



PETE RATES THE PROPOSITIONS

Sensible opinions on the California ballot propositions

since 1980

by Pete Stahl

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- My Semi-Biennial Lecture on Bonds

Proposition 2: \$10 Billion School & College Bonds – YES

SUMMARY: This is a close call. Prop 2 will provide \$10 billion in state bond funding for the construction and renovation of local public school and community college facilities. Measures like this appear every few years; they’ve been necessary since Prop 13 (1978) limited local districts’ revenue streams. Before 2016, I treated these propositions as an automatic “yes.” But serious equity issues have surfaced: areas with lower property values get less bond money. Still, the stronger case is in favor of Prop 2.

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

DETAILS: This should be easy. Public education is important, so we should approve funding for school facilities. Simple.

But there are legitimate concerns about how Prop 2 will distribute bond money to rich and poor areas, which

I’ll describe below. I’m still recommending a “yes” vote. However, if you decide to vote against Prop 2 due to equity issues, please see the end of this rating for instructions to **prevent your “no” vote from being misinterpreted** by the Legislature. It will help them craft a better bond measure next time.

Let’s dive in. Because the famous Prop 13 of 1978 limits local taxation, the state helps local school and community college districts pay the costs of construction and renovation. Over the ten years ending in 2019, the state pitched in [\\$15 billion](#), amounting to [16% of these costs](#). The state raises the money by selling bonds, which must be approved by voters via ballot measures such as Prop 2. Bond money is then distributed to districts via the School Facilities Program (SFP).

(The eagle-eyed among you might notice that p. 15 of the ballot pamphlet says, “the state usually pays 50 percent of the cost of new construction projects and 60 percent of the cost of renovation projects,” not the 16% I

cite above. Explanation: The figures in the pamphlet refer only to projects that **actually receive** SFP funding. Most projects do not, for a variety of reasons. So SFP funding is 50-60% for **funded** projects, but just 16% across **all** projects.)

Prop 2 would authorize \$10 billion in state bonds to assist with the construction and renovation of public schools (\$8.5 billion) and community colleges (\$1.5 billion). The projects are needed because over one-third of California's 5.8 million K-12 students attend aging schools with structural damage, gas leaks, electrical failures, damaged walls, floors, and ceilings, and so on. It has gotten so bad that, between 2015 and 2019, **over one hundred schools had to close temporarily** due to poor facility conditions.

We've approved bonds like Prop 2 over and over again: 1996 (\$3 billion), 1998 (\$9.2 billion), 2002 (\$13 billion), 2004 (\$12 billion), 2006 (\$10 billion), 2016 (\$9 billion).

But **something unexpected** happened in March of 2020. (Yeah, no, not *that*. Well, okay, that too, but also this.) In the March 3rd election, held one day before the first statewide Covid emergency, a \$15 billion school construction bond **failed**.

Why? There were lots of hypotheses: **sticker shock** at the high amount of the bond; opposition to a provision empowering school districts to **raise property taxes higher**; an overconfident, **lackadaisical campaign** for the measure; **conservative-skewed voter turnout** for an early primary; and the fact that the 2020 measure was coincidentally named **Proposition 13**, scaring off casual voters who thought it might be related to the landmark 1978 measure.

The 2020 bond also contained provisions that were **tangential**, at best, to its main purpose. For example, it directed the state to give preference to projects that used **unionized labor**. And it reduced certain fees **housing developers** pay school districts to accommodate increased enrollment. It's possible these inspired some "no" votes.

One issue that got virtually no attention, however, was the question of whether the bond proceeds would be **distributed fairly**. SFP grants bond money to districts on a matching basis—that is, in proportion to construction/renovation funds that a district has raised locally via bonds approved by local voters. But local bonds are limited to 2.5% of assessed property values in the district. This limitation means that districts with lower-value commercial and residential property—districts in **poorer areas**—cannot raise as much local bond money, and consequently qualify only for **smaller amounts of state bond money**. This **amplifies the**

disparity between rich and poor areas of the state.

The bond matching system is at cross-purposes with the state's operational school funding program. That program aims to **increase equity** by sending greater aid to districts with more students who are English learners, live in foster homes, live in poverty, or are otherwise disadvantaged. The state's operational funds are helping to level the playing field, while SFP tilts it further. A delightful "storymap" from the Center for Cities + Schools at UC Berkeley illustrates the disconnect, and also highlights how the quality of school facilities **affects learning outcomes**. "In Los Angeles, for example, upgrading school facilities produced up to 10% gains in student achievement."

Prop 2 contains some minor provisions intended to mitigate the inequities, but they will be largely ineffective. For example, Prop 2 will allow districts with a high proportion of disadvantaged students to qualify for an additional five percent match – that is, 55% for new construction and 65% for renovation. But five percent does not begin to counteract the vast differences in property wealth (and therefore local bonding capacity) between districts, and in any event it would make only a tiny difference to the amount of state funding for low-wealth districts.

"Okay," you might be saying. "You've convinced me that Prop 2 will make rich districts richer, and leave kids in poorer districts wallowing in squalor. But you **support** Prop 2. What gives?"

I'll let Sara Hinkley of the Center for Cities + Schools make my case.

"The immediate priority for California students is for voters to **adequately fund the SFP through a November bond measure**. The state has not passed a school facility bond in 8 years, and the general funds that have kept the SFP afloat are running out. ... It is equally important that the SFP is reconfigured so that it benefits the students in lower wealth districts who need it most, instead of exacerbating the unequal distribution of resources between districts."

In other words, defeating Prop 2 will hurt **every** district that needs SFP funding. That immediate concern outweighs the need to correct the matching mechanism that leads to inequity in distribution. But let's keep up the pressure on this issue, so the inevitable next school bond measure can be fairer.

Instructions for those who vote "no" on Prop 2 because of unfair distribution of bond proceeds

I respect anyone who votes against Prop 2 due to the inequity built into SFP's distribution process. However,

if you do so, you have an obligation to **clarify your reasoning** to the legislators in Sacramento who wrote the measure. The fact that, to this day, no one is sure why the 2020 bond failed means that your “no” vote is **likely to be misinterpreted** in the Capitol **unless you speak up**. You must tell your representatives why you opposed Prop 2, and what they can do to win your vote next time. Otherwise, they may assume you simply disapprove of all bonds, like the cranks at the Howard Jarvis Taxpayers Association who wrote the argument against Prop 2.

Here’s what to do: Find your Legislators [using this handy tool](#). Visit your Assembly member’s page, and click the **Contact** link (at the top of the page for most members, but you may have to search for it). Fill out the form, stating why you voted against Prop 2. Maybe something like this:

Proposition 3: Same-Sex Marriage – YES

SUMMARY: Repeals Prop 8 (2008), which prohibited same-sex marriage. Prop 8 was declared unconstitutional by the US Supreme Court in 2015, but it’s still in our state Constitution and ought to be removed. Prop 3 would substitute this language: “The right to marry is a fundamental right.”

DETAILS: Do not imagine that Prop 3 is inconsequential.

In 2008, voters approved Prop 8, which inserted this language into [California Constitution](#): “*Only marriage between a man and a woman is valid or recognized in California.*” Seven years later, the US Supreme court invalidated this clause in the case [Obergefell v. Hodges](#), holding that all states must allow and recognize same-sex marriages. But the language **remains in our state Constitution**.

Today, the liberal/moderate Supreme Court majority that decided *Obergefell* has been supplanted by the far-

Dear Assembly Member XXX:

I voted against Proposition 2, but *not* because I oppose bond funding for school construction. I actually *love* bond funding for school facilities. But Proposition 2 would perpetuate inequities in the School Facilities Program’s distribution of bond proceeds. Matching local funding will always under-fund the neediest districts in the poorest areas, and give districts in wealthy areas extra. If you can work with your colleagues to eliminate this problem in a future school facilities bond measure, you can count on my vote.

Repeat the process for your state senator.

Or you can simply vote “yes” despite Prop 2’s flaws.

right majority that [overturned *Roe v. Wade*](#). There is [every indication](#) that, given the opportunity, this majority would eagerly **overturn *Obergefell* too**. If that were to happen, it would **reactivate Prop 8**, ending same-sex marriage in California.

Prop 3 will prevent this scenario. Prop 3 will remove the Prop 8 language from our Constitution, and replace it with an assertion that marriage is a fundamental right **for everybody**.

If you have doubts about how damaging a restoration of Prop 8 would be, please read [what I wrote in 2008](#) in opposition to the measure. Here’s an excerpt:

“Those of us opposing Prop 8 are not asking you to sanctify, bless or even approve of same-sex marriages. Instead, we are asking you to allow these couples to live in privacy and peace, with the same legal, financial, health care, and other rights to support each other as heterosexual couples have. Gay marriage harms no one. Why outlaw it?”

Proposition 4: \$10 Billion Water & Climate Bonds – YES

SUMMARY: A large bond to fund almost any capital project associated with water in almost any form except maybe icebergs. Prop 4 will increase water availability during droughts, remove pollutants from drinking water, reduce risk of flooding, prevent wildfires, address sea-level rise, protect fish, restore habitats, subsidize offshore wind turbines, improve parks, protect communities from extreme heat. All of these are wise long-term investments, especially as our drought-flood cycles

become increasingly intense due to climate change.

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

DETAILS: This year’s [enormous state budget deficit](#) led to [\\$9 billion in cuts and delays](#) to state [climate programs](#). Affected programs include preparing for sea level rise, fighting wildfires, ensuring water security,

developing solar and wind energy, and replacing petroleum-burning vehicles with electric.

These cuts are beyond disappointing; they're dangerous. The more slowly California reduces greenhouse gas emissions, the worse climate change will get, and the harder it will become for us to meet our climate goals. Barry Vesser, chief operating officer of [The Climate Center](#), [put it this way](#): "Unfortunately, as you and I know, physics and chemistry and climate change do not really care about the state's fiscal condition."

Prop 4 is a \$10 billion bond intended to backfill this year's cuts in climate programs, plus a little extra. The money will be used to fund a huge catalog of activities, summarized on pp. 26-27 of your ballot pamphlet. Highlights include large-scale [water storage](#) so we can weather increasingly severe droughts; [dam repair](#) to handle stronger [atmospheric rivers](#); forest management to minimize [greenhouse gas-spewing wildfires](#); restoring [wetlands that can buffer us](#) against rising sea levels; improving land, river and ocean habitats to preserve critical [ecosystems](#) and protect [biodiversity](#); and the

development of [offshore wind turbines](#) to help wean us from fossil-fuel power plants.

Obviously, all of the programs are important. Prop 4 will allow them to move forward despite this year's deficit, by using bond borrowing to spread out the payments across a few decades. Future state budgets will be able to handle the estimated \$400 million annual payment, and in return we will **avoid interrupting** our fight against the existential threat of relentless climate change.

It's unfortunate that our state government's ability to protect us from the worst impacts of climate change is so fragile and volatile. It depends on the health of each year's **state budget**, which depends on how much **income tax** the state collects, which in turn depends on how much **capital gains** are earned by state's wealthiest taxpayers, which depends on how well the **stock market** performs. It's absurd, I know, but [that's our system](#). If you can think of a better way, tell your legislators. Until then, bonds like Prop 4 can smooth out the inevitable rough patches where the need is urgent.

Proposition 5: 55% Vote to Approve Local Bonds – YES

SUMMARY: Prop 5 would allow cities, counties, and regional agencies to pass local bonds with a 55% vote instead of the current two-thirds vote. (School districts can do this today.) Bonds passed by 55% could fund a limited set of capital expenses, including affordable housing construction, hospitals, police stations, parks, fire safety, and internet access. These are all fine uses of bond proceeds, and 55% is a fine threshold for voter approval.

DETAILS: Local bonds are how local governments borrow money. Typically, local bonds are paid off by a surcharge levied on property taxes. The famous Prop 13 (1978) requires local bonds to be approved by [two-thirds of voters](#).

In 2000, voters passed [Prop 39](#), which allows school districts to pass local bonds with just 55% of voters instead of two-thirds. To be eligible for 55%, a bond must be used only to fund long-term capital expenses: construction, rehabilitation, and equipping of school facilities, or the acquisition or lease of real property for school facilities.

Prop 5 would make this same 55% bond threshold available to cities, counties, and special districts like the

new [Bay Area Housing Finance Authority](#). The 55% threshold seems to work splendidly for school districts, and I cannot think of why it shouldn't apply to other local entities as well.

Under Prop 5, bonds passed by 55% could fund a prescribed set of public infrastructure expenses, some of which I list in the Summary above. These are all long-term capital expenses, so borrowing to fund them makes sense.

Also eligible for bond funding under Prop 5 are **down payment assistance** and **first-time homebuyer** programs, some of which are not appropriate for bond funding. For instance, the [Pathway to Homeownership Closing Cost Assistance](#) program is a straight grant for first-time buyers. It may be an admirable program, but it does not provide the public with a usable asset, so it would be **inappropriate** to fund it with long-term bonds. Fortunately, it is currently funded by other means.

So we may need to be vigilant about exactly which programs local bonds fund. Happily, Prop 5 puts us in a position to do so by requiring annual audits and citizens' oversight committees to supervise spending. Seems sensible enough.

Proposition 6: End Forced Labor in Prisons – YES

SUMMARY: California is one of 16 states that still allow forced labor in prisons. Yes, it's permitted by the Thirteenth Amendment, but it's still wrong. Prop 6 will end it here.

DETAILS: You might think that **abolitionists** are all long-dead figures from two centuries ago, like [Charles Sumner](#) or [Harriet Beecher Stowe](#). But there are abolitionists in 2024, right here in California. Why?

Look in our [state Constitution](#). It says, "Involuntary servitude is prohibited **except to punish crime**." Forced labor is **legal** in California prisons, and is regularly practiced today.

A [superb report by Victoria Valenzuela](#) for NPR affiliate [LAist](#) details how prison inmates are assigned non-paying work such as food preparation, facility maintenance, or teaching. If they refuse, they may lawfully face **retaliation**, including restricted recreational privileges, loss of family visits, solitary confinement for ten days, and [write-ups](#) that can postpone or even **preclude parole**.

Valenzuela writes of one inmate who, in 2020, was ordered to disinfect the hospital cells of those who had tested positive for Covid, undoubtedly without adequate PPE. In effect, he was forced to choose between risking his life and receiving parole. No one should have to make that choice.

Maybe you're wondering, "WTF? Didn't the federal government outlaw that at the end of the Civil War?" No,

it did not. The [Thirteenth Amendment](#) to the US Constitution, ratified in 1865, specifically **permits involuntary servitude** "as a punishment for crime whereof the party shall have been duly convicted." Maybe this sounded sensible 160 years ago, but our ideas about humane treatment of the incarcerated have evolved.

In a bit of good news, there is a [nascent movement](#) to [eliminate that clause](#) from the Thirteenth Amendment. Of course, it's opposed by the usual [collection of clowns](#) claiming that "idle hands are the devil's workshop" and similar claptrap.

Regardless of the national effort's outcome, though, we can do something about it here. Prop 6 will change California's Constitution to read, "Slavery and involuntary servitude are prohibited." No exceptions, no loopholes.

Thirty-four states, including Deep South states Alabama and Tennessee, have already outlawed forced labor in prisons. Frankly, it's **embarrassing** to have to look to those states for model human rights laws, but here we are.

New Jersey Senator Cory Booker [recently said](#), "Our prisons should reflect the best of who we are; they should reflect our values. And they should, in my strong opinion, be places that are not just for punishment, but for rehabilitation and for creating roads of redemption." Passing Prop 6 will bring us closer to that ideal.

Proposition 32: Raise Minimum Wage to \$18 – YES

SUMMARY: The minimum wage in California is [currently \\$16](#) except in [40 localities](#), mostly in the Bay Area and LA County, where it's as high as \$19.36. Prop 32 would raise the floor rate to \$18 starting in 2025, and

increase it thereafter based on inflation. Studies show that even in the [cheapest](#) parts of the state, it would take \$20/hour to afford the [basics](#). This is a small step in the right direction.

DETAILS:

Come and listen to a story 'bout a man named Ed
A poor retail clerk, barely kept his fam'ly fed
And all day long he was feelin' twice his age
And workin' three jobs for the minimum wage
(*Peanuts, that is. Low pay, chicken feed*)

Well, Ed knew his pay was permitted by the law
But he owed lots o' folks an' it was stickin' in his craw
He said, "Californy oughta pass a guarantee
"So I can pay my bills an' get out of poverty"
(*Living wage, that is. Make the rent, food security*)

Well, the next thing you know, Proposition Thirty-Two
Gave all the poorest workers a bump in revenue
It didn't turn a retail clerk into a millionaire
But it gave Ed a hand and a deal that's square
(*Fair pay, that is. Realistic wages, hope for the future*)

Y'all come back now, y'hear?

(*apologies to Paul Henning*)

Proposition 33: Lift Restrictions on Local Rent Control – NO

SUMMARY: Prop 33 would **repeal** a state law known as **Costa-Hawkins**, which prevents local rent control ordinances from applying to single-family houses or condos, or to any units built after 1995 (or the date of the ordinance, if earlier), or when a new tenant moves in. Some of these exclusions seem arbitrary and self-defeating, so it's tempting to support Prop 33. But eliminating Costa-Hawkins would allow rent control ordinances to apply to **newly built units** and **between tenants**. And that would open the door to **bad-faith ordinances** in **NIMBY** cities that would make new rental housing **financially infeasible** to build, and thus actually **prevent** the construction of more badly-needed housing.

Note: I have flip-flopped on this measure. Prior to September 29th I rated it a "yes." But an excellent analysis by Max Dubler (see below) persuaded me to change my mind. Thanks, Max!

DETAILS: Every residential rental unit in California is in one of three categories: **local** rent control, **state** rent control, or **no** rent control.

Local rent control ordinances exist in **sixteen cities** and Los Angeles County. 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). Also, local rent control cannot implement **vacancy control**, which would limit rent increases when a new tenant moves in. Cities and counties with local rent control contain about one-quarter of California's population; they are all in the Bay Area or LA County, plus Palm Springs.

State rent control is in effect everywhere there is no local rent control, by virtue of the **Tenant Protection Act**

(TPA), which **went into effect** in 2020. Under the TPA, landlords cannot increase rent by more than 5 percent plus inflation in a year (max 10 percent total). Also, instead of the fixed Costa-Hawkins built-before date of 1995 or earlier, the TPA uses a **rolling date** of 15 years before the current year. 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 TPA 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 TPA is temporary; it expires January 1, 2030. However, I expect it will be renewed before then, and possibly made permanent.

In places where there **is** local rent control, the TPA **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 TPA covers units built from 1978 to 2009, bringing **hundreds of thousands** of newer-but-not-really-new units under the umbrella.

Finally, **no rent control** applies to units not covered by local or state rent control. For example, units built since 2009 (i.e., younger than 15 years), or single-family homes or condos owned by individuals. Landlords for these units are free to charge market rates and adjust prices as they wish between tenants.

Prop 33 is **not** a replay of **Prop 21** from 2020. That proposition, which failed by a colossal **3.3 million votes**, would have implemented a relatively **modest reform** of Costa-Hawkins. It would have replaced the absurd, fixed "built-before" dates required by Costa-Hawkins with the TPA's rolling 15 year threshold, and matched TPA's rules for single-family homes and condos. (It also would have allowed vacancy control, which was potentially

problematic, but [I supported it anyway.](#))

Prop 33 on this ballot is much bolder: it seeks to **repeal Costa-Hawkins completely**. If Prop 33 passes, cities and counties will be allowed (but not required) to regulate **all types** of residential rental units **regardless of construction date**, and to implement **vacancy control**.

This might seem like a fine idea if you live in an area with mostly newer apartments, and are watching rents zoom upward, uncontrolled, year after year. “Prop 33 will stick it in those corporate landlords’ eyes!” you may be thinking. “My city will force them to treat me more like a person, and less like an ATM. That ought to get their attention.”

I feel your pain. And if Prop 33 were a well-considered and measured response like Prop 21 was, I’d be all over it. But Prop 33 is neither well-considered nor measured. It’s a primal scream, a wrecking ball, an earthquake. Prop 33 indiscriminately slashes **all** of Costa-Hawkins, including beneficial provisions that encourage developers to build more rental housing.

The most insidious, real danger of Prop 33 is spelled out in the [superb, dispassionate analysis](#) by Max Dubler for [California YIMBY](#), a pro-housing advocacy group.

“[C]ities that want to block new housing construction would gain a powerful new tool if [Prop 33] passes. By mandating strict, below-inflation rent control with vacancy control for all new multifamily housing, a city could make essentially all new multifamily housing **financially infeasible to build**. ... This bears repeating: anti-housing lawmakers who do not care about housing affordability are supporting [Prop 33] because they want to **weaponize bad-faith rent controls** to get out of having to follow state housing law.”

In other words, while Prop 33 may empower pro-

housing cities to help renters afford their homes, it will also empower anti-growth cities to **prevent construction of more badly-needed housing**. Far from helping to solve California’s critical housing crisis, Prop 33 will actually **torpedo solutions** in many places.

Lest you think this is an exaggeration, Dubler’s post names specific cities and policymakers who have **already** announced their intentions in the event Prop 33 passes. [Tony Strickland](#), a councilmember in Huntington Beach, bragged that his city “could slap steep affordability requirements on new, multi-unit apartment projects that are now exempt from rent control. Such requirements, he argued, could stop development.” And “[Pasadena](#) has already passed rent control ballot initiatives that call for the immediate imposition of vacancy control in the event of a Costa Hawkins repeal.”

I should point out, as I did four 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 agree with the theory, then you should oppose Prop 33 in order to prevent rent control from potentially expanding.

But even if you believe in rent control, Prop 33 is a terrible idea. It’s off-target, and would cause more mischief and havoc than could possibly be offset by its supposed benefits. I hate being on the same side as the avaricious California Apartment Association. But I cannot recommend a simpleminded, blunt tool that would have such horrible unintended consequences.

Proposition 34: Stifle the AIDS Healthcare Foundation – NO

SUMMARY: Initiative abuse, pure and simple. This preposterous proposition asks us to silence the [AIDS Healthcare Foundation](#), a Southern California nonprofit with a large advocacy mission. Why? Because they sponsored Prop 33 and two previous rent control measures. The [California Apartment Association](#) wants it to stop, and wrote Prop 34 so its provisions apply only to AHF. Like the recent failed kidney dialysis initiatives, this intramural tiff has spilled onto your ballot. I have no patience for measures like this.

DETAILS: We warned you.

In 2018, when you tried to control rents by [bumping](#)

[off](#) Costa and Hawkins, we told you there’d be trouble. You said you only wanted to help [shelter the homeless](#). We saw through that. You were horning in on the apartment rental racket, and that’s **our** territory. Ours! We crushed you and your feeble Prop 10 by 2.3 million votes. Sent you home whimpering, with your tail between your legs.

We thought you’d learn your lesson. But I guess you’re just too stupid.

So it kind of surprised us when you [came back](#) in 2020 for another shot. This time you didn’t try to ice Costa and Hawkins, just kneecap them. You called it “[reform](#).” We put a stop to **that**. Obliterated your whiny

little Prop 21 by, oh, 3.3 million votes. Apartments are our racket, and we will do anything to protect it. Understand? Anything.

But some people never get it.

So this year, when we saw you coming after us [one more time](#) with Prop 33, we knew we had to get serious. This guy, we said, this guy is more than an annoyance. He's a problem. And what do we do with problems? That's right, we **fix** them.

So, yeah, we'll make Prop 33 go away. We've already put up [sixty, seventy million](#) to defend our territory.

But we also gotta put an end to your interference. So

we've come up with a little plan. A little masterpiece of [finely targeted legislation](#), you might say. Prop 34. It'll only hit you, no collateral damage. Very clean and neat. One day you'll be planning your next move, and when you look up, boom! Suddenly you can't find your license to practice. And your tax-exempt status don't look so good anymore.

You'll cry, you pathetic loser. You'll point your finger at us, saying we did this to you. But our hands will be spotless. We didn't execute this hit, it was the **voters** who did it. Perfect alibi, we'll get off scot-free. And while you're lying there, bleeding, in the gutter, we'll be laughing all the way to the bank.

Proposition 35: Earmark Health Plan Tax for Medi-Cal – NO

SUMMARY: In 2023, when it looked like the state deficit was only \$30 billion, Gov. Newsom [promised](#) to use revenue from the multi-billion-dollar [Managed Care Organization \(MCO\) tax](#) to increase payments to Medi-Cal healthcare providers. But when the state deficit ballooned to [\\$56 billion](#) earlier this year, the governor [renege](#)d, claiming he needed the MCO tax to bridge the budget gap. Prop 35 is the healthcare industry's response. It would permanently dedicate the MCO tax to increase payments to certain types of healthcare providers, prohibiting any other uses. While I sympathize with the healthcare providers, the governor and legislature need **maximum flexibility** when addressing budget shortfalls. Furthermore, the increased payments in Prop 35 [exclude](#) some non-hospital services, such as private duty nursing and continuous coverage for children under age five, in favor of hospitals and outpatient facilities like those operated by the sponsors of the initiative. I wouldn't say Prop 35 is a [self-benefitting buy-a-law](#), but it's not a good look.

DETAILS: Medi-Cal is [California's version of Medicaid](#), the joint federal-state health insurance program for low-income children and adults. It provides free or low-cost health care to [over one-third](#) of the state's population. Medi-Cal is a big, costly program: \$160 billion this year. Over half of that amount comes from the federal government; the state's contribution is \$62 billion. Even with that huge budget, Medi-Cal's **reimbursement rates** (i.e., what Medi-Cal pays healthcare providers for services) [are considered paltry](#). Some providers must even [limit how many](#) Medi-Cal patients they take in order to break even.

Managed Care Organizations (MCOs) are health insurance providers, such as Kaiser Permanente and

Anthem Blue Shield, that manage and coordinate patient care in a way that controls costs, utilization, and quality of care. A health maintenance organization (HMO) is a type of MCO. MCOs serve patients with private insurance as well as Medi-Cal.

The MCO tax is a multi-billion dollar tax paid by MCOs to the state in order to qualify California for additional federal Medi-Cal funding. Washington offers this funding to [make up for](#) a major inequity in the distribution of federal Medicaid dollars: An [overly simplistic formula](#) shortchanges states, like ours, that have higher per capita income. Collecting the MCO tax nets California [\\$7 to \\$8 billion](#) per year in additional federal funding.

After receiving the additional federal bucks, California turns around and **repays** the MCOs for nearly all of the tax, using the all the federal money plus some of the MCO tax. The remaining MCO tax is used to **increase reimbursement rates** to Medi-Cal providers. So the MCO tax really is a **net win** for the MCOs.

To summarize: MCOs like the tax because they end up with **more money** than they pay in, and state policymakers like the MCO tax because it [frees up](#) billions they can use to **increase reimbursements** to Medi-Cal providers and for other healthcare-related expenditures.

Or at least that's how it was **supposed** to work, according to the [deal](#) the major players made with Gov. Newsom in 2023. But between then and now, a [gigantic budget deficit](#) reared its ugly head and, as happens in any budget crisis, the Governor and Legislature [got creative](#). One source was the MCO tax. In the current budget, most of that revenue was **not** used to increase reimbursements, but instead to pay for **existing** Medi-Cal services. In other words, the providers' **raise was canceled**.

The MCOs and their allies were **not amused**. Not only did this move deny them the increased reimbursements they were expecting, but it also exposed a structural problem: If the Legislature can poach MCO tax revenues in 2024, what's to prevent them from doing so **every** year, in perpetuity?

The only way to ensure the MCO tax will be used as it "should" be, the MCOs and their allies reasoned, is a **ballot initiative** preventing the Legislature from doing otherwise. And **that's** how we got Prop 35. (You knew I'd get around to Prop 35 eventually.) Prop 35 would block the state from using MCO tax revenue to **replace** existing Medi-Cal funding, instead requiring that it **supplement** it.

My regular readers know I'm no fan of propositions that dictate how the state must spend its money. Prop 35 is **budgeting by ballot box**, which ties legislators' hands, imposes absurd spending priorities, and ratchets up the pain during budget emergencies like this year's. Kayla Kitson and Adriana Ramos-Yamamoto of the [California Budget & Policy Center](#) put it well:

"In years when the state is facing a budget shortfall, this limited flexibility could result in cuts to other critical public services that help Californians make ends meet and address vital needs, such as income supports, subsidized child care, food assistance, and investments in reducing homelessness and increasing affordable housing."

Not only does Prop 35 lock in a portion of the budget every year, it also dictates **which categories of providers** are eligible to receive increases from MCO tax

revenue. The current budget includes private-duty nursing, non-emergency medical transportation, and continuous coverage for children up to age 5. Prop 35 would **freeze them out**. Instead, Prop 35 would fund only a fixed set of services including primary, specialty, and emergency care, inpatient behavioral health, emergency medical transportation, and public hospitals.

By coincidence, those are exactly the services provided by the **largest contributors** to the [Prop 35 campaign](#). Among them: ambulance company Global Medical Response, the California Association of Hospitals & Health Systems, the California Dental Association, and the California Medical Association. These are (or represent) healthcare providers that stand to receive increased reimbursements if Prop 35 passes.

Even if the set of beneficiaries of Prop 35 were exactly the right ones in 2024, who knows whether they'd be the right ones five, ten, or twenty years from now? The authors of Prop 35 believe they know, because the list is written into the proposition and cannot easily be changed. The Legislature can choose to fund other services from the General Fund, but the MCO tax funding for the services in Prop 35 cannot be reduced.

I'm sorry that this proposition is so **insanely complicated**, and I apologize for any **headaches** my rating has caused. That complexity was probably a major reason no one dared to write a ballot argument against Prop 35. But that doesn't mean there are no good reasons to oppose the measure. Prop 35 would be bad policy, and deserves your "no" vote.

Proposition 36: Increase Penalties for Theft and Drug Crimes – NO

SUMMARY: In 2014, voters passed [Prop 47](#), which reduced the punishment for property and drug crimes like shoplifting and receiving stolen property. Under Prop 47, if the value of property involved is \$950 or less and the defendant has no prior serious/violent convictions, the crimes are misdemeanors. Prop 36 would flip these back to felonies for defendants with two prior convictions for related crimes. Prop 36 would also lengthen sentences by three years if a crime was committed by a group. These changes may sound helpful, but they would reignite [prison overcrowding](#) and intensify budget crises by adding large new costs for housing nonviolent offenders. And there's **late-breaking news**: In August, Gov. Newsom signed [ten new anti-crime laws](#) cracking down on retail theft, including organized retail theft, multi-county crime sprees, multiple thefts totaling \$950, and online sale of stolen goods. These new tools for law

enforcement make Prop 36 unnecessary.

DETAILS: In the 1990s, California fell under the spell of a [nationwide](#) get-tough-on-crime mania. It reached a peak in 1994, when Gov. Pete Wilson signed the "[Three Strikes and You're Out](#)" law, imposing a life sentence for almost any crime, no matter how minor, if the defendant had two prior convictions for serious or violent crimes. [More get-tough laws](#) followed. Voters enthusiastically affirmed Three Strikes that November ([Prop 184](#)).

The impact of this frenzy was predictable and tragic. Extended sentences caused prison populations to soar higher and higher until, in 2006, they topped 173,000, [more than double the designed capacity](#). Inmates were forced to sleep in gyms and hallways, often triple-bunked. Medical care was inadequate. There were riots and attacks on guards, and the [suicide rate](#) was 80%

higher than in other states' prisons.

Eventually, the US Supreme Court stepped in, ruling that conditions violated the “cruel and unusual punishment” clause of the Eighth Amendment. California [was ordered](#) to reduce overcrowding from more than 200% of capacity to 137.5%. The state responded by sending many nonviolent inmates from state prisons to county jails (“realignment”), and with legislation such as Prop 36 of 2012 (no life sentence for a nonviolent third strike), Prop 47 of 2014 (described below), and Prop 57 of 2016 (increased credits for good behavior). The state hit the population target in 2015. It now stands at 94,000, or 119% of capacity, its [lowest point since before Three Strikes was signed](#).

One of the key pieces of legislation enabling this dramatic decline was [Prop 47](#), which voters passed in November 2014 by a convincing 60-40 margin. Please see [my 2014 rating](#) for a detailed analysis (I was for it). In a nutshell, Prop 47 changed how prosecutors treat six nonviolent property and drug crimes: petty theft, shoplifting, receiving stolen property, writing bad checks, forgery, and non-marijuana drug possession. Prior to Prop 47, these could be either **felonies or misdemeanors**, depending on severity and the defendant’s criminal history. Under Prop 47, they must be prosecuted as **misdemeanors** if the defendant has no prior convictions for violent and/or serious crimes and the value of the property is \$950 or less. Conviction for a misdemeanor results in a shorter sentence in a county jail, not a state prison.

Prop 36 on this ballot would partially reverse Prop 47. Under Prop 36, the value of property stolen in multiple thefts can be **added together** to trigger felony prosecution if the total exceeds \$950. If three or more people commit a crime of theft or property damage **together**, their sentences could be extended by three years. And, in an **echo of Three Strikes**, defendants with two past theft convictions could be charged with a felony for a third offense, **regardless of whether the value tops \$950**.

The proponents of Prop 36 are counting on us to buy into their Trumpian, [American Carnage](#)-style nightmare vision of California today. The [text of Prop 36](#) lays it out.

“Since the passage of Proposition 47 in 2014, homelessness has increased ... massive increases in drug addiction, mental illness, and property crimes, including retail theft, committed by addicts to support their addiction. ... an explosion in retail and cargo theft causing stores throughout California to close to protect employees and customers from criminal activity ... billions of dollars in economic losses to our local communities and state. ... rising

inflation, as businesses have been forced to raise prices to account for their economic losses. ... collided with the fentanyl epidemic, as hard drug users have engaged in brazen theft to support their drug habits, knowing that there will be no consequences for either their theft or their hard drug use.” ([Proposition Fun Book](#), pp. 127-128)

I don’t want to say this apocalyptic image is complete b.s., but the statistics **do not bear it out**. A [new study](#) by the nonpartisan Public Policy Institute of California, released in mid-September, indicates that the total rate of nonviolent property crimes in aggregate is **about the same** as it was in 2014 (see Figure 7 in the [study](#)). Yes, [shoplifting is up](#), but commercial burglary is down. And, yes, retail theft is up significantly in Alameda, Los Angeles, and Sacramento counties, but it has actually **decreased** in San Diego, Fresno, and most smaller counties. So while it may **feel** like there’s been “an explosion” in retail theft, that may be due to uneven distribution and [sensationalistic media coverage](#).

(The PPIC report emphasizes that the property crime rate has been **declining** in most other states. So while California’s steady rate may debunk the “carnage” story, it’s **nothing to celebrate**. Also, sadly, **violent** crime is [on the rise](#) in California, contrary to the national trend. But Prop 36 would do nothing to address that.)

And now there’s **late breaking news**. (Cue the [red chyron!](#)) On August 16th, long after your Ballot Pamphlet went to press, Gov. Newsom signed into law [ten new bills](#) that address some of the **same issues** as Prop 36. These include:

- AB 2943, allowing prosecutors to **combine thefts** by one suspect to meet the \$950 felony threshold
- AB 1779, allowing prosecutors to collect crimes **across multiple counties** into a single felony case
- AB 1802/SB 982, making permanent the crime of **organized retail theft**
- SB 1144, making it easier to prosecute organized theft rings that **fence stolen goods online**
- AB 3209, letting stores obtain **restraining orders** against people who steal from or vandalize a business, or harass employees

As you can see, these new laws replicate much of Prop 36, while adding more protections for businesses. What the new laws **don’t** do is repeat the Three Strikes mistake of allowing a third theft **of any value** to be prosecuted as a felony—in effect, a multi-year sentence for stealing a candy bar.

That provision of Prop 36—lock 'em up and throw away the key—is its Achilles' heel. If it's implemented as proponents envision, it will increase prison populations and their associated costs (hundreds of millions annually). And it could potentially place the state once again in danger of **violating the court order** to maintain humane conditions in prisons.

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. Props 2 and 4 on this ballot are just such requests. If voters approve, the state may take out loans for the projects by selling general obligation bonds, which are paid back with interest over 30 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 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 so, but at today's falling rates, each dollar of bond money will cost only fifteen cents in interest, accounting for inflation. (See details on p. 64 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 **\$20 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 about 3% of the General Fund, down from a high of nearly 6%

The newly signed laws should be sufficient to deter many crimes and effectively prosecute others. Prop 36, on the other hand, is designed for a nightmare California that doesn't really exist. And anyway, tough-on-crime ballot propositions are so 1990s—we should be over that by now.

fourteen years ago and below the historical average of 4%. Props 2 and 4 would increase it to about 3.5%, still within reasonable limits.

The bonds on this ballot fund long-lived, tangible infrastructure, such as buildings, water purification systems and electricity transmission lines. 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 millions every decade. (Yes, we've hit a lull since the pandemic, but there's no reason to believe that's permanent. This is still the best state to live in, and everyone knows it.) 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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