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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15	**YES**	Increase Taxes on Commercial Property
16	**YES**	Restore Affirmative Action
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		My Semi-Biennial Lecture on Bonds

Proposition 14: Stem Cell Research Bonds – NO

SUMMARY: $5.5 billion in bonds to fund research into medical uses of human stem cells. This is an expansion of a 2004 bond, which was needed at the time because a Republican administration had blocked federal funding of such research. The need to continue state funding is no longer so urgent, and in this crazy year there is too much uncertainty for the state to take on such a large financial commitment.

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

DETAILS: For my rating of this proposition, I was hoping simply to rerun my endorsement of its predecessor, Prop 71 of 2004. Wouldn't that have been great? Less work for everybody!

But a lot has changed since 2004.

Prop 71 provided $2.7 billion in bond funding for scientific research into medical uses of human stem cells. The money was distributed to the University of California, other universities and nonprofit institutions, and for-profit biotech firms. Bond-funded research has resulted in 92 clinical trials of new treatments and 2,900 published studies.

Nearly all of the 2004 bond has been spent. Prop 14 on this ballot asks us to re-up for another $5.5 billion.

Human stem cells are unspecialized cells capable of transforming into specialized cells. Because stem cells can transform into any type of cell in the body, they are widely believed to hold the key to curing degenerative diseases such as diabetes, multiple sclerosis, Alzheimer's, and Parkinson's. They also hold great potential for treating trauma such as burns and spinal cord injuries.

The need for stem cell research hasn't abated, but many of the other circumstances that led to a Yes rating then have changed.

In 2004, the G. W. Bush administration had blocked federal funding for research using new lines of embryonic stem cells. This left scientists with two inadequate options: a limited number of existing embryonic stem cell lines, or less-flexible adult stem cells. To move research forward

effectively, California would have to backfill the missing federal money with its own funding.

Since then, the Obama administration lifted restrictions on federal funding, and the Trump administration has not reinstated them (although it has blocked funding of research that uses fetal tissue). Prop 71 has led to derivation of more than 20 new lines of embryonic stem cells. In addition, scientists have discovered how to induce adult stem cells to be "pluripotent" (give rise to any cell type in the body), like embryonic stem cells. These "have taken some of the heat off the embryonic stem cell research," if not obviating the need for them entirely, according to researcher Timothy Kamp. So, if Prop 14 fails, access to adequate pluripotent stem cell lines won't be the obstacle it was 16 years ago.

In 2004, there was limited infrastructure in place to support stem cell research. Since then, Prop 71 has helped build state-of-the-art stem cell labs at a dozen universities and nonprofits, five clinics, and three centers for researchers. These should provide a great platform for current and future research.

In 2004, I was willing to overlook the measure's inappropriate use of bond funding. In my Semi-Biennial Lecture on Bonds, I assert that bonds are appropriate when you're paying for long-lived items like land, buildings and roads. But the proceeds of Prop 14, like Prop 71 before it, will be used for **everything** in a research lab. This includes such transient expenses as administration, researcher salaries, office supplies, travel, and chemicals.

Furthermore, although roughly half of Prop 71 funded research at the University of California, nearly $350 million was given as grants to for-profit biotech companies, which are essentially unaccountable to the public. Prop 71 requires these companies to negotiate with the state to share any future patents, royalties or licenses resulting from state-funded research. Maybe someday there will be a handsome windfall to public coffers, but so far we've earned only $350,000, or one-tenth of one percent return on our investment.

Finally, there's the question of timing. In 2004, California was recovering from the dot-com bust. The General Fund wasn't exactly flush with cash, but it was rebounding nicely, and was forecast to set a new high the following fiscal year.

This year is a different story. It is impossible to predict, of course, but there is potential for an extended economic downturn, with concomitant state budget crises. It probably is the wrong time to commit to payments on a $5.5 billion loan. We may well need that money for basic economic relief over the next few years. I like to think that the sponsors of Prop 14, which qualified for the ballot long before the pandemic hit, would agree.

Proposition 15: Increase Taxes on Commercial Property – YES

SUMMARY: Property taxes are based on a property's **assessed value**. Currently, all land and buildings in California are assessed only when purchased, with a 2% maximum annual increase. If Prop 15 passes, commercial and industrial land and buildings will be reassessed at **market rates** every three years. Smaller property owners (less than $3 million) are excluded. Business equipment is given a $500,000 exemption. Residential and agricultural assessments are not affected. This is a major step toward fair property taxation, and I'm thrilled to see it finally on the ballot.

DETAILS: Inflation has not exceeded 4% this century. But in the 1970s, it was much higher: 5.6% in 1970, 12.3% in 1974, and 13.3% in 1979. Under those conditions, possessions such as real estate quickly rise in dollar value, while personal incomes tend to lag behind.

This is exactly what happened in disco-era California. Home prices soared without comparable increases in homeowner incomes. Between 1970 and 1980, the median price of a California home **quadrupled** (from $24,640 to $99,550), but average household income grew **only 96%** (from $9,300 to $18,250; figures not adjusted for inflation).

Soaring home prices meant soaring market-rate property value assessments, and therefore **soaring property tax bills**. Homeowners, whose incomes often weren't keeping up, became less and less able to pay. Yes, their houses were worth more, but there was no easy way to tap that value. And even for those who **could** afford their taxes, the **unpredictability** of next year's bill became a tremendous inconvenience.

In 1978, anti-tax crusader Howard Jarvis and real-estate salesman Paul Gann invited the electorate to **revolt**. They qualified a radical ballot initiative offering property tax relief to besieged homeowners. In the absence of action from then-Governor Jerry Brown and the state Legislature, and against the advice of political leaders from both parties, voters used the only tool they had: they passed the Jarvis/Gann initiative, Proposition 13.

Prop 13 provided **instant relief**. It rolled back property assessments four years, capped property tax rates at 1% of assessed value, capped annual increases at 2%, and prevented reassessment at market rates until/unless a property is sold. This lowered property taxes and made them predictable for homeowners across the state.

The impact was **devastating** for local government services that relied on property tax revenue: an instant reduction of $6 billion (partially backfilled by the state). Particularly hard-hit were health services, libraries, parks, and especially schools. California's rank in per-pupil spending went from 18th in 1977 to 42nd in 1995. Despite efforts to replace the lost local revenue with an assortment of fees and sales, utility, and hotel taxes, the problem persists to this day.

The reason most Californians voted for Proposition 13 in 1978 was that taxes on their **homes** were skyrocketing. But Prop 13 also applied to **commercial and industrial** property. In fact, **two-thirds** of the initial benefit from Prop 13, about $4 billion, went to California businesses. To extract maximum benefit from Prop 13, large businesses have emulated homeowners, hanging on to their real estate to avoid property reassessment, decade after decade. As a consequence, the portion of property tax paid statewide by businesses has dropped from roughly 50% when Prop 13 passed to just 28% today.

Prop 15 on this ballot asks us whether that's really what we want. Prop 15 will **revoke reassessment immunity** from commercial and industrial land and buildings, with exceptions for farms, residential rental property, and small businesses. It will provide anywhere from $6.5 to $11.5 billion in new income to local governments and schools.

The small business exemptions work as follows. Owners of less than $3 million worth of commercial real estate will continue using their existing assessments. The assessed value of industrial equipment, which is currently based on its potential resale value, will be reduced by $500,000 (but not below zero) for every business. This will reduce or eliminate the tax on equipment for smaller businesses, while larger corporations will see far less significant savings.

In effect, Prop 15 is a tax increase on the largest commercial landowners in California. A recent USC study estimates more than 85% of the new revenue would come from just 10% of properties: those valued at more than $3 million. The remaining 90% of commercial properties—those valued under $3 million—would not be reassessed at all (unless the owner's total holdings exceed $3 million).

This measure will correct a bug in Prop 13, allowing the state to collect taxes that large landowners should have been paying all along. But Prop 15 is not without its warts.

Rural counties could actually see their income **reduced** by Prop 15. The campaign opposing the measure warns that 11 to 21 rural counties could receive less property tax revenue under Prop 15 than they do today, due to agricultural property retaining its reassessment immunity coupled with the $500,000 exemption for industrial equipment. This would be a shame. It's a **flaw** in the measure; I hope the Legislature can find a way to correct it.

The small business exemption won't help **businesses that rent** space from larger landlords. The increased property taxes will almost certainly be passed through to tenants. This may be especially unwelcome in the coming years, as restaurants and other businesses struggle to reestablish themselves in the wake of the pandemic shutdown.

Statewide, about 40% of the new money raised under Prop 15 will go to schools and community colleges. Instead of staying in the districts in which it's collected, the new money will be **hoovered up** by Sacramento and distributed to local districts based on a complicated formula. Districts that are home to high-value commercial real estate, like shopping malls and office parks, may be disappointed to discover they don't reap the benefits they were expecting from the new taxes. And "basic aid" school districts (i.e., those in areas with high current property tax revenues) could receive only a flat increase of $100 per student. I cannot say this is terribly unfair, though. If you think about it, there's **no correlation** between district funding needs and the presence of high-value commercial real estate in an area; because of that, it's sensible for the state to redistribute the new income brought in by Prop 15.

My regular readers know that reassessment immunity drives me crazy. I contend that it's as unfair and arbitrary to base taxation on length of **ownership** as it would be to base it on length of **hair** or length of **name**. The nonpartisan California Budget & Policy Center put it well: "After decades of tax breaks for California's commercial and industrial properties, voters have an opportunity with Prop 15 to correct a fundamental inequity in the state's tax system and send billions of dollars annually to their schools and local communities for services that benefit all Californians and their families." Prop 15 begins the process of rectifying a fundamentally unfair system, and that makes me smile.

Proposition 16: Restore Affirmative Action – YES

SUMMARY: Repeals the vile Prop 209 of 1996, which ended affirmative action programs for public employment, education, and contracts at the state and local level. Affirmative action helps reverse centuries of discriminatory practices that have resulted in the systemic oppression of minorities we see today.

DETAILS: There are **four measures** on this ballot addressing **systemic racism** in our state laws. Prop 17 grants voting rights to felons who are reintegrating into society on parole. Prop 25 eliminates bail, ending a practice that disproportionately penalizes people of color. Prop 20, which I oppose, seeks a return to draconian mass incarceration. And this measure, Prop 16, restores affirmative action.

Affirmative action dates back to 1965, when President Lyndon Johnson issued an executive order requiring all government contractors and subcontractors to "take affirmative action" to expand job opportunities for minorities. Two years later, it was expanded to include women.

Over time, Supreme Court rulings have constrained what is allowable under affirmative action programs. In 1978, **quotas and set-asides** were disallowed. In 1989, governments were required to show a compelling interest and **narrowly tailor** programs to further that interest. In

1994, **remedying past discrimination** was allowed as a compelling interest. And in 2003, **weighting candidates** based on race was disallowed unless all candidates were reviewed in their entirety.

Earlier this year, Louis Menand, writing in *The New Yorker*, made the case for affirmative action far better than I ever could.

> "[T]he reason we have affirmative action is that we once had slavery and Jim Crow and redlining and racial covenants, and that we once had all-white police forces and all-white union locals and all-white college campuses and all-white law firms. To paraphrase **George Shultz**, Nixon's Secretary of Labor [and later Reagan's Secretary of State]: for hundreds of years, the United States had a racial quota. It was zero. Affirmative action is an attempt to redress an injustice done to black people. The Fourteenth Amendment protects white people, too, but that is not why it needed to be written.
>
> "It turns out that, when you remove enforcement mechanisms and remedial oversight, things tend to revert to the *status quo ante*. The whole history of affirmative action shows, … that when the programs are shut down minority representation drops. Diversity, however we define it, is politically constructed and politically maintained. It doesn't just happen. It's a choice we make as a society."

Evidence is now emerging to show Prop 209 has had measurable, negative impacts on minorities. In August, a comprehensive study by Berkeley economist Zachary Bleemer found that the ban has inflicted **long-term harm** on Black and Hispanic students: it has decreased their number in the UC system, and reduced their likelihood of earning a degree, going to graduate school and earning a high salary. Columbia sociologist Jennifer Lee reports that reversing Prop 209 will actually help, not harm, Asian-Americans in employment, promotions, and earnings, while having **no effect** on college admissions.

Here's what I wrote in opposition to Prop 209 in 1996.

> "Let me clear up some common misconceptions about affirmative action. By law, all affirmative action plans must be remedial, not preventive. That is, they can only be remedies to well-documented discrimination by specific agencies against specific groups, not blanket policies to prevent future discrimination. Also, set-asides, such as reserving a certain number of places at a public medical school for some minority, are illegal; instead the school may consider race only as a factor to distinguish otherwise equally qualified applicants. Finally, state departments are merely 'expected,' not 'required,' to meet goals for awarding contracts to minority- and women-owned businesses. This allows the state much more flexibility than is commonly thought.
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> Given that it can be applied only as a remedy, that set-asides are illegal, and that contractor goals are not firm, affirmative action doesn't seem as diabolical as it has been portrayed. … Affirmative action, limited as I've described, is the best way to deal with natural, institutionalized discrimination in public hiring, promotion, contracts and admissions."

Prop 16 will restore an important, proven tool to address historic discrimination. If you support Black Lives Matter or related movements, voting for Prop 16 is a positive step you can take for social justice. This year it will be especially meaningful.

Proposition 17: Allow Parolees to Vote – YES

SUMMARY: Parole exists to help felons reestablish good citizenship behaviors. Voting is an essential part of citizenship. Yet people on parole cannot vote. The reason? To suppress the minority vote, of course. Prop 17 will repeal an outrageous, Jim Crow law that has no place in our state.

DETAILS: Parole is supervised reentry into the community after release from state prison. Parolees agree to certain terms and conditions, such as living in a specified county, consenting to be searched at any time, and other, offense-specific conditions (e.g., no weapons, no internet, or no association with gang members). Average parole lasts three years; longer for more serious offenses.

Under current law, parolees cannot register or vote. Prop 17 would allow it.

The **purpose of parole** is to retrain offenders to be good citizens. As the Penal Code states,

> "The Legislature finds and declares that the period immediately following incarceration is critical to successful reintegration of the offender into society and to positive citizenship."

Voting is a fundamental expression of citizenship. It ought to be part of the parole program.

So, why is it illegal? I think you can guess the answer: to reduce voting by people of color. The current law is rooted in racist, Jim Crow tactics, surviving from over a century ago. According to a 2012 report in the *Berkeley La Raza Law Journal*,

> "Since the passage of the [post-Civil War] Fourteenth and Fifteenth Amendments to the United States Constitution, felony disenfranchisement became one favored method utilized by 21 states in suppressing the African-American vote. After 1890, many states began enacting disenfranchisement statutes and constitutional provisions that listed crimes for which African-Americans were most often prosecuted—such as burglary, theft, perjury, and arson—as disqualifying offenses…
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> "No other country disenfranchises more of its citizens on a per capita basis than the United States.

> Many other democratic nations have ceased automatic disenfranchisement of criminal offenders."

Today, an estimated six million parolees nationwide are unable to vote, approximately 50,000 of them in California. As of 2016, Blacks made up 26% of parolees but only 6% of California's adult population, and Latinos accounted for 40% of parolees but only 35% of California adults. Disenfranchising parolees disproportionately suppresses voting by people of color.

We Californians like to think of ourselves as frontrunners on civil rights. After all, the first same-sex marriages happened here, and our elected representatives include a kaleidoscope of women and minorities. But on this issue we are sadly behind the curve. Parolees are currently allowed to vote in fourteen states, including deeply **conservative** states like Indiana, Utah, and North Dakota. Prop 17 will bring us closer to the vanguard.

One of the arguments against Prop 17 is that giving parolees a voice in elections will somehow **imperil** our communities. In fact, the opposite is true: denying voting to parolees actually is **bad for public safety**. Studies show when people feel connected to communities, they are less likely to be reincarcerated. Recidivism rates are **lower** in states that allow parolees to vote.

I'm afraid this this argument, that granting voting rights to parolees would reward crime, deny justice to crime victims, and place society in the hands of violent felons, is actually the kind of baseless, **alarmist fearmongering** that has led to the current systematic **oppression** of Blacks and other minorities. I urge you to be conscious of these insinuations, and fight back wherever you can.

Proposition 18: Allow 17½-Year-Olds to Vote in Primaries – YES

SUMMARY: Allows 17-year-olds to vote in primary elections if they will turn 18 by the November general election. This is perhaps the most **inconsequential** proposition I have seen in 40 years of rating. What a waste of our time. On the plus side, though, the Legislative Analyst displayed a wicked sense of humor, estimating "minor costs" to implement. Get it? **Minor** costs for 17-year-olds? Ha ha ha ha ha.

DETAILS:

You are sixteen going on seventeen
Baby, you can't vote yet.
Your aspiration's pre-registration;
Later, you'll be all set.

I am seventeen going on eighteen,
Eager to use my rights.
But I am banned from having a hand
In primary plebiscites.

Totally well-prepared am I
To choose who runs our state,
And if the law were changed then I
Could vote to nominate!

I will soon be older and wiser.
Why can't I vote in June?
If my elders pass Prop Eighteen
I'll be voting soon.

Proposition 19: Property Tax Relief for Older Homebuyers – NO

SUMMARY: The latest attempt by the Association of Realtors to goose their profits from home sales by providing property tax discounts for older customers. This year's measure allows homeowners over 55 to transfer their reassessment immunity when they move to a another house of any value, anywhere in the state, as many as three times. To compensate public coffers, it increases taxes on property that's inherited, which, oddly enough, Realtors don't make money on. This is less of a pure giveaway than the failed Prop 5 of 2018, but it will still exacerbate financial inequality and perpetuate inequitable property tax burdens.

DETAILS: When you buy real estate, the purchase price becomes the **assessed value** upon which your property taxes are based. The assessed value then rises a maximum of 2% every year, regardless of how much the actual market value

increases. Over time, the property's actual value may double, triple, or more, but its assessed value will change only slightly.

Under current law, homeowners who are over 55 or severely disabled, or whose property has been damaged by a natural disaster or contamination, can transfer their artificially low property assessments when they purchase homes of **equal or lesser** value. They can do this **once** in their lifetimes. Both homes must be in the **same county** (or in one of ten counties that allow intercounty transfers).

Prop 19 would extend this assessed-value transfer scheme to homes of **any value**, **anyplace** in California, up to **three times**. This provision will **reduce** overall property tax revenues for state and local governments, because fewer homes will be assessed at full value.

Also under current law, a parent's primary residence is not reassessed when the children **inherit** it (regardless of whether the children then use it as their primary residence). Consequently, a home that's been passed down from generation to generation over decades may have an assessed value today that is a **small fraction** of its actual value. In addition, people may inherit without reassessment up to **$1 million** worth of property other than the primary residence (e.g., a second home, business, or farm). In 2017, the Legislative Analyst estimated that these artificially suppressed property taxes due to inheritance exemptions cost state and local governments around **$1.5 billion** a year.

Prop 19 would require inheritors of their parents' homes to use those homes as their **primary residences** in order to claim exemption from reassessment. This is intended to restore the original spirit of Prop 13 of 1978, which was about preventing people from being taxed out of their residences. Under Prop 19, the exemption for homes would be **limited to $1 million**, the same as it is for farms. This means that a mansion that has appreciated by many millions of dollars will be taxed based on all but one of those millions. And Prop 19 would completely **eliminate** the $1 million exemption on **all other** inherited property, such as second homes and businesses. The effect of these provisions will be to **increase** overall property tax revenues.

The authors of Prop 19 believe its two main provisions will **offset**, making the measure essentially **revenue-neutral**, with perhaps an eventual increase of less than $1 billion. (Some of that increase will be dedicated to fire protection, but I consider that irrelevant. The funding will be unreliable, and in any event, the Legislature is free to allocate money for that purpose anytime it wishes. Sadly, this part of Prop 19 is merely a ruse to mislead you into believing that the measure will increase public safety.)

"All right," you may muse, "so Prop 19 won't gut public budgets the way Prop 5 threatened two years ago. You still haven't given me a reason to vote **for** it." This is true. The backers of Prop 19 want you to focus on the **outrage** of overprivileged heirs paying virtually no property tax on inherited mansions they rent out for hefty sums while lolling on their private islands in the Caribbean. And on the frankly meaningless, **feel-good** provisions that purport to help fire crews and victims, the disabled, and dear, old Aunt Bertha, who can't afford to downsize and move closer to her grandchildren in Grizzly Flats because El Dorado County hasn't enabled intercounty transfers.

"But Prop 19 also gives reassessment immunity to middle-aged people who **upsize**," you point out. "I don't see **that** justified anywhere. Level with us: what's really going on?" Here's your clue: **follow the money**. Prop 19 achieves its revenue neutrality by reducing tax bills for people who **buy**, and increasing them for people who **inherit**. Who makes money when real estate is **sold**, but not when it's **inherited**?

If you said "real estate brokers and agents," give yourself a gold star! Prop 19 began life as a self-serving initiative from the Realtors Association, along the lines of Prop 5 from two years ago, but not quite so egregious. After some last-minute wheeling and dealing in the Capitol, in late June the Realtors pulled their initiative in favor of the legislative amendment you see today, giving up the $1 million exclusion but adding the endorsement of the powerful Professional Firefighters union (which had opposed Prop 5). The original equation remains: lower property tax bills equals more real estate transactions equals higher real estate broker commissions. Prop 19 exists, first and foremost, to stimulate real estate sales and increase real estate industry profits.

The official argument in favor of Prop 19 focuses on the frail elderly and severely disabled. It could conceivably merit your support if those were truly the primary beneficiaries of the measure. But let's get real. Fifty-five is the new forty. These are not feeble empty-nesters looking to downsize; they're energetic high-earners looking to move up. Prop 19 has nothing to do freeing seniors of limited means from oppressive tax bills, and everything to do with freeing large paychecks to pay bigger mortgages.

By granting this tax break to property owners, Prop 19 will also exacerbate financial inequality. And by dropping the lower-value restriction, it will defeat the intent of the original law: to encourage older empty-nesters to downsize, making their larger houses available for younger, growing families.

The Realtors have funded the Yes on 19 campaign to the tune of $35 million, which is a tiny fraction of what their brokers and agents will reap if it passes. At its core, Prop 19 is just another cynical, self-benefiting buy-a-law. Do not encourage this behavior by voting for it.

Proposition 20: Harsher Parole Procedures – NO

SUMMARY: Rolls back some of the sensible reforms that voters recently approved in Props 47 and 57. Makes it much harder for felons to qualify for parole after serving the term for their primary offense. Reclassifies as "violent" (for parole purposes) dozens of felonies, including robbery, extortion, and elder abuse. Requires police to collect DNA from adults convicted of misdemeanors such as shoplifting and non-felony domestic violence. Creates new "mini-three strikes" theft crimes, allowing repeat shoplifting or petty theft to result in a felony charge. There is no compelling reason to do any of these things. Prop 20 is an attempt by the Correctional Officers Association to keep convicts in prison longer so there will be more work for officers. That's a horrible and pathetic rationale.

DETAILS: Prop 20 is a "get tough on crime" measure, in the awful tradition of Three Strikes, the Victims' Bill of Rights, and all the other harsh, misguided propositions we saw in the 1990s. The basic premise is that voters were somehow **fooled** into passing landmark prison reform measures in 2014 and 2016, and consequently the state has turned into a **gruesome hellscape**. Paroled violent felons are freely roaming the streets like packs of wild dogs; it isn't be safe to go out after dark; entire cities are held hostage to fear and terror. California has become a true-life Sylvester Stallone movie. Our only hope is to pass anti-reform initiatives like Prop 20.

Prop 20 would roll back parts of Prop 57 (2016), which made inmates convicted of nonviolent felonies eligible for parole after serving just the term for their primary offense. Prop 20 would significantly expand the list of "violent" crimes, restricting eligibility for primary-offense parole. It would require denial of parole if an inmate's "past and present attitude about the crime" was somehow inappropriate, or if they "pose an unreasonable risk of creating victims," regardless of type or severity. And it would force inmates denied parole to wait two years instead of one for their next hearing.

Is there evidence that this will make us safer? Oddly, it's **missing**. The sponsors of Prop 20 don't try to justify their measure by documenting, let's say, a recent rise in parole violations traceable to the reforms. Instead, they simply try to scare us into voting "yes" with horror videos.

I don't know about you, but I don't think we should enact state laws based on scary stories or creepy videos. If we did, inmates denied parole would include Hannibal Lecter, Norman Bates, Count Dracula and Darth Vader. Lacking anything solid, we should reject this measure.

Prop 20 has plenty of other provisions, from expanding collection of DNA to creation of a new felony for serial shoplifting. Maybe some of these are good ideas. If they were, I'd expect the Legislature to have held hearings, debated, amended, and enacted them already. Instead we have this initiative. Why?

To quote a movie, follow the money. Prop 20 is sponsored by the Correctional Peace Officers Association. The Association has watched as the inmate population declined from 173,000 to 128,000—more than 25%—between 2006 and 2018. This decline threatens the Association: fewer inmates, fewer officers needed. So they have attacked the reforms that sparked the decline, in hopes that you and I will keep more parole-eligible inmates behind bars and more officers employed.

But there's no evidence Prop 20 will actually improve public safety, so all we're left with is a hideous **abuse** of inmates in order to preserve unneeded jobs. Passing this measure would be tantamount to making double-parking a capital offense in order to keep executioners working. It's just backwards.

Proposition 21: Allow Rent Control on More Units – YES

SUMMARY: Under current state law, local rent control laws cannot apply to units built after 1995 or to single-family houses or condos, nor can they limit rent increases when a new renter moves in. Prop 21 would allow (but not require) local rent control to cover any units more than 15 years old and most houses and condos, and it could limit rent increases when a new renter moves in. Prop 21 is much narrower than the failed Prop 10 from two years ago. Mostly, it brings two arbitrary limitations in the original law into line with a newer state law. Consider it a bit of legal hygiene.

DETAILS: This is **not** a replay of Prop 10 from two years ago. That proposition, which failed by a colossal 2.3 million votes, would have authorized cities and counties with local rent control to expand it dramatically: it would have allowed rent restrictions on units of any age, even including new construction; on "mom-and-pop" single-family homes; and when new tenants move in without limitation. Prop 21, in contrast, is **modest** in its aspirations.

Fifteen cities and Los Angeles County currently have local rent control ordinances. These ordinances must conform to rules laid out in the **Costa-Hawkins** Rental Housing Act, a state law passed in 1995. Under Costa-Hawkins, local rent control cannot apply to **single-family homes or condominiums**, nor to any units built **after 1995** (or the date of the ordinance if it was enacted earlier); and it cannot implement **vacancy control**, which would limit rent increases between tenants. The localities with rent control contain about one-fifth of California's population; they are all located in the Bay Area or Los Angeles County, plus Palm Springs and Thousand Oaks.

Everyplace else in California is covered by a new, **statewide rent control law** that went into effect on January 1, 2020. Under this new law, named the California **Tenant Protection Act**, landlords cannot increase rent by more than 5 percent plus inflation in a year (or 10 percent if that's lower). This prevents renters from being suddenly priced out of their homes. Also, instead of the fixed Costa-Hawkins built-before date of 1995 (or earlier in some cities), the new law uses a rolling date of 15 years before the present. This allows more properties eventually to fall under rent control, while still providing a sufficient market-rate window to reward developers for building much-needed housing. Lastly, the Tenant Protection Act applies to single-family homes and condominiums owned by trusts and corporations. This recognizes the reality that these types of homes are now an essential component of rental stock. The new law is temporary; it expires January 1, 2030.

In places where there **is** local rent control, the Tenant Protection Act covers many units that Costa-Hawkins had placed off-limits. For example, in Los Angeles city, Costa-Hawkins dictates that local rent control can apply only to buildings constructed before 1978, when LA's ordinance was enacted. The Tenant Protection Act now covers units built from 1978 to 2005, bringing hundreds of thousands of newer-but-not-really-new units under the umbrella. *[note: This paragraph was updated on Oct. 1, after alert reader Michael Chen set me straight. Thanks, Michael!]*

Prop 21 amends Costa-Hawkins to bring it into line with the Tenant Protection Act. There are **three main provisions**. First, Prop 21 will change the built-before date for local ordinances from a fixed date of 1995 (or earlier) to a rolling date of **15 years ago**. This is identical to the Tenant Protection Act.

Second, Prop 21 will allow local ordinances to apply to **single-family homes** and **condominiums**, except those owned by "mom-and-pop" landlords who have only one or two properties. While not identical to the Tenant Protection Act, it's a **reasonable approximation**. This provision is aimed at corporations that have been buying up single-family houses in high-demand areas and renting them out for outrageous sums. (If you live in Silicon Valley you probably know what I'm talking about.) As single-family homes become a larger portion of rental stock, it makes sense for them to be treated like other rental units. The exception for mom and pop will ensure that families can rent out a second home or half of a duplex without worrying about bureaucratic red tape.

The third provision of Prop 21 may give you pause. It allows cities and counties to enact **vacancy control**. Under current law, after tenants move out, landlords can charge new tenants whatever the market will bear. In areas where market rates are jumping (i.e., most of the state), this gives landlords of rent-controlled buildings a strong incentive to **push out** longtime tenants so they can collect much higher rents from new ones. It can result in delayed repairs, harassment, and other misbehavior.

To prevent this scenario, Prop 21 would allow vacancy control. Cities and counties would be permitted to clamp the same limitations on vacant units as on occupied ones, as long as they allow a three-year, 15% temporary increase to fund repairs and upgrades. Under Prop 21, a city could enact regulations to ensure units more than 15 years old **never** float to market rate.

Note, however, that Prop 21 **does not require** cities to enact maximum vacancy control, or any vacancy control at all. And there are good reasons to assume that most cities won't. For one thing, removing the market-rate bump between tenants might reduce profitability enough to have a **chilling effect on construction** of new housing. And requiring vacant units to be priced below market means there will be fierce competition for those units, which can easily lead to bribery, off-the-books surcharges, and other **hanky-panky**. Realistically, the only cities to enact vacancy control will be those **fighting gentrification** in order to preserve their diversity and protect the character of special neighborhoods. Maybe a few cities will do this, but only a few.

Prop 21 requires that local rent control laws allow landlords a **fair rate of return** on their properties, consistent with past court rulings. If owners can show that local ordinances constrict their income unfairly, Prop 21 mandates that controls be loosened.

I should point out, as I did two years ago, that there is **no case** for rent control in economic theory. Economists across the political spectrum are virtually unanimous on this, from Paul Krugman on the left to Thomas Sowell on the right to Milton Friedman wherever he fits. Rent control contorts markets, causes perverse behaviors, and degrades the quality and quantity of rental properties. It frequently achieves the very opposite of its stated goals. You can read about it in any economics textbook.

If you want to apply the theory, then go ahead and vote against Prop 21. But here in the real world, skyrocketing market-rate rents have forced families from their longtime homes, torn apart communities, and intensified poverty and homelessness. You have witnessed it. Judiciously applied rent control, by moderating increases, can stem the human cost while still providing owners a fair rate of return.

Proposition 22: Deny Employee Benefits to Uber & Lyft Drivers – NO

SUMMARY: A breathtakingly self-serving buy-a-law from (and for) online rideshare and delivery companies Uber, Lyft, DoorDash, and others. Prop 22 would deny their drivers the usual benefits of employment, such as minimum wage, overtime, health insurance, unemployment insurance, and workers' compensation. Instead, the corporations offer a wretched assortment of inadequate crumbs, such as hourly pay slightly above minimum wage (but only while actually driving passengers), a health insurance subsidy that's slashed in half if a driver misses an engaged-hours target, partial wages if injured on the job, and a 12-hour-per-day work limit. This proposition is utterly Dickensian, and as brazen as it gets.

DETAILS: Workers are classified as either **employees** or **independent contractors**. Employees are entitled to benefits and protections such as minimum wage, overtime pay, sick leave, unemployment insurance, and workers' compensation. Independent contractors are not.

In 2018, the California Supreme Court unanimously ruled that most workers in the state should be **classified as employees**. The following year, the Legislature essentially codified the ruling by passing Assembly Bill 5 of 2019 (**AB 5**), which requires most workers to be employees. AB 5 went into effect at the beginning of 2020. (It was not a smooth rollout, and in August the Legislature was obliged to modify AB 5 to exclude freelance musicians, writers, photographers, interpreters, and certain others from the requirement to work as employees; those changes went into effect September 4th. Expect more tweaks in the future.)

Specifically **not** excluded from AB 5 are drivers for Uber, Lyft, DoorDash, Instacart, and other gig economy companies. Under AB 5, these drivers must be **classified as employees**, and the companies owe their drivers the **benefits** mentioned above.

These firms have resisted (i.e., ignored) AB 5, and the state has sued to enforce the law. The state easily won the first round, and there will be lengthy appeals. However, most legal experts agree the companies have a **laughably weak case**—arguing that they are really technology platforms, not transportation services—and are likely ultimately to lose.

But the companies are not taking it lying down. Paying for benefits for their thousands of California drivers will cost dearly: Barclays estimates that treating California drivers as employees would cost Uber $500 million a year and Lyft $290 million. So the companies have paid signature gatherers to qualify a ballot measure carving out an exception to AB 5 for their drivers. That measure, **Prop 22**, would reclassify gig drivers as independent contractors.

In order to give Prop 22 a chance to pass, Uber, Lyft and DoorDash have poured nearly **$50 million each** into Prop 22's gargantuan, $180 million war chest, the largest in state history. You have undoubtedly seen their ads on the Internet, on television, and in your mailbox. The backers of Prop 22 need this media saturation campaign because, as in court, their case is **laughably weak**.

The ad campaign is an attempt to pull the wool over voters' eyes, painting these companies as kindly businesses that facilitate flexible, good-paying side gigs for honest, hardworking folks just like you. A survey shows drivers **want to be independent**, they whimper. If Prop 22 fails, those drivers will **lose their jobs,** they protest. "Independent contractor status is **required** to make rideshare and food delivery services work," blurts the flyer I just got in the mail.

Do not fall for it. These claims are **false**. Drivers want **flexibility, not independence**, but the survey creators deliberately and unethically **equated the two** so they could make the claim they want. (See footnote on slide 8 of their report.) This is the **central lie** of Prop 22, and you'll find it in every ad: in order to maintain flexible work schedules, drivers must remain independent contractors.

There is **no reason** these companies can't make their workers employees while also granting them flexible schedules. Yes, the conversion will cost them hundreds of millions of dollars a year, but trust me, Uber and Lyft and DoorDash **can afford it**. Uber's revenue last year was $14 billion, and its "rides" app, the one employing all those drivers, earned over $600 million in profit in one quarter. Similarly, Lyft raked in $3.6 billion, and DoorDash $900 million. Paying for driver benefits is **well within their means**, and it's the right thing to do.

Prop 22 includes some window-dressing intended to convince us that it will not leave drivers high and dry. Remember that employees, but not contractors, get minimum wage, overtime, health insurance, unemployment insurance, and workers' compensation. In their place, Prop 22 offers the following **feeble substitutes**:

Below-minimum wage. Under Prop 22, companies must pay 120% of local minimum hourly wage. But the companies count only "engaged time" spent actually driving customers. Since drivers spend, on average, roughly one-third of their time waiting for orders, this offer really amounts to only 80% of local minimum wage. On what planet is paying **20% below minimum wage** considered a benefit to workers?

Inadequate health insurance stipend. Prop 22 sets up a quarterly healthcare subsidy equal to a paltry 82% of the "average contributions required under the Affordable Care Act" for the cheapest, lowest-coverage plan for one person. To qualify, drivers must average 25 hours of engaged time per week, which could mean 33 hours or more on call; it's impossible to predict. If a driver misses the threshold for a quarter, the subsidy is **slashed in half**.

Pathetic imitation of workers' compensation. Prop 22 requires companies to provide occupational accident insurance, but, unlike employee workers' comp, it can be **denied** if a company finds the driver is at fault. The disability benefits in Prop 22 are capped at less than 9 years,

rather than lifetime for employees. And if workers dispute an injury award, they must pay the entire cost of litigating.

Paid leave, unemployment insurance, discrimination protection, right to organize. None.

Maximum 12-hour workday; no overtime pay. Charles Dickens would gasp in disbelief.

If Prop 22 fails, as I sincerely hope it does, these companies will have to abide by the same regulations as everyone else. Part-time contractors will become part-time employees, just like workers in food service, retail, or most other industries. Yes, it will cost these companies more, but **this is what they should have been doing from day one**. Our labor laws came into existence over a century ago in order to prevent exactly what the gig economy companies are doing today.

The ubiquitous, loud campaign in favor of Prop 22 deliberately misrepresents the choice we have. They are trying to **gaslight** us into believing that its failure will lead to all drivers losing their schedule flexibility, and many their jobs. Is anyone surprised by this? No. But you can correct it: you have a voice. **Please use it.** Do not let Uber, Lyft, DoorDash, and their wealthy friends lie their way to a law that benefits only themselves and seriously harms their honest, hardworking drivers.

That's the end of my rating. Now, here's some bonus material you can share with friends who may think Uber is a benign actor that deserves the benefit of the doubt. Since its founding, Uber has engaged in a panoply of illegal, unethical and downright immoral practices towards customers, drivers, cities and towns, and its own employees. Examples abound.

- They implemented "surge pricing" during terrorist attacks in Paris, London, and Sydney, and during other public emergencies.
- When hackers stole personal data of 57 million customers and drivers in 2016, Uber illegally concealed the breach for over a year, and attempted to buy off the hackers. They later settled with multiple states for $148 million.
- They claim **not** to be a transportation company, but rather a technology company that contracts with independent transportation providers. Yet, when San Francisco called their bluff in 2017, demanding names of these "providers" so the city could make sure they had obtained business licenses and paid applicable fees, Uber stonewalled, and had to be forced by a judge to produce the information.
- In 2016 they started to test self-driving cars without a permit. In San Francisco the cars routinely drove through red lights and made dangerous, illegal turns across bicycle lanes. The California DMV had to step in and revoke the vehicles' registrations
- In 2018, after being caught stealing trade secrets from Google's self-driving car spin-off Waymo, Uber paid an eye-popping $245 million to settle.
- From 2014 to 2017, as Uber moved into new cities without permission, it deployed a program called Greyball to mislead local officials, who would see a fake version of the phone app with ghost cars in order to evade capture.
- Among non-driver employees, working conditions are so bad that investors—investors!—have publicly complained about "a culture plagued by disrespect, exclusionary cliques, lack of diversity, and tolerance for bullying and harassment of every form."
- And, unsurprisingly, they squeeze their drivers—excuse me, "independent driver partners" —ever tighter to maximize profits.

Proposition 23: Regulation of Kidney Dialysis Clinics (Again) – NO

SUMMARY: Another attempt by United Healthcare Workers union to inflict damage on dialysis giants Fresenius and DaVita in retaliation for their resistance to unionization. It actually contains one good idea, which the Legislature enacted last year, making this proposition unnecessary.

DETAILS: Here's the latest chapter in the **titanic struggle** between the **enormous** United Healthcare Workers union and the **giant** Fresenius & DaVita dialysis clinic chains. Fans will recall that two years ago, in Prop 8, the union failed in its attempt to **drop the hammer** on the chains by limiting their revenue and compelling them to spend more on workers and supplies. Apparently their earnest claim that the clinics were crawling with hideous vermin didn't resonate with voters.

In this year's installation, Prop 23, the union tries **mightily** to force the chains to (1) get state permission before reducing or eliminating services at any clinics; (2) accept all patients regardless of insurance; and (3) post a doctor or nurse practitioner on site whenever patients are being treated. The chains **bellow** in response that this would cost too much and have no effect on patient care.

The second of these is actually a **great idea**. In fact, it's such a fine idea that the Legislature went ahead and enacted it late last year.

You see, in 2019, the chains were caught running a **scam** involving the American Kidney Fund, a nonprofit that receives over 80% of its money from Fresenius and DaVita. The chains pushed Medicare dialysis patients to drop Medicare and enroll in private insurance instead, with premiums paid by AKF. The chains then charged private insurance companies four times as much for the same services. California shut down the scam with a new law signed last October, despite a $2.5 million **full-court press** from Fresenius and DaVita.

The upshot for Prop 23 is that its **thunder has been stolen** by the Legislature. I can't recommend the measure if all it will do is require a bureaucrat to okay service changes and mandate the presence of superfluous medical personnel.

Will the union ever exact its **revenge** on the chains for **resisting unionization** of clinic workers? Will the chains ever stop their **unethical** patient insurance cons? Well, probably not this year. But stay tuned—more **titanic** chapters await!

Proposition 24: Consumer Privacy – YES

SUMMARY: California already has a consumer privacy law, regulating how companies can use and share your personal information. It went into effect earlier this year. Already, it's under attack by a business lobby eager to track your behavior and sell your information. Prop 24 will prevent the Legislature from weakening the law, and add stronger consumer protections.

DETAILS: I have **flip-flopped** on this measure. Before September 25th, I was against it. My rationale then: California's existing consumer privacy law went into effect just months ago, so it's premature to consider changes. Also, Prop 24 is opposed by organizations I respect, such as the League of Women Voters and the ACLU.

But my mind was changed by a series of articles by Michael Hiltzik in the *Los Angeles Times* detailing the history of this very complicated proposition. Here is what I learned.

In 2018, a wealthy developer who was concerned about online privacy sponsored an initiative along the lines of the European Union's General Data Protection Regulation. The EU not so modestly calls GDPR "the toughest privacy and security law in the world." It covers business use of personal information, including data protection, security, consent, storage limitation, and accountability, with stiff fines for violations.

When the developer appeared to have enough signatures to qualify his initiative, members of the Legislature proposed a deal. They asked him to withdraw his initiative in exchange for passage of a substantially similar bill in the Legislature. Doing so would save him the uncertainty of a public election and the expense of a campaign that would undoubtedly pit him against some of the richest companies in the world. So he agreed. The bill that emerged from Sacramento was a slightly watered-down version of the original initiative. Now called the California Consumer Privacy Act (CCPA), it took effect on January 1, 2020. You're soaking in it right now.

CCPA is not a bad law. It guarantees consumers a great deal of control over the personal information that businesses collect about them. Specifically, CCPA grants you:

- The right to know what personal information businesses collect about you, and how they use and share it
- The right to delete your personal information
- The right to prevent your personal information from being sold
- The right not to be treated differently by a business if your exercise your CCPA rights

This is wonderful stuff. My personal data feels more European already! However, CCPA has a few **problem areas**.

For instance, limits on transmitting data to third parties apply only to the **sale** of data, so companies claim they're merely **sharing** data, which is legal. And CCPA is pretty **toothless**: businesses found in violation have **thirty days** to correct the problem without penalty; they can use this forgiveness once for each type of offense.

Also, the Attorney General's office is the only entity allowed to sue over violations. But they've got more important things to do, such as suing the federal government over immigration, the census, gun control, the Postal Service, and so on. In fact, AG Xavier Becerra has stated that his office can't prosecute more than a few CCPA cases a year. (That drip-drip you hear is the sound of businesses salivating at the prospect of misappropriating your data with impunity.)

But all of these problems are as nothing compared with the law's biggest hitch. Because CCPA was **enacted** by the Legislature, it can also be **amended**, eroded, and effectively **destroyed** by the Legislature. There is every indication that corporate lobbyists in Sacramento are now succeeding at exactly that, convincing legislators gradually to **gut CCPA** until it becomes worthless.

In response, the backer of the 2018 initiative (remember him?) has sponsored another one: Prop 24 on this ballot. Prop 24 largely restates CCPA, but because it's a voter-passed law, it would be **invulnerable** to weakening by the Legislature. That, by itself, is **reason enough** to vote for it.

Prop 24 differs from CCPA in a number of other ways. Under current law, businesses must allow consumers to opt out of having their personal data **sold**; under Prop 24 this would apply to **sharing** as well as selling. Prop 24 would give consumers the right to **correct** personal data held by a company, and the right to limit use of **sensitive data** such as race, sexual orientation, and location.

Under Prop 24, a new, dedicated state agency will be responsible for enforcement, replacing the overburdened Attorney General's office. Violators will no longer be able to duck penalties by correcting violations within thirty days. And fines will be tripled if they involve children's information.

Lest red tape place fledgling websites at a competitive disadvantage, Prop 24 has an exemption for small

businesses. Those with fewer than 100,000 customers will not be subject to consumer data privacy requirements.

Most importantly, the Legislature may change Prop 24 (by a simple majority vote) **only** in ways that, in the words of the proposition, "are consistent with and further the purpose and intent of this Act," namely "to further protect consumers' rights, including the constitutional right of privacy." Prop 24 will prevent your favorite online brands from grinding down our protections. We won't be challenging the European Union for "toughest in the world," but we'll be closer.

Given all those points in its favor, why have the ACLU, LWV, California Nurses Association, and others lined up **against** Prop 24? Here are their main kvetches:

Opponents assert that businesses should never keep any data unless a consumer explicitly **opts in**, yet Prop 24 stipulates the converse: businesses may collect all information consumers give them unless they **opt out**. I agree with the principle. But the Supreme Court has ruled that opt-in requirements are unconstitutional limitations of free speech rights, so opt-out is the best we can hope to do.

Opponents claim that giving businesses the right to award discounts to customers in exchange for their data, as Prop 24 would do, effectively legalizes a **pay-for-privacy** scheme: it costs you more to keep your data private. But this provision is really a carve-out for loyalty clubs, like your supermarket membership, that give you minor savings on selected merchandise in exchange for your data. Under Prop 24, discounts (or, if you insist, the "extra charge" for non-members) must be no more than the value to the business of the data.

The Electronic Frontier Foundation protests that Prop 24's ban on collecting more personal information than what's necessary to provide a requested service is **insufficient** ("only a partial step forward"). This may be true, but it's no reason to vote against the measure. You should always base your vote on what a proposition **will** do, not what it **won't**. In this case, Prop 24 represents an improvement.

The Foundation also points out places where Prop 24 arguably **weakens** parts of CCPA, such as biometric privacy and the right to delete. These may indeed be serious flaws. But if Prop 24 fails and the Legislature starts chipping away at CCPA, the Foundation's complaints will become **moot**, as **all** protections wither away. Prop 24 may not be perfect, but it's our only real hope to ensure California has meaningful privacy laws in the years ahead.

Finally, there's the argument that it's **too soon** to change the brand-new CCPA. This claim is advanced by the industry, and it's a key component of the League of Women Voters' position. But, as I pointed out earlier, most of Prop 24 is identical to CCPA; the ballot proposition exists primarily to cement these consumer protections into place.

As you can see, the objections to Prop 24 really don't amount to much; certainly not enough to merit a "no" vote. If you want your rights to privacy protected online, and not eroded away by an unreliable Legislature, you'll vote "yes."

Proposition 25: Eliminate Bail – YES

SUMMARY: California's criminal justice system relies on cash bail, so poor people awaiting trial must stay in jail while the well-off get out. It's **fundamentally unjust**. Prop 25 will eliminate bail in California, moving us closer to equal protection under the law. Its replacement, though, is far from perfect: an AI algorithm that calculates a person's risk of committing a new crime or failing to appear in court, based on personal and demographic data. The potential for bias is great. However, Prop 25 requires the state to adjust the algorithm regularly, and I'm optimistic we can find fair and safe parameters. In any event, it's a great improvement over bail.

DETAILS: The United States imprisons more people than any other country: 2.3 million, or one-quarter of all prisoners in the world. Our rate of prisoners per capita is five times as high as the UK, six times as high as Canada, and twelve times as high as the Netherlands.

Here in California, 239,000 people are incarcerated in jails, prisons, and other facilities (as of 2018). Of those in local jails, 60%—about 50,000 people—are pretrial detainees who have not been convicted of any crime. Many are only there because they cannot afford bail.

Bail is constitutional by definition; it is part of the Eighth Amendment. It's pretty simple in concept. When you're arrested, the court will set you free, as long as you promise to appear in court when required, and you provide something of value (i.e., bail) as collateral. If you appear as required, the bail is returned to you; if you skip your court appearance, the state keeps the bail and may re-arrest you.

Each county maintains a schedule listing the amount of bail required for each crime. For example, bail is $10,000 for domestic assault in Mendocino County, $100,000 for mayhem in Los Angeles County, and so on. (Judges can adjust these figures at arraignment—more on that later.) If you happen to have that kind of cash, you provide it to the court and go on your merry way. If you don't, you call a bail agent and arrange for a loan, known as a **bail bond**. The nonrefundable premium for this service is generally 10-15% of the bail amount. And if you cannot afford even that, you are stuck in jail until your trial.

As you can see, your **net worth** determines your treatment—cash, bail bond, or jail. The fact that the criminal justice system **treats you differently** depending on how much **money** you have is, to put it bluntly, **asinine**. It has led to tens of thousands being incarcerated in our state, awaiting trial, simply because they are poor. And since racial minorities are overrepresented in the lowest economic

tiers, they are overrepresented in this unfairly jailed group, making bail an important racial justice issue. Jay A. Fernandez describes the impact in *ACLU Magazine:*

> "Both court-assigned bail amounts and bail premiums are applied unevenly across race—studies have shown that Black and Latino men are on average assigned substantively higher amounts than white men for similar crimes—and those who cannot afford either land in jail. Trapped there, they are subject to a system that perpetuates negative outcomes: Defendants are four times more likely to be sentenced to prison if they spend their pretrial time in jail; they are more likely to take guilty plea deals for lesser charges to obtain release, even if they are innocent; they suffer the psychological trauma of being cut off from family and friends for weeks, months, or even years; they are exposed to violence, abuse, and poor health conditions; and they risk losing homes, jobs, and custody of their children."

Prop 25 will eliminate bail in California. It will require **release within 12 hours** of arrest for most misdemeanors. For more serious misdemeanors and felonies, arrestees will be **categorized for risk**. Those deemed low- or medium-risk must be released within 36 hours, with possible supervision for medium-risk people. High-risk arrestees and those accused of severe felonies would remain in jail. At arraignment, Prop 25 will generally require release until trial, unless prosecutors can show high likelihood the accused might commit a new crime or fail to appear in court.

Under Prop 25, your net worth will **no longer determine** how much time you spend in jail. Far fewer people will be jailed until arraignment and trial, and those who **are** jailed will be there for the right reasons: risk of criminal behavior, not indigence. It's a great step toward a more just system.

But Prop 25 is not perfect. Placing arrestees into those three risk categories is a tall order. Here's some background.

Today, courts have latitude to change bail at arraignment, based on the seriousness of the crime, prior record, and the risk of a new crime or skipped court dates. Determining that risk is obviously difficult, and can be quite subjective, making it susceptible to conscious or unconscious bias. To mitigate that bias, most courts today use **pretrial risk assessment tools**. These are computer programs that analyze an arrestee's personal history (e.g., prior record) and demographic data (e.g., age), compare it with historical data, and make a recommendation. The tool does not replace the judge's discretion, but it provides a useful, objective assessment.

Prop 25 will elevate these tools to be a **primary determinant** of pretrial risk. In essence, an AI algorithm will categorize people as low, medium, or high risk, with the consequences outlined above. The assessment staff is also directed to collect additional information, such as the particulars of the crime and extenuating circumstances, but the pretrial risk assessment tool's score will be critical.

If you're thinking, "I've seen this movie before – it had Tom Cruise and a lot of holographs," you're right. The movie is "Minority Report" (2002), based on a story by Philip K. Dick. In it, oracles predict who will commit crimes in the future, and hunky Tom arrests them before they get the chance. Crime is virtually eliminated. Prop 25's use of AI tools to determine who must remain jailed is not unlike that. The difference is that Dick's oracles are miraculous and inscrutable, while our tool is well-understood and under our control. Still, some skepticism is understandable.

As you might imagine, Prop 25 is fiercely opposed by the bail bond industry. A collection of bail bond insurers with bland names like Triton, AIA Holdings, Seaview, and American Surety, have poured over $5 million into the "No" campaign as of early September; expect more soon. Their main argument (aside from *"we're not really parasites!"*) is that defendants will simply stop showing up for court dates if they have no bail money at stake. This is a genuine risk, but a small one compared with the horrendous inequity of wealth-based justice. I'm willing to tolerate a few more court no-shows if I can make the system fairer.

A more serious objection is that the AI algorithm replacing bail will always be inherently unfair, because it is based on prior data from a system that has historically mistreated minorities. This is essentially the position of Human Rights Watch, which argues that Prop 25 "...exchanges money bail for a system that uses racially biased risk assessment tools, [and] gives judges nearly unlimited discretion to incarcerate." HRW proposes that California should adopt "cite and release" instead of arrests for non-serious and non-violent felonies; require courts to dig into facts and context when considering release; and require release in all cases "absent significant proof of a specific danger."

This may well be a superior system, but it **isn't on the ballot**; Prop 25 **is.** The only choices we have are yes and no; there is no essay section to add provisions we wish it contained. If Prop 25 fails, the message received in Sacramento **won't** be that voters want to see bail eliminated but mistrust the AI risk assessment tool; it will be that we want to **preserve bail**. In that scenario, the likelihood of the Legislature passing an even stronger proposal, such as HRW's, is **nil**.

Prop 25 will require the state Judicial Council to identify and mitigate any implicit bias in the tool at regular intervals. Will they get it right the first time? Doubtful. But it's reasonable to assume they will keep at it. There's a whole industry dedicated to improving these tools continuously. I'm optimistic they and the Council will gradually devise a fair way to determine who can go free.

My Semi-Biennial Lecture on Bonds

[This year's lecture departs from my usual spiel in two places. They're in brackets below.]

When California wants to finance a large project, it asks the voters for permission to take out a loan. Prop 14 on this ballot 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 30 or 40 years. 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 project 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 so, but with today's low interest rates, each dollar of bond money will cost only 40 cents in interest, accounting for inflation. (See details on p. 78 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 **$5.5 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 just over 4% (and shrinking) of the General Fund, down from a high of nearly 6% ten years ago. Prop 14 won't appreciably increase that figure. Accounting for Prop 14 and all bonds previously authorized by voters, the Legislative Analyst predicts the debt ratio still won't top 5%.

*[However, in the current period of **deep uncertainty**, it's possible we'll be facing years of state **budget crises**, as mass unemployment and unpredictable markets potentially slash the state's income. So I'm advising extreme prudence this election.]*

Most bonds fund long-lived, tangible acquisitions, such as laboratory buildings and equipment. It's sensible to make extended payments for things that will be used far into the future.

*[It's **not** sensible, however, for bonds to fund **transient** items such as administration, research staff salaries, consumable goods, and other indirect costs, as Prop 14 proposes. This is a **flagrant violation** of this point. For this reason and others, I **oppose** Prop 14.]*

Remember, too, that California's population continues to grow by millions every decade. Borrowing makes particular sense if you know your income will go up in the future. As the state grows, over time the General Fund will 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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Your comments are welcome at pete@peterates.com