



Repeal gas tax or end revenue for road repairs? It's the same ballot measure

By Bob Egelko | November 13, 2017



Photo: Rich Pedroncelli, Associated Press

A court will decide whether a ballot measure's title says it repeals the new gas tax or eliminates revenue for road repairs.

The future of California's new fuel tax — 12 cents a gallon for gasoline, 20 cents for diesel fuel — is likely to go before the voters in November 2018. What's less clear is whether the official title on the state ballot pamphlet, an important source of voter information, will start by saying it “repeals taxes” or “eliminates ... revenues” for transportation and road repair.

Both descriptions are accurate. Which one will accompany a Republican-sponsored initiative to repeal the tax, as of January 2019, is a question now before a state appeals court in Sacramento. The justices must weigh their duty to inform the voters against the authority provided by law to Attorney General Xavier Becerra, whose office prepares the title and summary for every proposed ballot measure.

Becerra, a Democrat, drafted a title for the initiative that referred only to its impact on repair programs and revenue, though his more-detailed summary that followed listed each tax that would be repealed. In September, a Sacramento County judge, in an unusual but not unprecedented action, found the title misleading and rewrote it to lead with the gas tax repeal.

The attorney general's office challenged the judge's action to the Third District Court of Appeal.



Photo: Paul Chinn, The Chronicle

Anthony Ballester and others protest California's 12-cent gas tax increase in San Francisco on Nov. 4. The tax is intended to help the state repair roads.

“Courts have stated that considerable deference must be afforded to the attorney general’s title and summary,” lawyers from Becerra’s office said in the filing. The judge, the lawyers said, “simply substituted (his) judgment for the judgment of the official vested by state law with the task.”

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On the other hand, the attorney general is also a politician, from the party that steered the gas tax through the Legislature. He was appointed to his current position by Gov. Jerry Brown, “the very governor who champions this” tax increase, to replace Kamala Harris after her election to the U.S. Senate, noted Benjamin Pugh, lawyer for Assemblyman Travis Allen, R-Huntington Beach (Orange County), sponsor of the tax repeal initiative.

The new taxes and fees, signed into law by Brown in April, are intended to raise more than \$5 billion a year to repair the state’s deteriorating streets and highways. Besides the gas tax, they include a vehicle registration fee of \$25 to \$175, depending on the value of the vehicle, starting next year, and a \$100 fee on zero-emission vehicles, starting in 2020.

In a USC Dornsife/Los Angeles Times poll conducted online among 1,504 Californians from Oct. 27 to Nov. 6, 54 percent said they would vote to repeal the tax.

Becerra’s title said the repeal initiative “eliminates recently enacted road repair and transportation funding by eliminating revenues dedicated for those purposes.”

In response to a lawsuit by Allen, a prospective Republican candidate for governor next year, Superior Court Judge Timothy Frawley recast the title to say that the measure “repeals recently enacted gas and diesel taxes and vehicle registration fees. Eliminates road repair and transportation programs funded by these taxes and fees.”

But under state law, Becerra’s appeal of Frawley’s ruling automatically reinstated the attorney general’s language on initiative petitions, at least until the appellate court acts. Pugh said a speedy ruling is needed so that supporters will have a chance to collect 365,880 valid signatures and submit them by the June 28 deadline.

The title of a proposed ballot measure, written in all capital letters, and the summary

that follows appear on signature-gathering petitions as well as the state ballot pamphlet, and represent most voters' first view of the measure's contents. Their importance was illustrated in 1996 in a dispute over Proposition 209, which eliminated any consideration of race or sex in state education, employment and contracting programs.

Then-Attorney General Dan Lungren, a Republican who supported Prop. 209, gave it a title and summary that said it prohibited "discrimination or preferential treatment" based on race or gender. In a suit by civil rights groups, a Sacramento judge ordered Lungren to also state that the measure would ban "affirmative action" for minorities — a ban that most Californians opposed, according to opinion polls.

The appeals court disagreed, saying Lungren had taken his wording from the text of the initiative, which did not mention affirmative action. Prop. 209 passed with 54.6 percent of the vote.

Other challenges to ballot titles have occasionally succeeded, and there have been a few unsuccessful legislative efforts to shift responsibility for titles and summaries to a less partisan office. The drafter of the current law that assigned those tasks to the attorney general says he now regrets it.

The Legislature's nonpartisan fiscal analyst now does assessments of each ballot measure's likely financial impact for the ballot pamphlet, and "we should have put them in charge of the titles as well," attorney Robert Stern said. "The legislative analyst, as far as I can remember, has never been accused of playing politics."

The law was part of the state's Political Reform Act, a 1974 ballot measure that also regulated political contributions and spending. Stern helped to write it as legal counsel to then-Secretary of State Jerry Brown and later served as the first general counsel of the enforcement agency, the Fair Political Practices Commission.

He now teaches an extension class at UCLA, where Becerra appeared as a guest speaker last month and defended his role in writing the state's official descriptions of ballot measures.

There is "no one who has more expertise on this than the attorney general's office," Becerra said, responding to questions by Stern. "It doesn't make any difference to me

if you're a Republican or a Democrat. ... We are the attorney for the state.”

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