispositive of ques-

95. Marbury v. Madison, 5 U.S. 137, 177 (1803).

96. Pruneyard Shopping Center v. Robins, 447 U.S. 74 (1980). *See supra* note 5.

97. Arizona v. Fulminante, 111 S. Ct. 1246 (1991). Within the last two decades, rights guaranteed under the fourth amendment have been severely limited. For example, the Supreme Court has found the warrant requirement plainly appearing in the text of the fourth amendment does not require the police to obtain a warrant before arrest, however easy it might have been to get an arrest warrant. United States v. Watson, 423 U.S. 411 (1976). It has declined to read the fourth Amendment to prohibit search of an individual by police officers following a stop for a traffic violation, even though there exists no probable cause to believe the individual has committed any other legal infraction. United States v. Robinson, 414 U.S. 218 (1973). The Court has held permissible searches grounded upon consent regardless of whether the consent was knowing and intelligent. United States v. Watson, 423 U.S. 411 (1976); Schneckloth v. Bustamonte, 412 U.S. 218 (1973). Even when the Court has found searches to violate fourth amendment rights, it has occasionally declared widesweeping exceptions to exclusionary rule and allowed the use of such evidence. *E.g.*, United States v. Janis, 831 F.2d 773, *cert. denied*, 484 U.S. 1073 (1988).

tions regarding rights guaranteed by counterpart provisions of state law."[98] If one disagrees with these Supreme Court decisions, at least one can take comfort in the fact that the independent nature of the California Constitution will allow the California courts "to separately define and protect the rights of California citizens despite conflicting decisions of the United States Supreme Court interpreting the federal Constitution."[99] If one believes that state constitutional independence is a necessary doctrine, then, one must believe that *Raven* is a good decision because it has shown that the California courts will not be forced to blindly follow the federal courts.

V. CONCLUSION

Raven v. Deukmejian held that a voters' initiative measure which purported to vest all judicial interpretive power as to fundamental criminal defense rights amounted to a revision of the state Constitution. The implications of that decision are two-fold. First, the decision will have an impact on the way future courts review constitutional challenges to the initiative process. The *Raven* court has made it perfectly clear that a constitutional initiative which "substantially alters the preexisting constitutional scheme" will be subject to strict scrutiny by the court. The court has acknowledged the important constitutional limits on the initiative process.

Second, the decision has reaffirmed the court's position on state constitutional independence. The court will not give up its constitutional right to interpret the state constitution and will not act as a rubber stamp for the federal courts. Instead, the state constitution will govern in a manner consistent with the interpretations of the California Supreme Court.

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98. Brennan, *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489, 502 (1977).

99. People v. Disbrow, 16 Cal. 3d 101, 114, 545 P.2d 272, 280, 127 Cal. Rptr. 360, 368-69 (1976) (holding that statements taken from suspects before giving Miranda warnings are inadmissible in California courts to impeach an accused who testifies in his or her own defense).