

INTRODUCTION

California's Crowded November Initiative Slate: The 1990s Called—They Want Their Ideas Back

By Bill Whalen

Not that he ever made it to the West Coast, but Thomas Jefferson was California dreaming when he remarked, “God forbid we should ever be 20 years without . . . a rebellion.”

Jefferson was referring to [Shays' Rebellion](#)—a series of anti-tax protests by farmers in 1786 and 1787. But the same principle applies to that more peaceful form of rebellion called the California initiative process and voters' tendency to alter the Golden State's course every two decades or so.

Consider California's initiative slate of forty years ago.

In 1974, a total of twenty-six measures appeared on the June and November ballots. Voters approved four bond measures—money for veterans, to buy recreational land, to curb water pollution, and prepare for earthquakes—all worth a combined \$850 million. Californians also approved a transition to gender-neutral language in the state's constitution. At the height of the Watergate crisis, two months before Richard Nixon's resignation, voters created the watchdog [Fair Political Practices Commission](#).

Two years later, in the first of Jerry Brown's four midterm gubernatorial elections (this November being his fourth and final), Californians approved another \$955 million in bonds for veterans, water systems, and coastal parks. The sum of these actions: California tilting left—though there was a warning sign in 1976 of an anti-government revolt to come: voters shot down four other bonds worth \$875 million.

Now, fast-forward two decades to the initiatives of 1994 and 1996.

In the former year, amidst a nationwide conservative surge, California voters rejected all five bonds on the two ballots, plus a proposed increase in the state's gasoline tax. Also rejected: a single-payer health care system and a ban on public smoking. Not every initiative lost, though; Californians approved a new “three strikes” law, as well as the now-infamous [Proposition 187](#), cracking down on illegal immigration.

The trend continued in the next November election. Voters broadened the definition of death penalty “special circumstances.” The biggest initiative fight of 1996: [Proposition 209](#), the successful effort to end race-based admissions in California universities. The sum of these parts: California, at the time, was in a right-of-center mood.

And that brings us another twenty years, to the November 2016 ballot slate—seventeen initiatives (collectively, Propositions 51–67) awaiting a public yea or nay.

What stands out about these measures: how they contradict choices made by California voters back in the 1990s.

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In November, California will decide:

- [Proposition 58](#), which would overturn 1998's [Proposition 227](#) and return bilingual education in public schools.
- Two decades after California put capital punishment back in practice, [Proposition 62](#) would repeal the death penalty (the rival [Proposition 66](#) would streamline the Death Row appeal process).
- [Proposition 64](#) would legalize recreational marijuana use. In 1996, Californians did legalize medicinal marijuana ([Proposition 215](#)), but recreational pot was a political non-starter.
- Two decades after the aforementioned tough-on-crime ballot measures, Governor Brown's [Proposition 57](#) would improve early parole chances for felons doing time for non-violent crimes.
- Finally, in regard to those tax increases that were a tough sell back in the '90s: [Proposition 55](#) would extend 2012's [Proposition 30](#) and the "temporary" tax hike imposed on Californians earning over \$250,000; [Proposition 56](#) would boost the state cigarette tax to \$2 a pack (at present, it's 87 cents).

Does all of this confirm that California is in the midst of a profound shift to the left? If so, are these sound ideas for the state to embrace?

For this issue of *Eureka*, we decided to take an early look at the crowded and contentious November ballot and delve into the concept of "buyer beware."

This issue includes:

- Hoover fellow Carson Bruno positing that, given the volume and magnitude of ballot measures in California, a growing indifference to voting, and the designed inflexibility of the initiative system, it may be time to re-evaluate whether voters should be entrusted with this decision-making power;
- State Senator John Moorlach offering that Propositions 51 and 53 give Californians a chance to reassert fiscal control over long-term debt issuances and demand fiscal restraint from state leaders;
- Joel Fox, founder of *Fox&Hounds Daily* and president of the Small Business Action Committee, contending that Proposition 55 isn't merely an extension of a temporary tax increase, but a doubling-down on a tax system ripe for roller-coaster-like ups-and-downs;
- And last but not least, Kent Scheidegger, legal director of the Sacramento-based Criminal Justice Legal Foundation, assessing this ballot's impact on the future of public safety in the Golden State.

We hope you enjoy this latest installment of *Eureka*—and that it gets you thinking about where California stands and whether we're moving in the right direction.

Bill Whalen is a Hoover Institution research fellow, primarily studying California's political trends. From 1995 to 1999, Bill served as Chief Speechwriter and Director of Public Affairs for former California Governor Pete Wilson.



FEATURED COMMENTARY

Is It Time to Reconsider California's Initiative System?

By Carson Bruno

On November 8, 2016, Californians will once again have the opportunity to not only elect (or re-elect) local, state, and federal representatives, but also to directly participate in generating public policy. While California's initiative system is often romanticized, its inflexibility often leads California down a path ripe with unintended consequences and few options for fixing past mistakes.

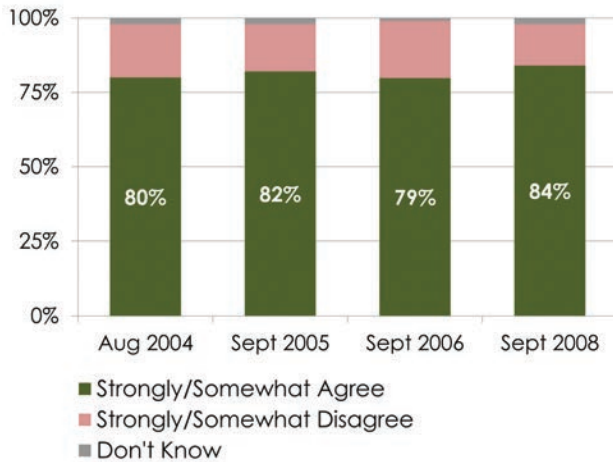
FIRST ADOPTED IN 1911, California became the tenth state to create the initiative system, whereby voters could themselves put on the ballot statutes, constitutional amendments, and referenda. Supported by the progressive movement to blunt the influence of the railroad lobby over the Legislature, California's version of direct democracy has led to some of the Golden State's most notable—and infamous—policies, such as Proposition 13, medical marijuana legalization, the death penalty, and California's abbreviated period of banning same-sex marriage. And Californians love their direct democracy. In a [March 2013 PPIC survey](#), 62 percent of likely Californian voters were very or somewhat satisfied with the initiative process and 72 percent of likely voters said they thought it was a good thing "that a majority of voters can make laws and change public policies by passing initiatives."

And in 2016, Californians will have to make a decision on at least [seventeen ballot measures](#), including nine state statutes, two statute/constitutional amendment combinations, four constitutional amendments, one referendum, and one advisory question. The topics are hefty, ranging from prescription drug price controls to voter approval of revenue bonds to taxes to the death penalty to gun control to regulating plastic bag use to recreational marijuana legalization.

The volume and magnitude of these measures generates a serious question, though. In an era of declining voter turnout, electorates that are largely uninformed on non-presidential candidates and issues, and a direct democracy system specifically



CALIFORNIANS BELIEVE BALLOT MEASURE WORDING IS TOO COMPLICATED TO FULLY UNDERSTAND



Source: *Public Policy Institute of California, Surveys, 2004 to 2008*

Note: Question wording, "The ballot wording for citizens' initiatives is often too complicated and confusing for voters to understand what happens if the initiative passes."

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designed to be inflexible, should Californians continue to be vested with such enormous public policy decisions?

Declining turnout

In 2016's California presidential primary, 48 percent of registered voters turned out to vote, a drop of ten points from 2008—the last presidential primary featuring two competitive, open contests. Even compared to 2000—the next most previous presidential primary with two open (but less competitive) primaries—turnout in 2016 was down about six points.

Looking at general elections, we also see a downward trend. In 2014's general election, 42 percent of registered voters voted, down from 60 percent in 2010, 56 percent in 2006, and 51 percent in 2002. In fact, 2014 was the only general election since California started recording participation where turnout fell below 50 percent. And even for recent presidential-year general elections, we see falling turnout. In 2012, turnout was 72 percent, down seven points from 2008 and four points from 2004. In just two presidential general elections since Ronald Reagan left office has turnout been lower than 2012's—1996 and 2000.

Even though voter registration is at all-time highs, voters appear to be becoming less interested in participating in politics. Whether this is because they don't like the candidates, don't think their vote counts, or don't prioritize voting isn't really that important; what is important is that we are relying on a

less engaged—and possibly more partisan and extreme—electorate to make major policy decisions. We cannot expect voters to educate themselves on the issues they are to vote on if they aren't interested in voting in the first place.

An uninformed electorate

It may be controversial to say, but the average voter isn't that informed about non-presidential candidates and major policy issues. And between voters living their lives and media less interested in non-presidential politics—let alone serious policy analysis—it's hard to blame them. Truth be told, it can be hard for someone who's employed in the political or policy arena to be 100 percent informed on the candidates and issues. For those who aren't, it's understandably even harder to balance their actual jobs and personal lives with educating themselves about hundreds of candidates and complex policy issues.

Moreover, media outlets—largely driven by ratings and advertising dollars—rarely focus on political news not related to the presidency and major Washington, D.C. events. More problematic, the media do a very poor job of analyzing policy issues and debates.

And as a result, even the likeliest of voters—those who are most engaged in politics—find themselves uninformed. In a [September 2015 PPIC survey](#), 15 percent and 11 percent of likely voters had no opinion of their *own* state representatives and their *own* U.S. Representative, respectively. These may seem like small numbers, but likely voters are the ones we'd expect to definitely have opinions of their elected officials.

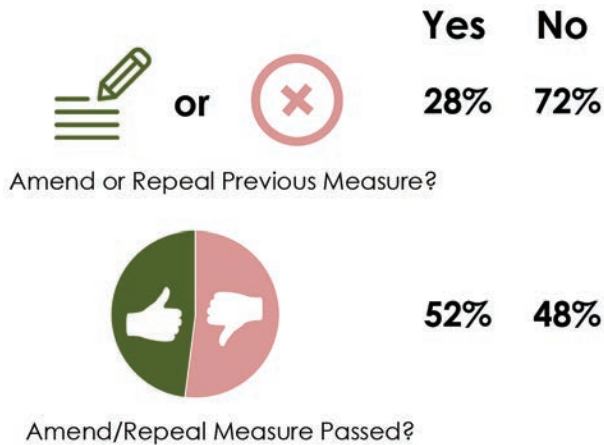
This matters because ballot measures are very complex and voters are aware of this. In a [September 2008 PPIC survey](#), 84 percent of likely voters strongly or somewhat agreed that ballot initiative wording is "often too complicated and confusing for voters to understand what happens if the initiative passes." We are expecting average Californians to both live their typical lives *and* be full-time legislators. We don't even expect this of our *actual* full-time legislators.

A system designed to be inflexible

If negative unintended consequences or just plain bad policy outcomes stemming from passed ballot measures were easily reformed or repealed, having an uninformed and dwindling pool of voters deciding the measures' fates wouldn't be a major issue. But that's not the case. In fact, California's direct democracy is intentionally inflexible.

According to [Article II, Section 10 \(c\)](#) of the California Constitution, the Legislature cannot amend or repeal a passed proposition without voter input—unless said proposition

SINCE 1990, VERY FEW BALLOT PROPOSITIONS HAVE SUCCESSFULLY AMENDED OR REPEALED A PREVIOUSLY PASSED MEASURE



Source: Ballotpedia, List of California Ballot Propositions, 1990 to 2014

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specifically allows for legislative tampering. Considering that the whole point of the initiative process is to specifically circumvent the Legislature, very few ballot measures include such a provision.

Thus, to amend or repeal a law passed via the initiative process, the voters have to pass another ballot proposition. This is unreliable. Since 1990, fewer than three-in-ten of the 301 statewide ballot measures presented to voters for consideration would have amended or repealed a previously passed ballot measure. Of those, just about half actually passed. This is expensive. Over the last three elections, the average funds raised by the proponents and opponents of successful amending-or-repealing ballot measures were almost \$9 million. Adding those that weren’t successful to the mix increases the average to almost \$19 million. This suggests that the successful ones were largely non-controversial changes, something that isn’t always guaranteed.

The return of the indirect initiative?

However, allowing the Legislature to easily tamper with passed ballot measures or eliminating direct democracy entirely both have serious downsides.

If tampering were too easy, Proposition 13’s tax protections would have been eliminated years ago. And while Proposition 13 is far from perfect, it is definitely the best alternative. Moreover, eliminating the initiative system removes an important tool to force reforms on a good-government-lethargic Legislature. Despite Assemblymember Kristin Olsen’s multiple attempts to force transparency on the State Legislature,

the ruling Democrats have silently killed her bills. But on November 8, voters can force those good governance reforms on the Legislature via [Proposition 54](#)—the Legislature Transparency Act.

A solution might be the reintroduction of the indirect initiative, which was allowed until 1966’s [Proposition 1A](#) abolished it. The indirect initiative allows citizens to qualify a measure for the ballot, but it first goes to the Legislature for consideration. Legislators can then: a) not act on the measure, which sends it directly to the voters, b) pass the measure as written, c) amend and then pass the measure, or d) come up with their own law on the same subject and place both the citizen-initiated measure and the Legislature-written measure on the ballot. Nine states allow some form of the indirect initiative. The indirect initiative would work to alleviate some of the system’s inflexibility in a responsible manner, while also keeping the integrity of direct democracy’s intent.

The indirect initiative, however, doesn’t preclude the necessity of California finding a way to educate voters on the complexities and nuances of ballot measures to ensure they are confident and capable of knowledgeably weighing the pros and cons of propositions. This, of course, requires a systematic change in how the Attorney General’s Office writes ballot summaries, how the Legislative Analyst’s Office analyzes the measures, and how state and local media outlets report on the propositions. And at the end of the day, if voters don’t feel confident in their understanding of a measure or have doubts about what the measure would accomplish, they should feel okay voting “NO.”

Carson Bruno is a Hoover Institution research fellow, studying California’s political, electoral, and policy landscapes. Prior to joining Hoover, Carson structured municipal bond issuances at J.P. Morgan Securities, Inc.



CALNOTES:
1911 PROPOSITION 7



Placed on the October 10, 1911, statewide ballot by the State Legislature, Proposition 7 amended Section 1 of Article IV of the California Constitution to institute direct democracy. While legislatively referred statutes and constitutional amendments had been allowed, Proposition 7 permitted Californians to qualify and vote on initiatives and referenda. It passed overwhelmingly with over three-fourths of the vote. Since its passage, 379 citizen-initiated propositions have qualified, with the voters approving 123.



The Desensitization of Debt— An Accountant's Analysis of Propositions 51 & 53

By John Moorlach

In the 2016 June primary, 81 percent of local tax and bond measures were passed by the California electorate. That, of course, would seem to make a pretty significant statement about the mood of these voters in regard to incurring future debt and establishing additional local taxes. This November, they will have two chances to reassert fiscal prudence and make a significant statement about long-term debt.

Voters are in charge of approving certain state financing matters, as they are the ultimate oversight on issuances that will leave future generations responsible for repayment. One need only look at Puerto Rico and its recent default on \$779 million of bonded debt to see the perils of issuing too many future obligations. They kept racking up the credit cards with over \$70 billion in total debt, but currently cannot make even the simple maintenance payment. California voters should consider Puerto Rico's challenges before allowing a similar scenario here at home.

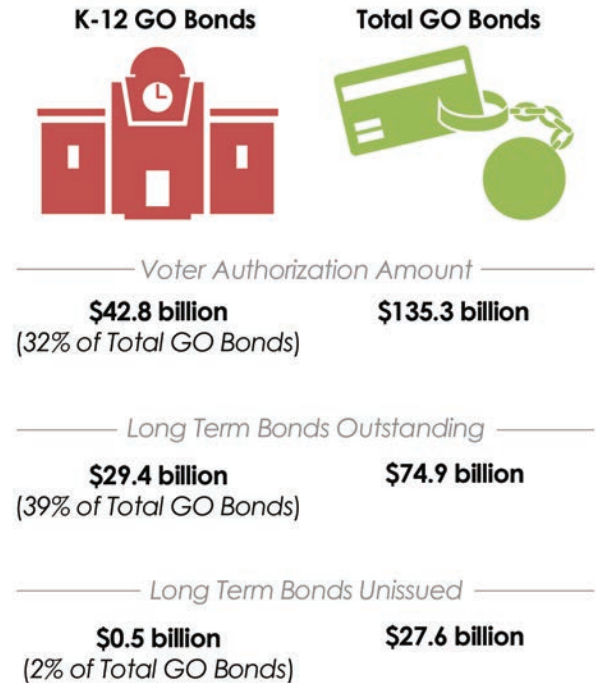
The first measure, **PROPOSITION 51**, would approve a \$9 billion general obligation bond for school construction. The second, **PROPOSITION 53**, asks voters to convert certain revenue bonds into a special category that would also require voter approval on all state lease revenue bond issuances of \$2 billion or more. It is estimated that, if approved, Proposition 51 will add up to \$500 million annually to the state budget, which has given even Governor Brown serious reservations.

In 1988, California voters approved Proposition 98, an education funding measure, which requires at least 40 percent of tax revenues to be devoted to K-12 schools and community colleges. But Proposition 51 will not be paid out of Proposition 98 funds, putting further stress on the state's general fund.

Nearly 90 percent of school district budgets are for personnel costs, including wages, benefits, and pension contributions. Public teacher unions do not leave much room in district budgets for other critical expenses, like supplies, repairs and maintenance, and building improvements or replacements.

No matter the justification, with a general obligation bond, Californians will pay the costs through higher taxes, diminished or cut services, or both. Yes, schools are a good area for investment, but if districts are unwilling to set funds aside, why should taxpayers be obligated to take on another new statewide debt? California residents shouldn't be punished for poor budgeting practices.

K-12 GENERAL OBLIGATION BONDS REPRESENT A PLURALITY OF VOTER AUTHORIZED/OUTSTANDING BONDS, BUT JUST 2% OF BONDS UNISSUED



Source: California State Treasurer's Office, Infrastructure Bonds Outstanding, as of July 1, 2016

Note: Outstanding+unissued does not equal authorized amount because of matured bonds and refundings

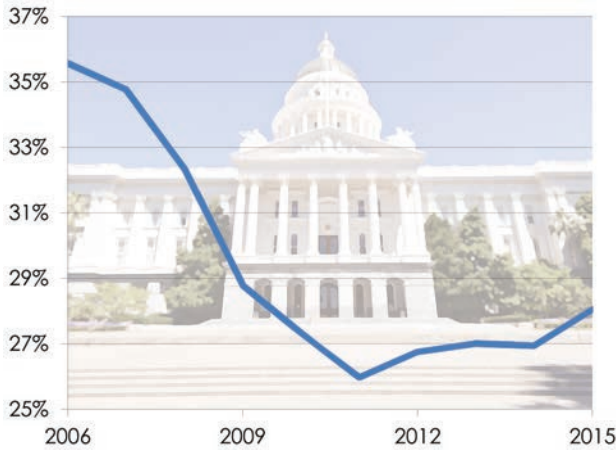
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Proposition 53 has the potential to give taxpayers additional oversight on revenue bonds. Its origination story is fascinating, as concerned fiscal advocate Dean Cortopassi was frustrated enough about California's debt and unfunded pension liability load that he decided to sponsor a ballot measure that targeted long-term debt based on government's current revenue streams.

Currently, revenue bonds do not need voter approval because they are repaid through some non-tax-revenue stream by the governing bodies of the municipal agencies. Why should the electorate be bothered to deal with specific revenue bonds, when you have elected representatives to handle these issues? What should really concern the California electorate is the amount of debt this state, and its municipalities, have encumbered upon the taxpayers, much of it without their knowledge or consent.

To stem the tide, if passed, Proposition 53 would require voter approval of significantly large revenue bond deals, those of \$2 billion or more. This should be simple enough.

REVENUE BONDS, ONCE ABOUT 1/3rd OF CALIFORNIA'S BONDED DEBT, HAVE ONCE AGAIN BEGUN INCREASING AS A SHARE



Source: California State Controller's Office, Comprehensive Annual Financial Report, Fiscal Year 2015

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But proponents of major government programs are having heartburn over this proposal. Could it be that this will slow down projects that elected leaders could normally approve and fund in a more expedited fashion? Or is it that voters don't really understand bond-related matters?

It may be none of the above. The real reason for the strong rebuff is that it will threaten two significant projects that are already in the works: the Delta tunnel and high speed rail. They will require revenue bonds to finance their construction. But many doubt that the revenues projected from a bullet train will come close to forecasted projections and debt payments will end up being borne by the taxpayers.

A high passage rate of current bond measures may indicate that most voters do not make the connection that general obligation bonds put them on the hook to pay the related principal and interest out of their taxes for up to thirty years. Too much debt could be the downfall of the State of California. One only needs to watch Puerto Rico. Debt management is a serious voter responsibility.

With voters approving four out of five local tax and bond ballot measures, one has to ponder. Are voters unaware that the debt is paid out of their taxes? Are they bullish on the future and unafraid to pay higher taxes? Or are they just fiscally uninformed of the consequences of their votes? Regardless, they will have a chance to speak on two critical financial issues this November.

John Moorlach represents California's 37th State Senate district, is a trained Certified Financial Planner, and is the only trained Certified Public Accountant in the State Senate. He previously served on the Orange County Board of Supervisors and as County Treasurer.



CALNOTES:
2016 PROPOSITION 51



Proposition 51 would authorize the State of California to sell up to \$9 billion in general obligation bonds for K-12 school and community college facilities. Of the bond proceeds, \$3 billion would fund new construction; another \$3 billion would go toward K-12 facility modernization; \$1 billion would be set aside for charter and vocational school facilities; and the remaining \$2 billion would be earmarked for community college facilities. The Legislative Analyst's Office estimates the true total cost of Proposition 51 to be \$17.6 billion, costing the state about \$500 million per year on average—or about 0.05% of the current General Fund budget.

CALNOTES:
2016 PROPOSITION 53



If approved, Proposition 53 mandates voter approval of state revenue bonds costing more than \$2 billion. Current law requires general obligation bonds—bonds repaid out of the general fund—to be approved by voters. Proponents argue elected officials have a blank check with the use of revenue bonds. Opponents note that revenue bonds are repaid by dedicated funding connected to the project the bond proceeds finance, limiting taxpayers' exposure. As of fiscal year 2015, revenue bonds accounted for 28 percent of the State of California's outstanding debt.

Proposition 55: A Lesson in Not-So-Temporary Temporary Taxes

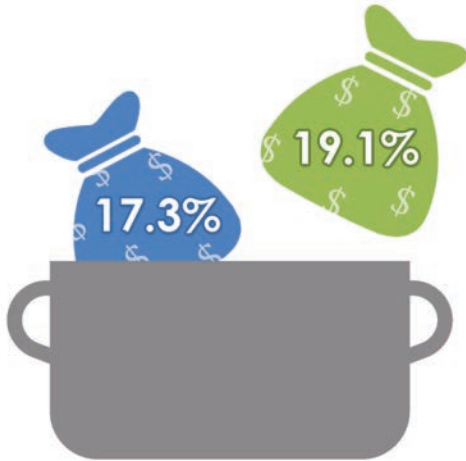
By Joel Fox

Coming out of the Great Recession that ravaged the state budget, Governor Jerry Brown and the state's teachers' unions joined forces to successfully push Proposition 30, a 2012 ballot initiative labeled, *Temporary Taxes to Fund Education*.

Yet, despite a General Fund that grew 42 percent since Brown became governor and Proposition 98 education spending



GROWTH IN DISTRIBUTED PROPOSITION 30 REVENUES TO SCHOOL DISTRICTS IS ALMOST ENTIRELY CONSUMED BY THEIR PENSION CONTRIBUTIONS GROWTH



2013-2015

- School District CalSTRs Contribution % Change
- Distributed Proposition 30 Revenue % Change

Source: California State Teachers’ Retirement System, Fiscal Year 2015 Comprehensive Annual Financial Report, Statistical Section & California State Controller’s Office, Track Prop 30

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that increased 52 percent over the same time period, a new ballot initiative, **PROPOSITION 55**, will ask voters to continue the income tax portion of Proposition 30 for another dozen years. The Legislative Analyst’s Office and the Governor’s Director of Finance project this initiative could bring in between \$5 billion and \$11 billion per year.

Not all the money will go toward education if Proposition 55 passes because of a compromise over the revenue reached by the teachers’ unions and health care providers, which will direct about \$2 billion a year to Medi-Cal.

There is a question of how much of the already-collected Proposition 30 money actually went into the classroom to boost education.

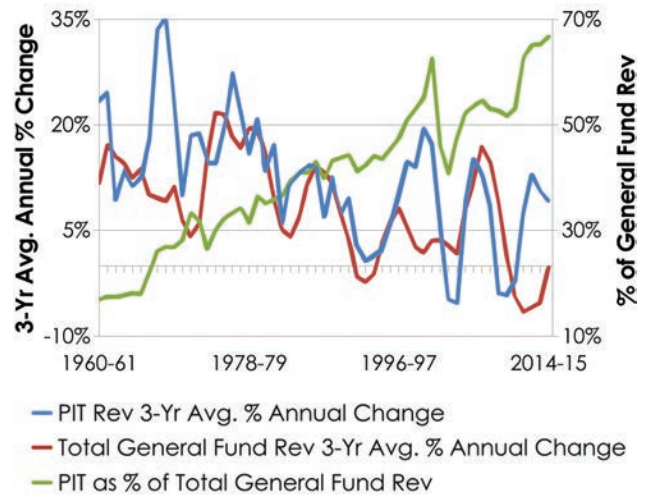
The **State Controller’s Office** tracks Proposition 30 money, which is sent to county education offices and forwarded to school districts. However, as Stanford lecturer, research scholar on economic policy, and member of the State Budget Crisis Task Force David Crane **pointed out**, because the state shifted more pension obligations onto school districts, pensions are eating up the Proposition 30 funds.

Since CalSTRS, the teacher retirement fund, recently reported funds were well below investment goals, and officials project the fund could have **negative cash flow for fifteen years or more**, Proposition 55 education money likely would also go to help offset the pension shortfall.

Supporters of the ballot measure argue it is essential to keep schools from facing another economic crisis. Pointing to Governor Brown’s Department of Finance projections, they argue that the budget could take a \$4 billion hit in the 2019–2020 fiscal year, the year after Proposition 30 expires. Brown said the state could manage if Proposition 30 were not extended, and he has piled up a nearly \$7 billion fund for “rainy days.”

Governor Brown, who led the campaign for the temporary tax, when pressed on his position about the tax extension, verbally refers to the temporary status of Proposition 30 but there seems to be a metaphorical wink in his response. He said he would let the people decide. The Governor won’t be on the campaign trail reminding voters of his emphatic support for the *temporary* taxes just four years ago.

PERSONAL INCOME TAXES HAVE MADE GENERAL FUND REVENUES MORE VOLATILE AS IT’S SHARE OF TOTAL GENERAL FUND REVENUES HAS GROWN



Source: Legislative Analyst’s Office, Historical Data, State of California Revenues, 1960–61 to 2014–15

As of Tax Year 2013, tax filers making \$300,000 and more accounted for 56% of personal income tax liabilities in California

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Governor Brown won't object to additional revenues to meet the dramatically increased budgets during his tenure or the need for new revenue as a result of his own actions. He signed a new minimum wage law that his staff said will add \$4 billion a year to the state budget when fully implemented.

The politics of passing Proposition 55 fall heavily in favor of the proponents. They will have a lion's share of the campaign money. Close to \$70 million was spent in support of Proposition 30. A similar amount backing Proposition 55 is not unthinkable. The teachers' unions already put \$13 million into a campaign committee.

And there is no question business opposes the effort to extend the temporary tax. The California Chamber of Commerce and the National Federation of Independent Business/California have already come out in opposition to Proposition 55. Particularly significant is the case of CalChamber since it was neutral during the Proposition 30 campaign. The important question: will members of the business community raise big money to oppose the tax extension?

There is reason for business to be concerned about continuing the tax that applies to upper-income taxpayers. Many business owners pay their business taxes through their personal income taxes. In a recent survey done by the Los Angeles County Business Federation, the personal income tax was ranked first among concerns of the organization's members. In addition, business opponents of the tax cite a negative effect on the economy.

However, there seems to be little enthusiasm at this point for mounting an expensive campaign against a tax aimed at the rich that is already on the books and dedicated mainly to schools, a triple whammy that will be hard to overcome.

Op-eds and appearances on radio talk shows will have little impact against a multimillion-dollar campaign. The opposition's best hope is that the effort to continue a supposed temporary tax coupled with many other tax increases that will appear on state and local ballots might turn the electorate against the heavy tax increases and the income tax extension.

Should Proposition 55 pass, California will double down on its reliance on high-end taxpayers to fund its budget. California has traditionally had high income tax rates. The state experiences roller-coaster budget rides relying on top-income taxpayers and the ups-and-downs of their capital gains portfolios. Continuing the tax rates introduced by Proposition 30 will only magnify the crisis during a recession. Governor Brown, among others, warns this course will lead to huge budget shortfalls during down economic times. The wide disparity of revenue gains quoted by the state financial prognosticators tied to

Proposition 55 mentioned earlier is based on the expected wild swing in revenue from good economic times to bad.

State leaders recognize the problem California's tax structure presents of maintaining a steady revenue flow to government. State Senator Bob Hertzberg and State Controller Betty Yee are pushing efforts to consider reform in the state's tax system, relying less on taxing incomes and more on adjusting the tax system to parallel the state's economy.

But changing the tax system is hard and will be made more difficult if the current structure is cemented in place if Proposition 55 passes.

Joel Fox is president of the Small Business Action Committee, former president of the Howard Jarvis Taxpayers Association, and co-publisher/editor of *Fox&Hounds Daily*, named by the *Washington Post* as one of California's top political websites.



CALNOTES:

2016 PROPOSITION 55



In November 2012, voters passed Proposition 30, which temporarily increased income and sales taxes. With Proposition 30's expiration approaching, Proposition 55 would extend the income tax increases for another twelve years. Supported by the teachers' unions, Proposition 55 allocates 89 percent of the revenues to K-12 schools and the remaining 11 percent to community colleges. It also earmarks up to \$2 billion annually for health care. The Legislative Analyst's Office estimates suggest it will increase income tax revenues by between \$4 billion and \$9 billion, depending on economic health.

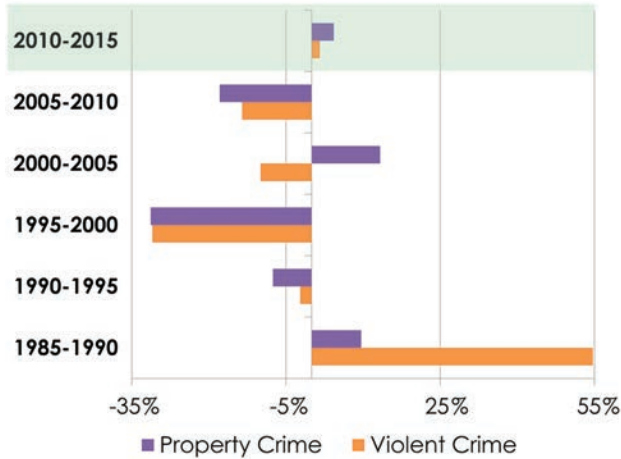
California, Criminal Justice, and Initiatives: Maintenance Is Harder to Sell Than a Crusade

By Kent Scheidegger

Democracy, Winston Churchill once said, is the worst form of government except for all the other forms that have ever been tried. In California, we carry that a step further: direct democracy is the worst form of democracy, except for the other kind. This has been particularly true in the area of criminal justice. The voters have made some significant



THE 2010 TO 2015 PERIOD IS THE FIRST TIME SINCE THE LATE 1980s WHERE BOTH VIOLENT AND PROPERTY CRIME HAVE EXPERIENCED A PERCENT INCREASE



Source: California State Attorney General's Office, Criminal Justice Statistics Center, Crimes and Clearances, All Counties, 1985 to 2015

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errors but, on the whole, they've done better than their elected representatives.

This November, the people will speak directly again, this time with three criminal justice initiatives. **PROPOSITION 66** would fix the problems with delays in capital punishment and carry out the appropriate sentence in the very worst murder cases. **PROPOSITION 62** would give up on justice and let even the worst murderers off with life in prison. A third initiative, **PROPOSITION 57**, would give a government agency nearly unlimited authority to let criminals out early, making the sentences imposed by courts almost meaningless.

Crime rates, sentencing policies, and public opinion have all gone through cycles since the 1960s, and these cycles depend on each other to a large extent.

Crime rose sharply from the mid-1960s to the early 1990s for multiple converging reasons, including the baby boom generation's entrance into its prime crime years, cultural changes that reduced respect for the law and personal responsibility, and reduced consequences for those who broke the law.

As Barry Latzer documents in *The Rise and Fall of Violent Crime in America*, the increase in crime produced further increases in crime in two ways: first, the lack of capacity in the system to deal with the increase produced reduced clearance rates, more plea bargains, and earlier releases from overcrowded prisons, all of which reduced both the deterrent and incapacitative

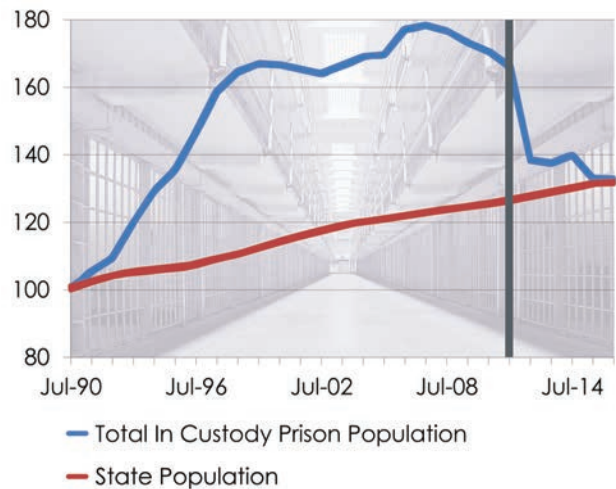
effects of punishment; second, there was a "contagion effect." Young people learn by imitation and are more likely to commit crimes when they see others around them committing crimes.

These horrific rates of crime had a severe and detrimental effect on the quality of life. Government failed dismally in its first duty—to protect people from violence—and fear of crime was both pervasive and justified.

In California, the State Legislature remained resistant to public demands, requiring the "tough on crime" advocates to turn to the initiative process. In 1978, **Proposition 7** instituted a stronger death penalty alternative to the watered-down version passed by the Legislature. Four years later, law-enforcement advocates successfully pushed for **Proposition 8**, providing five-year enhancements for repeat felons and abolishing the state search-and-seizure exclusionary rule, among other reforms. And in 1994, California passed the strictest "three strikes" law in the nation.

In 1992, the crime rate peaked and began to subside. While universally greeted as good news, the decline in crime following

PRISON POPULATION EXPLODED RELATIVE TO STATE POPULATION THROUGH THE 1990s/2000s, BUT SINCE 2011's REALIGNMENT, THE TWO POPULATIONS RELATIVE TO 1990 HAVE CONVERGED (100 = 1990)



Source: California Department of Corrections and Rehabilitation, Office of Research, Population Reports and California Department of Finance, Population Estimates

Since July 2010, California's state prisons have decreased from 184% of capacity to 135% of capacity.

FACTS ON THE ISSUE

the enactment of “tough on crime” measures touched off an intellectual panic. There was a flurry of activity to find some explanation, *any* explanation, for the decline other than the previously passed policies.

Some of these explanations were partially correct and some fanciful, but none did the job of proving that toughness did not make a major contribution to the decline. For example, it's undoubtedly true the aging of baby boomers was a contributing factor in the decline. However, the demographics thesis fell flat when the “baby boom echo” completely failed to produce its predicted crime increase.

As crime rates dropped to levels not seen in decades, the issue dropped off the political radar screen for most voters. Social activists concerned about the effect of high incarceration rates found an audience with fiscal conservatives concerned about the high cost of prisons. As cultural norms shifted on drug use, long sentences for drug offenses particularly fell out of favor.

The people of California saw the need for some modification of sentencing laws. In 2000, they approved [Proposition 36](#) under the banner of “treatment not jail” for low-level drug offenders. In 2004, and then again in 2012, the voters moderated California's “three strikes law.”

Meanwhile, the Legislature failed to expand prison capacity to keep pace with population growth, despite voter-approved bonds for that purpose, and prison overcrowding reached crisis proportions.

In 2011, Governor Brown's “[realignment](#)” [proposal](#) redefined felony punishment and pushed persons convicted for the lower tier of felonies into county jails instead of state prison, even for multiple-year sentences. County jails had previously housed only persons awaiting trial, misdemeanants sentenced to a year or less, and probationers serving a short jail term as a condition of probation. Because many county jails were already at capacity, this meant that many prisoners who would have been incarcerated were released.

Unsurprisingly to the “tough on crime” community, property crime spiked in 2012—the program's first full year. While the nation as a whole enjoyed a slight drop in property crime, California suffered a 7 percent increase. The cry immediately went up from soft-sentencing advocates that a single year's numbers were not meaningful, and they claimed vindication when the rates subsided in the next two years. But there was no cause for celebration. The declines in 2013 and 2014 were part of the continuing nationwide trend. California's property

crime rates remained over 5 percent higher relative to the nation than they had been in 2011.

In 2014, an even more audacious reduction in sentencing was sold to Californians under the guide of [Proposition 47](#). It redefined a broad swath of felonies as misdemeanors, punishable by a maximum of a year in county jail, regardless of how many times the miscreant has repeated. For example, stealing an automobile worth less than \$950 is now only a misdemeanor even though it imposes an enormous hardship on an owner of modest means and the measure effectively legalized shoplifting under the \$950 threshold, as many storeowners no longer bother to report such thefts and police do little or nothing when they are reported.

Again, unsurprisingly, crime in California is up across the board for 2015, the first year of the combined effects of realignment and Proposition 47. The rate for auto theft jumped a staggering 12.5 percent in a single year. For other kinds of theft, it jumped 10.7 percent.

How did California stray so far, that an initiative that would so predictably and detrimentally impact public safety could be approved by the voters?

In part, the “tough on crime” movement has been a political victim of its own success. With crime rates down to levels not seen since the 1960s, deep-pocketed donors willing to contribute to maintain that success are harder to come by. Californians today are more easily persuaded that crime is not a serious problem—and not worth the tax dollars being spent to keep it low. Maintenance is harder to sell than a crusade. Whether this is a short-term glitch or a long-term trend will be tested this November.

Unsatisfied with the number of criminals he has already unleashed on the public, Governor Brown now proposes to give the California Department of Corrections and Rehabilitation (CDCR) breathtakingly sweeping powers to release criminals long before they have finished their sentences. This power could be exercised any time budgets or court orders make it inconvenient for the Department to carry out its duty of enforcing judgments.

Proposition 57 would make every felon convicted of a supposedly “nonviolent” offense eligible for parole after finishing the base term for just one of the sentencing offenses. However, “nonviolent” is not defined. We'll have to pass the initiative to find out which crimes it applies to.

And it gets worse. Additional sentences for additional crimes, imposed as part of the same sentence, could be wiped out by



the parole board. Time served for twelve offenses could be the same as the time for one offense. Enhancements imposed for prior offenses could similarly be wiped out, so the prisoner in for the twelfth offense could get out with no more time than a first offender.

The CDCR will also enjoy a constitutional authority, not subject to Legislative or judicial oversight, to grant credits against sentences without any limitations on the amounts of such credits or the requirements to earn them. If the Department comes under pressure to reduce its population, it could simply hand out credits like Halloween candy. Unlike the parole provision, the credit provision is not limited to nonviolent offenders. Rapists and murderers could be granted these credits.

California has already gone too far down the road of letting criminals off easy. We should go no further. Let us hope that California's voters fully understand the nature of this initiative and exercise the common sense that they have shown in the past.

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CALNOTES:
2016 PROPOSITION 66



The second death penalty-related initiative, Proposition 66 would reform California's death penalty, streamlining the appeals and petitions process for death penalty convictions and sentences. Fiscal estimates remain uncertain, but likely include short-term cost increases with long-term cost savings to the state and local governments. Proponents argue that the death penalty remains an effective punishment, but the current appeals process unnecessarily delays justice and costs taxpayers. Opponents note that the death penalty would still cost taxpayers more relative to life in prison and mistaken convictions are still too common.

CALNOTES:
2016 PROPOSITION 62



The first of two death penalty-related initiatives on the November 2016 ballot, Proposition 62 would retroactively repeal California's death penalty, replacing it with life in prison without parole. It is estimated this would save the state and local governments around \$150 million per year. Proponents note that because of court decisions, no one has actually been executed in California in the last ten years. Opponents, however, contend that the system needs reform, not repeal, and the death penalty should remain a punishment option for the state's worst murderers.

CALNOTES:
2016 PROPOSITION 57



Proposition 57, supported by Governor Jerry Brown, would reform the parole process for felons convicted of nonviolent crimes and empower judges to decide whether juveniles should be tried as adults. Net savings to the state could range from the tens of millions to the low hundreds of millions because of reductions in the prison population. However, counties could see a significant net cost increase due to implementation costs. Opponents argue the measure is sloppily written, ultimately resulting in violent felons receiving early parole.

EUREKA

ABOUT THE PUBLICATION

Eureka was created to serve as an occasional discussion of the policy, political and economic issues confronting California. Like the Golden State motto from which this forum's title was borrowed, the goal here is one of discovery—identifying underlying problems and offering reasonable and common-sense reforms for America's great nation-state.

Ever since Archimedes supposedly first uttered the word, *eureka* has meant joy, satisfaction and a sense of accomplishment. Drawing on the combined wisdom of Hoover's policy experts and leading California thinkers, we hope that you'll find enlightenment in these pages. Hoover research fellow Bill Whalen, who has nearly two decades of experience in California politics and public policy, serves as this forum's editor.

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