



PETE RATES THE PROPOSITIONS

Sensible opinions on the California ballot propositions since 1980 by Pete Stahl

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Pete recommends:

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My Semi-Biennial Lecture on Bonds

Proposition 51: School Construction Bonds – YES

SUMMARY: For the past several decades the state has issued bonds to fund construction and renovation of public schools and community colleges. Money from the last bond (2006) is running out. We must provide more for a growing population and aging facilities. Gov. Brown has legitimate [objections](#) regarding the allocation process, but Prop 51 is still needed now.

DETAILS: See *My Semi-biennial Lecture on Bonds*, at the end of this document, for my opinion of bonds in general.

Once upon a time, public school and community college districts could build and renovate their buildings using local revenues. But Prop 13 of 1978 severely constrained those revenues, so the districts need help. State bonds now pay for

about 30% of construction and renovation for schools and community colleges.

The last state bond, worth \$10 billion, was approved [in 2006](#). That money is now running out. Prop 51 will replenish the supply, adding a fresh \$9 billion. Of that total, \$3 billion will be used to build new K-12 (kindergarten through twelfth grade) buildings; \$3 billion to renovate existing K-12 buildings; and \$2 billion to build, renovate and equip community colleges. The remaining \$1 billion will fund buildings for public technical education schools and charter schools.

Normally I consider measures like this a slam-dunk “yes” vote, for all the reasons I cite in *My Semi-Biennial Lecture on Bonds*. Those reasons are still valid, but there’s a new twist.

An important [2012 report](#) from the [Center for Cities and Schools](#) at UC Berkeley points out a number of troubling aspects of the administration of school bonds. Specifically, the report found **serious inequities** in the allocation of funding from previous bonds, **favoring large and wealthy districts** over smaller and poorer ones. This indirectly led to a [class-action lawsuit](#) against the state, settled in 2004 for \$800 million, alleging "...that tens of thousands of students, most of whom were low-income and nonwhite, were being deprived of basic educational opportunities by attending schools in 'slum conditions.'"

The Berkeley report also faults California for failing to maintain an **inventory** of school facilities, which would enable it to find districts most in need of bond funding. Instead, the state evaluates applications **as it receives them**, making funding decisions without understanding the total need or priorities statewide.

The Berkeley report convinced Gov. Brown that the allocation process must be corrected. But Prop 51 does **not** change the process; it's essentially a rerun of the 2006 bond measure. For this and other reasons, the Governor **opposes** Prop 51. The Governor's opposition effectively prevented

the Legislature from adding this measure to the ballot; instead a coalition of [construction industry](#) and [school district](#) officials had to gather signatures to qualify it as an initiative.

I hear you ask: If the allocation system is so unfair and funding decisions are made in a vacuum, why does Pete **support** Prop 51?

Here's why: A vote against Prop 51 is first and foremost a vote **against public education**. You may mean, "yes on schools but no on the allocation process," but that won't be the effect. The effect will be to starve schools of construction and renovation funds, and to subject students to overcrowded classrooms, crumbling buildings, and inadequate facilities.

If we defeat this bond, there's **no guarantee** we'll see another in 2018 that corrects the flawed allocation system. Certainly it's possible; if you believe the Governor and Legislature can give us a better solution at the next election, by all means vote against Prop 51 now, then vote for its corrected replacement later. But be aware that powerful interests have a stake in the current system; that's political reality.

Sometimes voting requires us to choose an imperfect solution over one that would be even worse. You may have heard the contest for U. S. President described in those terms. Prop 51 is another case in point.

Proposition 52: Permanently Extend Medi-Cal Hospital Fee -- NO

SUMMARY: Permanently enshrines an accounting gimmick to squeeze \$4.4 billion a year out of Washington. In practical terms, Prop 52 prevents the Legislature and Governor from temporarily cutting Medi-Cal funding during an extreme budget crisis. That would limit our flexibility when we need it most.

DETAILS: In 2009 a coalition of private hospitals [proposed](#) a complex [accounting scheme](#) that would net **billions of federal dollars** for [Medi-Cal](#), the provider of health care services for California's low-income families, seniors, disabled, and others. The Legislature quickly agreed to the scheme, and has eagerly renewed it four times this decade.

However, in 2011, at the height of the recession, the Legislature made a **one-time change** to the terms of the scheme in order to resolve a [monumental budget crisis](#). To bridge that year's **\$16 billion gap**, the Governor and Legislature cut billions in spending wherever they could: welfare, public universities, redevelopment agencies, and, yes, even Medi-Cal.

As a result, in 2011 private hospitals collectively received some **\$500 million less** than they were expecting. Understandably, this pissed them off. In order to ensure they're never shortchanged again, they qualified Prop 52 for your ballot. Prop 52 will **prevent** the Legislature from **altering**

the terms of the Medi-Cal scheme again, preserving the private hospitals' original portion of the federal dollars regardless of how badly they're needed elsewhere.

Now, I agree that Medi-Cal is a very important program. In ordinary years, and even in most bad ones, it deserves all the billions it receives. But 2011 was a horrible nightmare; every program suffered. Should Medi-Cal have been included in the spending cuts? **Absolutely!** The 2011 spending cuts were very painful, but at least they were **spread equitably**. Now, if another extreme budget crisis occurs, the [hospitals](#) and [healthcare organizations backing](#) Prop 52 want us to **protect** their program from cuts. That would leave other critical programs vulnerable to **even deeper cuts** to compensate for Medi-Cal's exclusion.

Bear in mind that the Legislature has repeatedly demonstrated its desire to **renew** the accounting scheme on the original terms. They know it's a sweet deal for public hospitals, private hospitals, Medi-Cal clients, and the state. If Prop 52 were to fail, **of course** Sacramento will extend it again and again, barring another budget catastrophe.

That catastrophe is less likely since [Prop 2](#) (2014) strengthened the state's "rainy day fund." But if it does occur, I want **all options** to be available to the Governor and Legislature. Prop 52 would take Medi-Cal off the table at a time when we may need **all** programs to pitch in. That's not fair, and it's not wise budget policy.

Proposition 53: Voter Approval of Revenue Bonds -- NO

SUMMARY: Requires voters to approve all revenue bonds in excess of \$2 billion, even though these cost the state nothing. Promotes ballot bloat, and could jeopardize critically needed infrastructure projects. Bleh.

DETAILS: There are seventeen state propositions on this ballot. Do you wish there were **more**? Then Prop 53 is for you! Prop 53 will require a **new ballot proposition** every time the state wants to issue revenue bonds in excess of \$2 billion.

There are two main types of bonds: general obligation (GO) and revenue (sorry, no acronym). Both are long-term loans paid off by the state.

GO bonds are paid from the General Fund, the state's **\$120 billion** main budget. GO bonds must be approved by voters, with good reason. As I write in *My Semi-Biennial Lecture on Bonds*, when we vote on a GO bond, we're really voting on whether to add the expense to the General Fund for the next few decades. That's a choice with consequences: General Fund money could be used instead for health and human services, criminal justice, natural resources, or even to reduce taxes. So it's eminently sensible to require ballot propositions for GO bonds. (**Prop 51** is a GO bond.)

Revenue bonds, on the other hand, are paid off by income generated by the projects they fund. Revenue bonds for

bridges are paid off by bridge tolls; bonds for water systems by water bills; and bonds for power plants by utility bills. In a sense, revenue bonds are "self-retiring;" they generate enough revenue to pay off the bonds without affecting the General Fund at all. Revenue bond projects don't compete with other government programs the way GO bond projects do. For this reason, I don't see any point in asking voters to approve revenue bonds, even large ones, as Prop 53 would require.

"What would be the harm of Prop 53?" you ask. Really? What could be the harm of more ballot propositions? Here's harm: multi-million dollar campaigns of **half-truths** and **distortions**. Voters afraid of **nonexistent threats** to their favorite government programs (I see a crying child in a TV ad). Voters goaded into **slamming** the other part of the state (I see much-needed BART extensions derailed by LA voters and crucial Southland water systems torpedoed by Bay Area voters). It's not a pretty picture.

If the **proponent** of Prop 53 objects to a particular project (**he does**), then he ought to sponsor a referendum on that project or hire lobbyists in Sacramento. Prop 53 is like using a flamethrower to swat a fly: it may be effective, but you know there will be collateral damage and unintended consequences.

Proposition 54: 72-hour Legislation Review Period -- YES

SUMMARY: Requires bills in the Legislature to be posted online for 72 hours before they can be passed. Requires all of the Legislature's public meetings to be recorded

and available online within 24 hours. Pours a much-needed dose of bright sunshine on the Capitol.

DETAILS:

Here comes the sun, here comes the sun,
And I say it's all right

Little voter, too often laws are **made in secret**
Little voter, we need three days to see them well
Here comes the sun, here comes the sun
And I say it's all right

Little voter, let's stop the Legislature's scheming
Little voter, last-minute-change, **gut-and-amend**
Here comes the sun, here comes the sun
And I say it's all right

Sun, sun, sun, here it comes
Sun, sun, sun, here it comes
Sun, sun, sun, here it comes

Little voter, committee meetings should be open
Little voter, Prop 54 will make them clear
Here comes the sun, here comes the sun
And I say it's all right
It's all right

Proposition 55: Continue Tax on Incomes Over \$263,000 -- YES

SUMMARY: Renews the top income tax brackets for The One Percent that were enacted by Prop 30 in 2012. Allows that measure's sales tax increase to expire. The income tax revenue from Prop 30 has been critical to our state's recovery, but we're not out of the woods yet: California still ranks at or near the bottom in per-capita education and healthcare spending. Prop 55 is a concrete step you can take to attack income inequality.

DETAILS: Four years ago, in a spasm of civic-mindedness, Californians passed Prop 30. That measure bailed the state out of the worst fiscal mess in our lifetimes by jacking up the sales tax and increasing the income tax on incomes over \$250,000. As a result, we are well on our way back to fiscal health. Per-student school spending is almost back to its pre-recession levels. The state's "rainy day fund" is prepared for the next low-revenue year. Yay!

Prop 30's quarter-cent sales tax increase will expire at the end of this year, leaving the state about \$1.5 billion poorer. There is no proposal to renew it, and that's fine by me. Sales taxes are regressive, hitting poor people much harder than the well-off. Sales taxes should be kept low whenever possible.

Prop 30's income tax brackets will remain in effect until 2018, but when they expire, they'll leave a **much bigger hole: \$6.7 billion** if current trends hold. Prop 55 will **renew** the

income tax brackets for another 12 years, until 2030. We can decide then whether to drop them, temporarily re-extend them, or make them permanent.

After indexing for inflation, the income tax brackets in question now start at \$263,000, \$316,000, and \$526,000. (All numbers are "single filer." Multiply by two for "filing jointly.") These brackets start so high that they apply only to the **top one percent** of earners. Yet they bring in all those billions. If you care about rising income inequality, then Prop 55 is a golden opportunity to start to put things right.

Incidentally, when Prop 30 was put before voters four years ago, one of the most strident **arguments against it** was that it would "hurt small businesses and kill jobs." I **haven't noticed** that happening. Have you? Undaunted, opponents of Prop 55 have trotted out the **same, tired argument** this time. I realize actual facts have ceased to matter in politics, but come on guys, give it a break.

As with all General Fund revenue streams, over half of the Prop 30 income tax revenue is spent on education, the vast majority for K-12 schools. Per-student spending under Prop 30 **has risen** from an embarrassing low of \$7,500 in 2011 to \$10,500 this year. Even so, California still **ranks** well below average nationally. If the Prop 30 income tax brackets are allowed to expire, our schools will drop even further behind. Who wants to see that happen?

Proposition 56: Increase Cigarette Tax -- YES

SUMMARY: Prop 56 will impose a new, two-dollar-a-pack tax on tobacco products (including e-cigarettes), and dedicate the money—about \$1.4 billion a year—to Medi-Cal and various anti-tobacco programs. This is budgeting by ballot box, which I hate. Nevertheless, increasing the cigarette tax will reduce smoking, prevent many teens from becoming addicted, and temper the rise in statewide healthcare costs. So I'm reluctantly supporting Prop 56.

DETAILS: My support for Prop 56 is not without reservations. My regular readers will see why I'm so torn: This measure pits two of my rules against each other.

The first rule is, "Never vote for a measure that **permanently commits state money** to a program. It distorts budget priorities and straitjackets the state, preventing it from shifting money to address urgent needs as they arise. Budgeting by ballot box gives me hives."

Prop 56 will raise the cigarette tax by \$2.00 a pack, generating about \$1.4 billion a year for the state. You'd think this will be a **bonanza** for the General Fund, enabling legislators to address important issues like the mountain of pension obligations or skyrocketing tuition at public universities. You'd be **wrong**. The new revenue will **bypass** the General Fund, and instead be **permanently dedicated** to Medi-Cal (an estimated \$850 million) and several state programs for medical research and smoking prevention. What Prop 56

bringeth into state coffers with one hand it spendeth with the other.

I generally oppose propositions that wall off revenue streams. For example, in 2004 I was against Prop 63, which established a new top-tier income tax bracket and funneled all of the proceeds--on the order of \$1 billion a year--into mental health services. While I firmly support these services, I cannot support a funding model that, in essence, elevates the priority of the protected program above everything else in the state, including law enforcement, environment, and education. Prop 56 is exactly such a proposal. I'm itching already.

Now that I've got you ready to swat Prop 56, it's time for my second rule: "Never vote down a measure because of what it **won't** do. Instead, look at what it **will** do, and decide whether that's a change for the better."

What have I described above? What Prop 56 **won't** do. It won't allow its billions to address urgent state problems like pension debt and student fees. But as maddening as that may be, it's **not sufficient reason** to vote against Prop 56.

So let's look at what Prop 56 **will** do. Raising the price of cigarettes **will** reduce smoking and addiction, especially among teenagers, who are the most at risk both socially and **biologically**. Less smoking means fewer of us will be exposed to harmful secondhand smoke. I would love to tax cigarettes into oblivion, and Prop 56 will be a big step in that

direction.

The state budget **will** reap benefits from the reduced rate of smoking. Fewer smoking-related illnesses will decrease the burden on Medi-Cal by billions of dollars annually. Fewer work days will be lost to tobacco-related conditions, increasing productivity. Health insurance for state employees will become cheaper than it would otherwise be.

The tobacco tax increase in Prop 56 **will** have positive impact on California regardless of what we do with the money, even if we plow it into a hillside or launch it into space. Indeed, I supported earlier tobacco tax proposals Prop 86 (2006) and [Prop 29](#) (2012) using exactly that rationale.

Prop 86 failed in the face of a withering, \$66 million onslaught from tobacco companies, and Prop 29 lost (by a [mere 0.4%](#)) after a [\\$45 million](#) tobacco company blitz. This time, opponents of Prop 56 have amassed [\\$56 million](#) (as of Sept. 22). But the [health providers](#) that stand to get larger Medi-Cal reimbursements if Prop 56 passes have raised \$19 million in its support. Looks like we're in for a good, old-fashioned media saturation campaign. Yee haw.

So now comes the moment of truth. We must resolve the conflict between my two rules. By the first rule, Prop 56 is **hideous** because it permanently earmarks all of the money it collects for special programs, and prohibits the state from using those billions for things we might need more urgently. Yet by the second rule, Prop 56 is **wonderful** because it will reduce the amount that people smoke, prevent many young people from ever starting, and improve health throughout the state.

To decide, let's consider whether voting down Prop 56

might actually address any of our complaints. If Prop 56 fails, could the Legislature raise cigarette taxes to help resolve urgent issues? Here's a hint: over the past 23 years, in budget crisis after budget crisis, the Legislature has **not once** raised the cigarette tax. And since 1959 they have raised it **just two cents** a pack. All other increases have come via voter initiatives. It seems our legislators are so **cowed** by the tobacco lobby that they are **politically incapable** of raising this tax themselves. Prop 56 is our only way to increase the tobacco tax. Any visions we may have of the Legislature hiking the tobacco tax on its own are just pipedreams. It could never happen.

Because there is essentially no hope of directing an increased tobacco tax into the General Fund, the arguments against Prop 56 crumble. Sure, it's budgeting by ballot box. But this measure is the **only way** to increase the cigarette tax. There is no fallback.

It has now been 18 years since California's 87 cents per-pack tobacco tax was last touched. Because it's a per-pack excise tax, not a per-dollar sales tax, we must periodically adjust it for inflation or else it will dwindle into uselessness. Our 87-cent tax is now [far lower](#) than it is in supposedly tax-averse states like Texas (\$1.41), New Hampshire (\$1.78), and Arizona (\$2.00). Among our blue-state peers we fare even worse: Washington (\$3.02) collects over three times as much per pack as we do, Massachusetts (\$3.51) four times, and New York (\$4.35) a whopping five times. It's high time we followed suit, if only for the public health benefit. California is not a tobacco state. Let's stop behaving like one.

Proposition 57: Parole and Juvenile Justice Reform -- YES

SUMMARY: Requires that juvenile court judges, not prosecutors, decide whether to try 14-year-olds as adults, reversing the worst aspect of the awful Prop 21 (2000). Reduces prison overcrowding two ways: Allows prisoners convicted of nonviolent felonies to be considered for parole after serving the sentence for their primary offense, and allows more sentence-shortening credits to more prisoners for good behavior, education and rehabilitation. These are sensible, safe updates to our criminal justice system.

DETAILS: In 2000 voters passed [Prop 21](#), a reckless and unnecessary attempt to "get tough" on juvenile crime. Because of Prop 21, prosecutors can now decide to try **14-year-olds** accused of [various offenses](#) directly in **adult court**. District attorneys are not the right ones to decide this. They are subject to political pressure to maximize convictions. The temptation to use "direct file" to charge juveniles as adults is **too great**, and the data bear this out. As the [Center on Juvenile and Criminal Justice](#) reports,

"The data shows that prosecutors are increasingly charging youth in adult courts despite plummeting youth crime. Though California experienced a 55 percent drop in youth felony arrests, direct files increased 23 percent per capita from 2003 to 2014. These opposing trends suggest that

there is no clear relationship between serious crime and the use of direct file."

There's much more, including the disparate impact of Prop 21 on youth of color, in a [comprehensive joint report](#) from the [Burns Institute](#), [CJ CJ](#), and [National Center for Youth Law](#).

Prop 57 will place the decision to try accused youth as adults back with the **juvenile court judges**, where it belongs. To me that's **sufficient reason** to support Prop 57. But there's more.

In 2011, California's prisons were so horrendously **overcrowded** that federal courts deemed the conditions **cruel**, as in the "cruel and unusual punishments" clause of the Eighth Amendment. [Those courts](#) ordered the release of more than 30,000 inmates. The state has complied by transferring thousands of nonviolent felons from state prisons to county jails ("realignment"), in turn pushing many low-level offenders out of the county jails through early release. And, under court order, the state has made several thousand nonviolent felons [eligible for parole](#) before their sentences are complete, further easing overcrowding.

Prop 57 will formalize this early parole program, and extend it to another 1,000 to 1,500 prisoners per year. Under

Prop 57, inmates will become eligible for parole when they complete the sentence for their “primary offense” -- that is, the actual crime, without enhanced sentencing for things like gang involvement or prior convictions.

Note that early release must continue regardless of whether we pass Prop 57. As [Gov. Brown](#), a former Attorney General, explains,

“Eighty percent of what Proposition 57 does is being done right now under the force of a court order. It is backed up by the United States Supreme Court and which we cannot change unless they say our remedy, in this case Proposition 57, is durable and serves the end of justice.”

Note too that **parole eligibility** does not imply **parole**. Each inmate must appear before the Board of Parole Hearings to determine suitability for release; only [slightly more than half](#) pass. Truly dangerous criminals with a history of poor behavior will not be released early under this measure. But those inmates with automatic sentence enhancements they may not have deserved will get a welcome chance at early release. Remember, those enhancements are added by **inflexible sentencing laws** that were created by grandstand-

Proposition 58: Allow Bilingual Education -- YES

SUMMARY: Repeals a misguided 1998 law that drastically reduced bilingual education for the 2.7 million English-learner students in California. Bilingual education is just as good as other teaching methods for these students; possibly better.

DETAILS: In 1998 voters passed [Prop 227](#), which severely restricted use of bilingual education for English language learners. Instead, schools were to use Sheltered Immersion, English as a Second Language, or regular classes.

I thought Prop 227 was a **bad idea** then, and I think it’s a bad idea now. Please [read my rating](#) to see why. In essence, because research showed bilingual education was **just as good** as any other teaching method, voters had no basis to eliminate it. All Prop 227 did was limit school districts’ options.

Since then, there are [new research findings](#) supporting bilingual education as an effective teaching method for English language learners. For instance, a [2004 research report](#) for ASCD (originally the Association for Supervision and Curriculum Development) concludes,

“Well-designed and carefully implemented bilingual education programs can have a **significant positive effect**

ing politicians in a bygone era of **get-tough-on-crime hysteria**. Inevitably some inmates with enhanced sentences are unintended targets. It’s high time we started correcting those excesses.

Prop 57 will also allow inmates to earn credits for good behavior, education and rehabilitation, further reducing their time in prison. As the [San Francisco Chronicle](#) reports,

“Most current prisoners will eventually be freed, and ‘it’s better if they earn their way out earlier,’ [Gov. Jerry] Brown said. While about half the prisoners released after completing their fixed terms wind up back behind bars for a new crime or parole violation, he said, only a small fraction of those cleared for release by the parole board return to prison.”

The **main knock** against Prop 57 is that it’s sloppily written, with too narrow a definition of what constitutes a violent crime. I disagree. But even if it were true, the Legislature can amend Prop 57 to correct any holes. And the Board of Parole Hearings isn’t required to release any prisoners; in fact, it must deny parole to anyone who presents a danger to society. That’s the ultimate backstop.

on student achievement both in English literacy and in other academic core courses when compared to English immersion.”

And a 2008 article in the [Educational Research Newsletter](#) proclaims,

“The research is quite clear that when it comes to what is the most effective approach for teaching [English language learners], **bilingual education gets the best results**.”

That’s based on a [2008 article](#) by [Claude Goldenberg](#) of Stanford, who warns,

“state policies, such as in California ... that block use of the primary language and limit instructional modifications for English learners are simply not based on the best scientific evidence available. Moreover, these policies make educators’ jobs more difficult, which is unconscionable under any circumstance, but especially egregious in light of the increased accountability pressures they and their students face.”

In other words, Prop 227 is based on nothing and is causing real damage to our educational system. In Prop 58, we have the opportunity to right this wrong. Let’s do it.

Proposition 59: Register Disapproval of “Citizens United” -- YES

SUMMARY: Asks our Legislature to propose and/or ratify an amendment to the U. S. Constitution to overturn *Citizens United*, the case that allowed unlimited corporate spending on political campaigns. This measure won't actually accomplish anything, but it will make our voices heard.

DETAILS: This one's kind of silly. Yes, I agree that the *Citizens United* decision was an abomination. Corporations are not people, no matter what [Mitt Romney says](#). Allowing them to have outsize political influence perverts our system of government of, by, and for the people. I would love to see the decision overturned so Congress can implement reasonable campaign contribution and spending limits. Heck,

maybe it would even open the door to true [public campaign financing](#), which I'd love to see.

So go ahead and vote for Prop 59 if it makes you happy. Just don't expect anything real to come out of it. Constitutional amendments require passage by 38 state legislatures. That means at least 18 Republican-controlled statehouses would have to break with [party orthodoxy](#). If you think that'll happen anytime soon, you're more naive than you look.

If you want to overturn *Citizens United*, a more practical strategy is to elect a candidate for U. S. President who will appoint Supreme Court justices hostile to the legal theory behind the decision. I don't have to tell you which candidate that is.

Proposition 60: Condoms in Porn Videos -- NO

SUMMARY: Workplace safety regulations already require adult film performers to use condoms, but there's virtually no enforcement. Prop 60 would encourage compliance by increasing fines, allowing any Californian to report a violation, and in some cases awarding the reporter 25% of the fine as a bounty. The measure would require porn producers to provide medical exams and vaccines to performers, and would extend fines to distributors and talent agents. This proposition is overkill. Prop 60 will only drive the industry back underground, placing performers at greater risk than they are today.

DETAILS: I was going to write a snarky poem about Prop 60. You know, something like this:

Said the porn star, “My work is perfection;
“No need to require protection.
“I'm tested quite often.
“Plus, condoms would soften
“Demand for my giant e- ... er ... midsection?”

As I say, I **was** going to write something like that. But I didn't. Because when I looked into Prop 60, I discovered a genuine workplace safety issue. So I'll find another proposition to satirize in verse, and handle Prop 60 as usual.

The California Occupational Safety and Health Administration (Cal/OSHA) is tasked with ensuring workplace safety. Cal/OSHA writes and enforces regulations for workers in all industries, from agriculture and construction to healthcare and motion pictures. Under existing regulations, adult-film actors are [already required to wear condoms](#). It's for the same reason [dental hygienists](#) are required to wear gloves: to prevent transmission of dangerous pathogens in the workplace. On top of that, there is also a [local law](#) that requires condoms in explicit films made in **Los Angeles County**, home to most of the adult movie industry.

Prop 60 will tack on **additional regulations** for licensing, filming, paid medical services, and reporting of violations.

If federal, state and county regulations are **already in place**, why would we need Prop 60? You could argue we need it because current regulations **aren't being enforced**. Cal/OSHA can't be everywhere, so it focuses regular inspections on “high hazard industries” such as manufacturing and construction, and depends on workers in other industries to [file complaints](#). Porn actors are understandably **hesitant** to file such complaints because of fears they'd never be hired again (despite laws against [employer retaliation](#)).

Prop 60 will allow **anyone** in California to file a complaint against an adult film producer for lack of condom use. Cal/OSHA will conduct an inspection, and the onus will be on the producer to prove that condoms were actually used. Fines, which are currently on the order of **\$10,000** per violation, would be as high as \$70,000. If Cal/OSHA fails to respond to the complaint within 21 days, **the filer may sue** the producer directly. If successful, the filer will be awarded legal costs **plus 25% of the fine as a bounty**.

Prop 60 expands the pool of liability to include **distributors** as well as producers. Fines on distributors will be as high as 150% of the cost of production. Also, **talent agencies** that knowingly refer actors to noncompliant producers could be forced to surrender their referral fees to the affected actor(s), along with any (presumably far greater) legal fees. And Prop 60 will require adult film producers to **pay for medical examinations, testing and vaccinations** against sexually-transmitted diseases for performers. Failure to do so could cost up to \$70,000.

Proponents believe that passage of Prop 60 will usher in an era of better treatment of workers, reduced infection rates, and positive modeling of healthy behaviors in adult films. **I'm not buying it**. Here's what I think will happen if Prop 60 passes:

Producers will be faced with **large new costs** of compliance, from medical examinations and vaccinations to record-keeping and license fees. And they'll be forced to produce (in their eyes) an **inferior product** (i.e., pornography with condoms), that will fetch **less money** in the market. Perhaps some producers have deep pockets and fat profit margins;

they can absorb these financial blows. But most don't. They'll have to hang up their cameras, or else they'll **go underground**.

Going underground can mean abandoning **all worker protections**, potentially including the **regular testing** used in the porn industry today (even if it doesn't meet **OSHA standards**). Going underground can also mean filming in secret, hiding from authorities, and perhaps moving out of state or country, depriving California of tens of millions of dollars in tax revenue.

Think of how today's recreational marijuana growers

behave: **hiding from authorities**, militia-style **defense systems**, secret distribution networks, complete avoidance of regulation and taxes. This is where adult films were decades ago, and where they might return if Prop 60 passes. As actor **Dale Cooper** said about the similar LA County Measure B, this "is a drug war-esque piece of legislation whose enactment will do little to bring about its stated goals."

I might be tempted to support Prop 60 if there were an outcry of injustice and mistreatment from performers. **But there isn't**. Failing that, I'm hard-pressed to see the benefit of this initiative.

Proposition 61: Limit Prescription Drug Prices Paid by State -- NO

SUMMARY: A feeble attempt to contain prescription drug costs by mandating that state agencies pay no more for drugs than the Dept. of Veterans Affairs. The state cannot force drug companies to play along, however. Of course they won't, rendering this measure utterly worthless.

DETAILS: Imagine you're head of procurement for **Veloci-Rations**, a regional food delivery service. It's time to purchase ten refrigerated cargo vans. You must buy Ford vans, because Veloci-Rations has a big investment in Ford replacement parts and service know-how. You want the best deal, but in the end you'll have to pay **whatever Ford charges**, because there is no alternative source. Ford's sticker price is \$95,000 per van, but that's baloney. You offer \$40,000, settle on \$50,000, and walk away happy.

The next day you read in the *Cuisine Courier Cold Press* that Amazon's nationwide **Amazon Fresh** service just purchased 100 of the same Ford vans for \$25,000 each. That's **far less** than you paid. Uh oh: your boss saw the same article, and is walking toward your office. What are you gonna do?

Your boss arrives, but instead of chewing you out, surprises you with a crazy idea: To avoid being gouged again, from now on Veloci-Rations will **refuse** to pay Ford **more than what Amazon pays**. It will be official Veloci-Rations policy, no exceptions, written into the articles of incorporation. Ford will just have to live with it.

How will this story play out? Will Ford agree to sell vans to Veloci-Rations at Amazon's price? If not, can Veloci-Rations survive without Ford vans? What if Amazon stops disclosing the price it pays? Before you read on, try to come up with the most likely Act III. Feel free to cast Scarlett Johansson and Chris Pratt in the lead roles.

Prop 61 proposes **exactly** the Veloci-Rations policy, but for prescription drugs. Veloci-Rations is the **State of California**; the vans are **prescription drugs**; Ford is the **drug companies**; and Amazon is the enormous **U. S. Department of Veterans Affairs** (the VA). Put it together, and it comes out like this: Prop 61 will require that California pay drug companies no more than the VA for a given drug.

Now, when you wrote the final act of our little drama, I bet you had Ford telling Veloci-Rations to **get lost**. Ford is under no obligation to honor Veloci-Rations's internal company rules, and doesn't much care whether Veloci-Rations lives or dies. (I cast Jack Nicholson as the heartless Ford

salesman.) Similarly, drug manufacturers and wholesalers have no obligation to give California the VA price, and they have no responsibility for California patients. Other than the size of our patient base, we have **no leverage**. The drug companies **do not have to comply** with Prop 61.

Prop 61 does not specify what should happen if a drug company **flat-out refuses** to sell a medication to California at the VA price. I'm pretty sure it would not be, "No deal, no drugs, patients die" (although that would be an intriguing movie plot twist). Federal law requires the state to provide drugs to patients in order to protect their health. The **Legislative Analyst** speculates that California "might have to **disregard the measure's price limits** and pay for prescription drugs regardless of whether manufacturers offer their drugs at or below VA prices."

In other words, if a drug company refuses to cooperate, **Prop 61 can be ignored**. And if that happens once, then the dominoes will fall. Soon **all** drug suppliers will refuse to play along, and Prop 61 will become **100% worthless**. Worse than worthless, in fact, because the provisions of this **zombie law**, still nominally in effect, will impose a new set of **bureaucratic hoops** to jump through for the state to procure **any** prescription drugs. (Hmmm. Zombies jumping through hoops. "The Circus of the Undead." Direct-to-video, I'd say.)

I won't go into the other shortcomings of Prop 61, such as the **secret drug pricing agreements** that make it impossible to know what the VA actually pays. Or the **self-defeating exclusion** of millions of Medi-Cal managed-care patients, drastically reducing the state's leverage. These shortcomings **don't matter** because the sellers will never let Prop 61 become effective.

I hate having to oppose Prop 61. It means being on the same side as the detestable **Martin "Daraprim" Shkreli** of Turing Pharmaceuticals, the abominable **Heather "EpiPen" Bresch** of Mylan Pharmaceuticals, and all the avaricious drug manufacturers that have poured over \$80 million into this campaign. I desperately want to do something about price gouging and profiteering in this industry.

But I'm not desperate enough to vote for a dumb idea that's certain to fail. Let's work on policies with promise, such as **greater FDA involvement**, **tethered price regulation**, **patent reform**, **national price controls**, or **utility-style regulation** of the industry. Prop 61 may be well-intentioned, but it won't work. Do **not** green-light this picture.

Proposition 62: Repeal Death Penalty -- YES

Proposition 66: Reduce Barriers to Capital Punishment -- NO

SUMMARY: Even if you support the death penalty in principle, you cannot support how it is implemented in California. It is discriminatory, ineffective, susceptible to error, and cruel and unusual. Prop 62 will **abolish** California's death penalty, as 20 other states and all enlightened countries have already done. Prop 66 aims instead to **accelerate** executions by short-circuiting legal appeals. It will deny justice to the condemned and address **none** of the problems with the current implementation.

DETAILS: A [new report](#) from the [Fair Punishment Project](#) at Harvard Law School delivers a stinging indictment of the death penalty in California. Examining cases in Kern and Riverside counties from 2010 to 2015, the report paints a distressing picture of prosecutorial misconduct, defense incompetence, racial bias, and death sentences for minors and the mentally incompetent.

For example, in a Kern County trial the prosecution dismissed all black prospective jurors and "argued extensively with defense counsel about whether [one] juror was black or not." The conviction was later reversed on race discrimination grounds.

And in Riverside County, court-appointed defense attorneys have a financial incentive to **encourage** capital murder charges against their clients. If the prosecution decides **not** to seek the death penalty, the defense attorney's fee is **reduced by half**, and **by half again** if there's a plea bargain. What kind of representation do you think murder defendants get in that county?

The Harvard report adds yet another strong voice to the chorus chanting one thing: California's death penalty must go.

The death penalty is **ineffective**. There is no evidence of a deterrent effect on murder rates. According to a 2009 article in the [Journal of Criminal Law and Criminology](#) from Northwestern University, "88% of the country's top criminologists do not believe the death penalty acts as a deterrent to homicide. Similarly, 87% of the expert criminologists believe that abolition of the death penalty would not have any significant effect on murder rates." It's time for the death penalty to go.

The death penalty is **error-prone**, as illustrated by the wrongful conviction of [Franky Carrillo](#) for a 1991 murder in Los Angeles County. After Carrillo had spent twenty years behind bars, his conviction was reversed when all the witnesses who had identified him admitted they had actually been **unable** to see the gunman, but were influenced by police to identify Franky anyway. It's time for the death penalty to go.

The death penalty is **discriminatory**. As a 2003 [Amnesty International study](#) put it, "...race, particularly race of victim, continues to play a role in who is sentenced to death in the USA." Nationwide, "Even though blacks and whites are murder victims in nearly equal numbers of crimes, 80% of people executed [since 1976] have been executed for

murders involving white victims." It's time for the death penalty to go.

The death penalty is **cruel and unusual**. The Harvard report notes that in Riverside County between 2010 and 2015,

"...nearly one-quarter of [death penalty] cases involved a defendant with an intellectual impairment, brain damage, or severe mental illness. For example, one case involved a 'severely emotionally disturbed' 22-year-old man who had been diagnosed with schizophrenia. Another defendant had a 68 IQ score in childhood and a 77 IQ score at trial, which placed him at the bottom six percent of the population."

In 2002 the [United States Supreme Court](#), citing the Eighth Amendment's "cruel and unusual punishment" clause, held that individuals with intellectual disabilities **cannot be executed** because they are categorically less culpable than other criminals. Yet California continues to place these people on death row. It's time for the death penalty to go.

The death penalty is **barbaric**. It [has been abolished](#) in Canada and Mexico; in all of Europe save Belarus and Russia; and even in places like Angola, Bolivia, and Cambodia where you might expect to see "frontier justice." California is currently in a club with fewer than two dozen nations, mostly authoritarian regimes like North Korea, Iran, China, Saudi Arabia, and Yemen. Do those countries really represent the moral high ground? It's time for the death penalty to go.

Prop 62 will **abolish** the death penalty, effective immediately. ([Treason and train wrecking](#) will remain capital offenses, but no one has been convicted of those in many, many years.) All 748 inmates currently on death row will have their sentences commuted to life without the possibility of parole; this will also be the new maximum sentence for murder with special circumstances. Prop 62 has a few other provisions, but they are really just window dressing. If Prop 62 passes, it will be time for the death penalty, finally, to go.

Prop 66, on the other hand, is an attempt to **accelerate** executions in California by streamlining certain lengthy procedures. For example, initial "[habeas corpus](#)" appeals will be heard in the original trial court instead of the state Supreme Court, where today it can take years just to have a qualified attorney appointed.

In its quest for efficiency, however, Prop 66 will rob defendants of basic justice. Consider: *habeas* appeals exist so defendants can dispute the fairness of the original trial, including possible prejudice or errors by the judge. Having that same judge hear the appeal, as Prop 66 would do, is a potential conflict of interest. There's good reason the Supreme Court hears *habeas* appeals: so they can be decided on their merits. Prop 66 will remove that protection in the name of speed.

But that's a mere quibble compared to the grave injus-

tice of death penalty as a whole. Under Prop 66, capital punishment in California will **still** have all of the systemic problems it has today: racial discrimination, prosecutorial misconduct, defense incompetence, lack of deterrent effect,

cruelty, and so on. Prop 66 would improve nothing, and make capital punishment even **less just**. I have no use for propositions like that.

Proposition 63: Keeping Guns from Those Who Shouldn't Have Them -- YES

SUMMARY: Requires notification of law enforcement if guns or ammunition are lost or stolen. Enforces removal of weapons from those ineligible to have them, including felons and those under domestic violence restraining orders. Ensures continued partnership with federal background check database. These all make sense, and don't threaten anyone's gun rights.

DETAILS: Every [politician seems to agree](#) we must keep guns out of the hands of people who shouldn't have them. Prop 63 is a [concrete step](#) we can take to bring that closer to reality. Prop 63 will enforce removal of firearms from felons and those under restraining orders for domestic violence. It will criminalize those who give guns to felons, then later claim they were "lost" or "stolen." And it will formalize collaboration with the FBI's instant background check system. All of these provisions make Prop 63 a powerful set of laws to prevent ineligible individuals from possessing firearms. There is no cogent reason to oppose it.

That's the end of my rating. Now here's some bonus material for political nerds:

Prop 63 is the latest in a [long line of initiatives](#) designed to advance the political careers of their proponents. This one

benefits Lieutenant Governor Gavin Newsom, who hopes to succeed Jerry Brown as Governor in 2018. He's [not being coy](#) about taking credit; the "[Yes on 63](#)" website identifies its sponsor as "a Newsom Ballot Measure Committee."

Funny thing. On July 29, 2016, Gov. Brown signed into law a very similar gun safety measure, Senate Bill 1235 by State Senate leader [Kevin De León](#) (D-Los Angeles). SB 1235 contains **variations of several key provisions** in Newsom's Prop 63. Apparently there's something of a **power struggle** between these two Democratic heavyweights. In consideration of SB 1235, Newsom was asked to withdraw Prop 63. He, ahem, declined. De León responded by [amending SB 1235](#) so it will **take precedence over Prop 63** if it passes. Stay tuned for more fireworks, possibly in court.

Because of that tiff, you may see [other provisions](#) advertised for Prop 63, such as requiring a license to purchase ammunition. And yes, those provisions are in the initiative. But because SB 1235 pre-empts them, they'll have no impact. Nevertheless, Prop 63 remains a worthy measure because of the important provisions I point out at the top of this rating. Those aren't in SB 1235, and we need them to make us safer.

Proposition 64: Legalize Recreational Marijuana -- YES

SUMMARY: Legalizes recreational marijuana, bringing this multi-billion-dollar underground industry out of the shadows. Places tight restrictions on shops, individual possession and use, and allows cities and counties to tighten them further. Imposes special taxes on growers and sellers, funding drug abuse education, prevention, and treatment, with a special focus on youth. It's about time for this bill.

DETAILS: Whoa. I am so stoked this is on the ballot. *Hee hee. Heeheeheeheehee. Heh.*

Lots and lots of Californians use marijuana. Like, [3 million](#) or something. That's 9% of all adults, and 22% of adults under 26. That's, like, everybody. If you're at a rock concert with 50,000 fans, you can expect 10,000 stoners in the crowd. Even more if certain bands are playing, if you know what I mean.

But unless you have a [medical referral](#) for that bud, you're breaking state and federal laws whenever you acquire your illicit little doobies. Harsh. Yet weed is [less intoxicating](#) than legal alcohol, and way [less addictive](#) than legal tobacco (10% vs. 33%). Marijuana is a huuuuuuuge business, with [\\$14 billion](#) in annual sales, man. Even with eradication ef-

forts by the Drug Enforcement Agency and [over 8,800](#) marijuana arrests last year, this underground market is booming.

Say it with me now, "[Boooooooming](#)." Oh wow, my whole head is vibrating. *Heehee*.

Now that recreational pot has been legalized in four western states (Alaska, Washington, Oregon, and Colorado), we are totally at a crossroads with this drug. We can continue to pretend to suppress it, leaving this gigantic industry in the hands of, shall we say, the state's more unsavory element. Or we can legalize it, regulate it, tax it, bring it into the open, and remove the stigma and hypocrisy (and those stems too, they're no good). Freedom, yeah! This is what our great-grandparents did in 1933 when alcohol prohibition ended, and that has turned out okay, no?

Okay, so Prop 64 will, like, legalize recreational weed.

Adults 21 and older will be allowed to buy, hold and smoke. Dudes and dudettes may possess up to an ounce (roughly 40 joints, unless you roll 'em fat), or eight grams of hash. No toking in your car, or anywhere tobacco smoking is prohibited, like in a movie theater during Star Wars (come on, you know you've done it). Weed will be sold only through state-licensed shops, which can't also sell tobacco or alcohol. Pot shops must be at least 600 feet away from

schools, day care centers and youth centers. Counties and cities can enact stricter (or laxer) rules, including banning the shops entirely, though that would be pretty harsh, bro. You can grow six plants of your own, but you gotta keep ‘em out of public view, behind a locked door or gate. In other words, grow it in private, smoke it in private.

The tax man cometh, man. Growers will pay \$9.25/oz. tax on potent cannabis flowers, and \$2.75/oz. on leaves (which aren’t too bad either); these will increase with inflation. At pot shops there will be a whole pile of taxes: a 15% excise tax, the regular sales tax (7.5% to 10.0%), and any dope-specific taxes in your city or county. These will generate, well, uh, **nobody knows** exactly how much money for Uncle Sam. Let’s go with the Legislative Analyst’s wild guess of \$1 billion. Or \$1 ka-skillion. Whatever.

That billion will be spent like this: All on Doritos! Okay, just kidding. *Heh.*

The sales tax will do **what sales taxes do**. The rest will be used mostly for youth substance abuse prevention, education, and treatment, so young pups don’t get into the habit. They’ll also fund research to find a weed threshold for DUI; don’t drive stoned, man, it’s a very bad trip. Also there’ll be special services for residents of places like Humboldt and Mendocino that may see economic displacement. And clean-

up of nasty, old, illegal marijuana farms. Those are all excellent uses of excise taxes and special fees, so I’m cool with it.

Since Prop 64 will decriminalize things like growing and selling, people who are in the slammer for those offenses will be eligible for resentencing. Far out. Courts would have to approve each one, and would have the option of denying those cases where the inmate is determined to be a danger to commit more crimes (what a drag). The Legislature can amend (but not repeal) most of Prop 64 with majority votes, so Prop 64 can be adjusted as we gain experience with it.

Have you heard? The War on Marijuana is over, man. Marijuana won. Even the stodgy [Los Angeles Times](#) has thrown in the proverbial towel.

“On balance, the proposition deserves a ‘yes’ vote. It is ultimately better for public health, for law and order and for society if marijuana is a legal, regulated and controlled product for adults. Proposition 64—while not perfect—offers a logical, pragmatic approach to legalization that also would give lawmakers and regulators the flexibility to change the law to address the inevitable unintended consequences.”

Righteous. Hey, got anything to eat?

Proposition 65: Redirect Plastic Grocery Bag Fees to State -- NO

Proposition 67: Ban Single-Use Plastic Grocery Bags -- YES

SUMMARY: Single-use plastic grocery bags are a huge environmental hazard. Given away by the billions, too often they often blow into the environment, where they suffocate wildlife, attract toxins and enter the food chain. They’re already illegal in much of California. Prop 67 will extend the ban statewide. Prop 65 is a stealth initiative by the plastic bag industry to sabotage Prop 67. Don’t let your friends vote for it.

DETAILS: Single-use plastic grocery bags, as you are aware, tend to blow everywhere, even when they’re properly placed in trash and recycling containers. Given away by the **billions**, they make their way to natural habitats where they **wreak havoc**. Tons of them end up in the ocean, where, if current trends continue, by 2050 there will be more plastic than fish (by weight). These bags are not biodegradable, and they are not really recyclable; they cause **costly jams** in recycling equipment. Manufacturing them creates **toxic emissions** such as dioxins and benzene. In short, they ought to be banned.

Nearly **half of all Californians** are already covered by local bag bans. **Places with bag laws** include Los Angeles, San Francisco, Long Beach, San Jose, Pasadena, Oakland, and Santa Barbara. San Diego will join them next year. **These communities** seem to be getting along quite nicely without single-use plastic grocery bags, wouldn’t you agree?

In 2014 the Legislature passed, and the Governor signed, a bill prohibiting grocery, convenience, drug, and liquor stores from giving out single-use plastic grocery bags.

Store patrons are asked to bring their own reusable shopping bags into the store, as is common practice in most of the world. For customers who need them, stores can offer recycled paper or heavyweight, reusable plastic shopping bags for a minimum charge of ten cents.

The **major manufacturers** of plastic bags, located in Texas, South Carolina and New Jersey, are mightily offended by California’s new law. So they have paid millions of dollars to qualify Prop 67, a referendum that asks voters to **confirm** what the Legislature and Governor have already done. So **vote “yes” on Prop 67** to reaffirm the wisdom of the statewide bag ban.

The manufacturers, of course would like Prop 67 to **fail** so they can continue to sell their polluting product. They believe they can improve the likelihood of scuttling Prop 67 by introducing a competing measure. Hence Prop 65.

The provisions of Prop 65 regarding plastic bags are trivial and irrelevant. The true purpose of the measure is to **torpedo** Prop 67. The **proposed law** states that if Prop 65 gets **more votes** than Prop 67, then “the provisions of [Prop 65] shall prevail in their entirety, and the provisions of [Prop 67] shall be **null and void**.” (Sec. 6, bottom of p. 212 in your **Voter Guide**.) In other words, if Prop 65 pulls in more votes, it will **nullify** Prop 67 completely.

I wish I could say we’ve never seen anything like this before. But of course we have. In 2004, reformers qualified **an initiative** for Top Two Primaries. Political parties strongly opposed it, terrified they’d lose their guaranteed slots in general elections. Thinking that simply campaigning against it

might not work, they placed their own [measure](#) on the ballot, which did essentially nothing, but acted as a **political bomb** thrown at the Top Two initiative. It worked: the bomb received 68% “yes” votes, while Top Two received just 46%. (This implies that at least 14% of voters actually voted for

both, which still boggles my mind.) (Top Two Primaries [re-appeared](#) in 2010. It passed then.)

So do not be tempted to vote in favor of Prop 65. In spite of its benign demeanor, it is truly a **wolf in sheep’s clothing**. If it gets enough votes, it will **wipe out** the statewide bag ban. History shows it could happen.

Proposition 66: see Propositions 62 & 66, above

Proposition 67: see Propositions 65 & 67, above

My Semi-Biennial Lecture on Bonds

When California wants to finance a large project, it asks the voters for permission to take out a loan. Prop 51 is just such a request. If voters approve, the state may take out a loan for the project by selling general obligation bonds, which are paid back with interest over 35 years or so. The bond payments come out of the state’s main budget, the General Fund. So when we vote on bond measures, we are really voting on whether the projects in question ought to be added to the state’s budget.

“**Wait a minute!**” I hear you cry. “What about those interest payments? Won’t we end up paying more for interest than for the bonds themselves?” This may once have been the case, but with today’s low interest rates each dollar of bond money will cost [only 30 cents](#) in interest, accounting for inflation. (See details on p. 114 of your ballot pamphlet.)

“Okay,” you admit, “but loans are still more expensive than pay-as-you-go.” This is true. Still, loans are the only way to buy a house, or a car, or anything else that you need immediately but can’t pay for yet. It’s worth paying the premium of interest to get the funding **now**.

“Well and good,” you continue, “but there are **\$9 billion** in bonds on this ballot. Isn’t that too much to borrow?” For you, yes, but the State of California can handle it. Bond payments today amount to [less than 5%](#) (and shrinking) of

the General Fund, down from a high of nearly 6% seven years ago. Prop 51 will barely increase that figure. Accounting for both Prop 51 and all bonds previously authorized by voters, the Legislative Analyst predicts the debt ratio will continue to decline.

Prop 51 will fund long-lived, tangible acquisitions, such as land and school buildings. It’s sensible to make extended payments for things that will be used far into the future.

Remember, too, that California’s population continues to grow by hundreds of thousands of people every year. Borrowing makes particular sense if you know your income will go up in the future. As the state grows, the General Fund will certainly grow too.

There is one last reason to vote for a bond measure. In addition to being formal requests for permission to take out loans, bond measures are also looked upon as referenda on the merits of the proposed projects. If a bond measure fails, legislators are likely to believe that the public feels the project is not worthy of receiving state funding. By voting no, you may have meant, “Yes on the project but no on the bonds,” but your message to Sacramento will read, “No on the project.” So if you vote down a bond measure just because you don’t like bonds, you may well have killed forever the project the bonds were to have funded.

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