

A low-angle photograph of the California State Capitol building in Sacramento. The image shows the grand portico with its tall white columns and the pediment adorned with statues. Above the portico is the large, ornate dome topped with a golden orb. An American flag flies on a tall pole to the right of the dome. The sky is bright blue with scattered white clouds.

CALIFORNIA

INITIATIVE REVIEW

OCTOBER 2014

INITIATIVES AT A GLANCE

UNIVERSITY OF THE
PACIFIC
McGeorge School of Law

INTRODUCTION

The California Initiative Review (CIR) is a non-partisan, objective publication of independent analyses of California statewide ballot initiatives and referendums. The CIR is a publication of the Pacific McGeorge Capital Center for Public Law and Policy and is prepared before every statewide election. Each CIR covers all measures qualified for the next statewide ballot, and also often contains reports on topics related to initiatives, elections, or campaigns. The complete reports for this issue and past issues of the CIR are housed online at: <http://blogs.mcgeorge.edu/lawandpolicy/capital-center/initiative-review>.

The CIR and this “Initiatives at a Glance” supplement are written by law students enrolled in the California Initiative Seminar course at University of the Pacific, McGeorge School of Law. This fall 20 students were enrolled in the seminar. Editing of each analysis is performed by student editors under my supervision.

The student authors, editors, and I are grateful to the Capital Center for sponsoring the publication of the CIR and the California Initiative Forum. We hope that the information contained in the analyses online, and these short synopses, will be helpful to you as you prepare to vote on the initiatives presented to the electorate this November.

Happy Voting,

A handwritten signature in black ink, appearing to read "MB Moylan", with a stylized, flowing script.

Prof. Mary-Beth Moylan

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PROPOSITION 1: WATER QUALITY, SUPPLY, AND INFRASTRUCTURE IMPROVEMENT ACT OF 2014

Current Law:

California has numerous agencies and commissions that are charged with water quality, supply, and infrastructure. Water storage, protection, and restoration are funded through the state, and in the recent past through bond measures proposed by the Legislature and authorized by a vote of the people. This bond measure has been working its way through the legislative process since 2009.

Proposed Law:

Proposition 1, the *Water Quality, Supply, and Infrastructure Improvement Act of 2014*, will authorize \$7.5 billion in bond funding if approved by a majority of voters. A qualified bond measure allows the government to sell bonds for the purpose of funding various public works projects. The water bond will authorize \$7.5 billion to be allocated for the following purposes: \$4.2 billion for water supply, \$1.4 billion for watershed protection and restoration, \$1.4 billion to improvements to groundwater and surface water quality, and \$395 million for flood protection.

YES on Prop 1	NO on Prop 1
<ul style="list-style-type: none">• The bond will provide critical funds as the state continues to struggle with one of the most severe droughts in its history.• Proposition 1 represents an incredible step forward in preparing California for our current and future water needs.• The Water Bond makes smart, high-priority investments in a water delivery system that was built to serve less than half the number of people it struggles to support now• The water systems in rural communities do not have the technical expertise or equip to produce clean water.• Proposition 1 provides the funding communities need to update their water systems to meet water quality standards.	<ul style="list-style-type: none">• Opponents would like the state to develop new 21st century methods for water storage and conservation rather than build new dams.• Proposition 1 has numerous environmentally damaging sidebar promises included in the bond.• The bond imposes hidden costs by taking money from the general fund to pay the accumulating interest, crowding out investment money for public schools, roads, and public safety and health.• Proposition 1 would add over \$7 billion in taxpayer indebtedness not including the interest.• The Water Bond is an insidious threat to core environmental values and other principles established to protect fisheries and the environment as a whole.

PROPOSITION 2:

STATE BUDGET – BUDGET STABILIZATION ACCOUNT

Current Law

- The approximate amount of revenue that goes into the Budget Stabilization Account (BSA) each year is a little over \$3 billion, although the Governor can choose to put in less for any reason.
- Under existing law the state can also take money out of the BSA, and there is a maximum size of the BSA set at \$8 billion or 5 percent of the General Fund revenues, whichever is greater.
- Under current law, there is no required spending on state debts, no state reserve for schools and community colleges, and no limit on maximum size of school district reserves.

Proposed Changes

- Proposition 2 would require a minimum of \$800 million and a maximum of \$2 billion or more when capital gains revenues are strong to be deposited into the BSA. The state could only put less in when the Governor calls a budget emergency and the Legislature agrees. In a budget emergency, the state could take money from the BSA but not more than half of the money. The maximum allowed in the BSA would be about 10 percent of the General Fund revenues.
- Proposition 2 would require paying down state debts with General Fund revenues. For the first 15 years, the state would be required to use .75% of the General Fund revenues to pay down specified debts. When revenues from capital gains are higher than usual, Proposition 2 would require additional payments towards state debt.
- Proposition 2 would create a state reserve for schools and community colleges that will have funds deposited when capital gains revenues are strong. It also sets maximum reserves that school districts can keep at the local level when money is deposited into the state reserve.

YES on Prop 2	NO on Prop 2
Will likely lead the state to pay off its debt more quickly.	Prohibits local school districts from accumulating reserve accounts.
Provides financial support for the state in case of another downturn in the economy.	May delay implementation of the Local Control Funding Formula for schools.
May eventually stabilize education spending levels.	May cause voters to believe that the school funding problem is solved.

PROPOSITION 45: INSURANCE RATE PUBLIC JUSTIFICATION AND ACCOUNTABILITY ACT

Current Law:

- The California Department of Insurance (CDI), headed by the elected Insurance Commissioner, is responsible for regulating indemnity-based insurance policies.
- The California Department of Managed Health Care (DMHC) is responsible for regulating managed care plans.
- Covered California, an independent state agency with a five-member governing board, is responsible for negotiating with and certifying health plans in the individual and small-group markets based on a broad set of criteria including premium rates, coverage and quality of essential health benefits, and standards for transparency and reporting.
- California law requires all insurers to file information with CDI or DMHC regarding any proposed changes to their premium rates in the individual and small group markets.
- CDI and DMHC publish those filings online. Interested parties may review the filings and submit comments regarding the proposed rate changes.
- CDI and DMHC are required to review all filings, and any submitted comments.
- If CDI or DMHC determine that the rate change is unreasonable or unjustified, they can request that the insurer amend the rate change. If the insurer does not, CDI or DMHC will publicly pronounce the change as unreasonable or unjustified.

Proposed Changes:

- Insurers who currently report to CDI would continue to do so, while insurers who report to DMHC would be required to file proposed rate changes with both DMHC and CDI.
- If the Commissioner determines the rate change to be excessive, he could reject the rate.
- In addition to commenting on proposed rate changes, members of the public would have the ability to file “intervenor” suits challenging any proposed rate change and would be entitled to payment for their efforts in connection with successful suits.

YES on Prop 45	NO on Prop 45
<ul style="list-style-type: none">• The Commissioner would have the power to modify or reject rate increases that are excessive or unjustified.• Health insurers would have to justify rate changes before they take effect.• Costs of the program would be paid by increased fees to insurers.• Members of the public can file intervenor suits challenging rate changes.	<ul style="list-style-type: none">• CDI and DMHC would continue to have the authority to review rates, but cannot accept or reject them.• Members of the public would continue to have the ability to participate in the rate review process by submitting comments.• Covered California would continue to have the ability to negotiate with individual and small-group insurers.

PROPOSITION 46: DRUG AND ALCOHOL TESTING OF DOCTORS AND MEDICAL NEGLIGENCE LAWSUITS INITIATIVE STATUTE

Current Law:

- There are no requirements for hospitals to test doctors for alcohol and drugs.
- Under the Medical Injury Compensation Reform Act (MICRA) enacted in 1975, non-economic damage awards in medical malpractice suits are capped at \$250,000.
- Under MICRA, there is also a cap on attorneys' fees in medical malpractice cases. This is a percentage based cap – the percentage declines as the amount of the award grows. For example, attorneys cannot receive more than 40% of the first \$50,000 recovered or more than 15% of any amount received greater than \$600,000.
- CURES is a database that allows preregistered users to access controlled substance history information for patients. Beginning in January 2016, prescribers of medication will be required to register with CURES, but will not be required to use the system.

Proposed Changes:

- Hospitals will be required to test physicians for alcohol and drugs randomly under certain circumstances. If the physician is found to be impaired, the medical board is required to discipline him or her.
- Increase the MICRA cap on non-economic damages in medical malpractice cases from \$250,000 to approximately \$1.1 million, and would be adjusted for inflation annually.
- Proposition 46 would not change the cap on attorneys' fees in medical malpractice cases.
- All prescribers of medication and pharmacies must register and use the CURES database beginning the day after the vote. If a prescriber/pharmacist fails to check the database prior to prescribing or dispensing drugs, they will be subject to medical liability.

Yes on Prop 46	No on Prop 46
<ul style="list-style-type: none">• Raising the cap would result in annual government costs likely ranging from tens of millions to several hundred million dollars annually.• Drug testing of doctors could decrease overall health care spending by deterring some physicians from using alcohol/drugs while on duty.• Requiring use of the CURES system by doctors/pharmacists could result in lower prescription drug costs because potential doctor shoppers will be caught.	<ul style="list-style-type: none">• The cap on non-economic damages in medical malpractice cases would remain at \$250,000 – the same amount it has been for nearly 40 years.• Doctors in hospitals will not be subject to random drug testing.• Registering for CURES will be voluntary until January 2016. However, usage of CURES will still be voluntary.

PROPOSITION 47: SAFE NEIGHBORHOODS AND SCHOOLS ACT

Current Law:

- Certain offenses can be charged as misdemeanors or felonies. These are referred to as wobblers.
- The California Penal Code often distinguishes between misdemeanors and felonies based on the monetary value of the thing stolen or forged.

Proposed Changes:

- Changes charging of six offenses from wobblers into mandatory misdemeanors, which also means reduced sentencing: Petty Theft, Shoplifting, Receiving Stolen Property, Writing Bad Checks, Check Forgery, and Drug Possession (not including marijuana)
- Makes these mandatory misdemeanors only available to offenders who do not have a history of serious or violent felonies, or sex offenders
- Anticipates changes in charges and sentencing are estimated to save the state between \$150 million and \$200 million. These savings will be put into grant programs.
 - 10 % to be put into a Victims Compensations and Government Claims Board
 - 25 % will be used by the Department of Education to pay for truancy prevention programs and programs for at-risk youth
 - 65% will be used by the Board of State and Community Corrections for mental health and substance abuse treatment programs
- Applies retroactively. Any current prisoners who were convicted and sentenced for one of the six crimes are eligible to petition the court to have their record and sentence changed. This has the potential of releasing 10,000 prisoners over the next three years.

YES on Prop 47	NO on Prop 47
1. This stays consistent with other Propositions passed by California voters, including amending the Three Strikes law and reducing sentencing for drug offenses. 2. Keeps California on track with a Supreme Court ruling that requires the prison population to be reduced. 3. This will save money for California through reduced costs in housing prisoners in other states and paying for litigation in prison related suits that will be addressed by these changes. 4. The money saved will go to good causes to reduce crime in the future.	1. Downside for gun control. People with felonies are not allowed to own guns while those with misdemeanors are. In addition, most guns are worth less than \$950, the new dollar amount required to make theft a felony. Theft of a gun would become a misdemeanor. 2. There is a disincentive to seek drug treatment. Rather than go to treatment, which is currently allowed in lieu of a felony and jail time, drug possession will always be a misdemeanor. 3. There could be a negative effect on agricultural communities which have felonies based on the type of livestock or product stolen. Now it would be based on the value of stolen livestock.

PROPOSITION 48: INDIAN GAMING COMPACTS

Current Law:

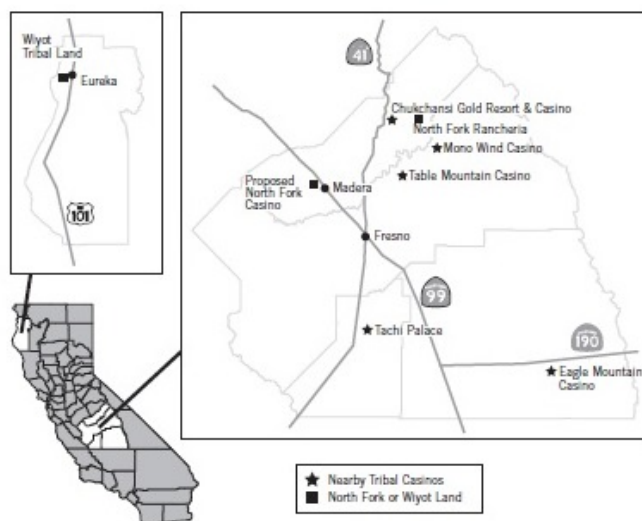
A “yes” vote would affirm the current gaming compact negotiated between Governor Brown and the North Fork Rancheria of Mono Indians, which was approved by the California Legislature as AB 277 in 2013. This compact allows the North Fork Tribe to operate a “Las Vegas style” casino and resort in Madera County approximately 38 miles from the tribe’s reservation. A “yes” vote would also affirm a compact between the State and the Wiyot Tribe in Humboldt County under which the Tribe agrees to forgo a casino on its environmentally-sensitive land in exchange for a percentage of the revenue from the North Fork Casino.

Proposed Changes:

Because Proposition 48 is a referendum, a “no” vote will change the law that was passed by the Legislature. The referendum seeks to invalidate the compacts between the State and the North Fork Tribe and the Wiyot Tribe. This would not foreclose the possibility that the North Fork could build and operate a casino offering “Las Vegas style” gaming. However, it does make it more difficult for the North Fork Tribe to build an off-reservation casino at the proposed site. The Wiyot Tribe would also no longer be bound by its agreement not to pursue a casino on its reservation adjacent to the Humboldt Bay National Wildlife Refuge.

YES on Proposition 48	No on Proposition 48
<ul style="list-style-type: none">• The construction and operation of a casino will create thousands of direct and indirect jobs.• The casino will generate new state and local revenue.• Approval of the compacts, in their current form, respects the concept of local control.• Approval of the compacts will result in the protection of a scenic wildlife area.	<ul style="list-style-type: none">• Could result in a massive increase in off-reservation gambling while breaking the tribes’ promise in 2000 to limit Indian gaming to existing tribal land.• Will result in more crime and pollution in the Central Valley.• Will not result in new money being given by the tribe to the state general fund or schools.

Figure 1
Location of Proposed North Fork Casino and Wiyot Tribal Land



LEGISLATIVELY REFERRED ADVISORY QUESTIONS ON THE BALLOT: THE STRUGGLE FOR PROP. 49

Advisory Questions:

California has had advisory questions on the ballot three other times in California's history.

- In November 1892 voters approved an advisory question, whether United States Senators should be directly elected by a vote of the people.
- In June 1933, voters rejected two advisory questions on whether the legislature should divert gas taxes to pay off highway bonds.
- In November 1982, voters approved an advisory question, which urged the United States government to propose to the Soviet Union that both countries agree to immediately stop all testing and production of nuclear weapons.

Prop 49:

- Prop. 49, an advisory question put on the ballot by the Legislature, asked Californians whether or not Congress should be instructed to pass a constitutional amendment that would limit campaign spending and whether the Legislature should ratify said amendment.
- This was in response to the U.S. Supreme Court's ruling in *Citizens United* a case that has come to stand for corporate personhood, and allowing corporations the ability to influence elections with unlimited expenditures.

Removal From Ballot:

- The Howard Jarvis Taxpayer Association challenged the proposition as an improper use of the ballot, arguing that the California Constitution did not grant the legislature or the people the right to place an opinion poll on the ballot.
- The California Supreme Court granted a preliminary injunction, an unusual move for the court, taking the proposition off the ballot as it feared it would harm the legitimacy of California's forms of direct democracy.

The Upcoming Court Ruling:

- If the Court agrees with the Howard Jarvis Taxpayer Association and rules that advisory questions are an improper use of the ballot little will change on California ballots. However as other states embrace advisory questions as detailed in the report, Californians will increasingly be confronted with limited tools to share their views on important issues in comparison with their neighbors in various states.
- If the Court disagrees with the Howard Jarvis Taxpayer Association, reverses its course from the preliminary injunction, and allows Prop. 49 onto the ballot a significant shift could occur on the ballot. This less impactful option will be another tool for Legislators to use that may want to gauge support with trial propositions in the form of advisory questions, with a binding initiative reserved for later use when the electorate is deemed supportive.

MEASURE L: SACRAMENTO’S CHECKS AND BALANCES ACT OF 2014

Current Law:

- *Form of Governance:* Council-Manager
- *City Manager:* the city’s Chief Executive Officer – overseeing all city departments and staff, and proposes the city’s annual budget.
- *City Council:* nine members, with power to propose and adopt city ordinances, reapportion and redistrict, and are not subject to term limits. Mayor is the ninth member.

Proposed Changes:

- *Form of Governance:* Council-Mayor or “Strong-Mayor”
- *City Council:* reduced to eight members; the mayor would no longer be a voting member. City Council would lose power to redistrict and reapportion to the Redistricting Commission. Individuals limited to three, four-year terms.
- *Mayor:* the city’s Chief Executive Officer, with the powers to remove the city manager without cause and without council approval, to propose the annual budget, to veto most ordinances passed by the city council, and to veto line-items in the annual budget approved by the council. Individuals limited to three, four-year terms.
- *City Manager:* the city's Chief Administrative Officer answers directly to the Mayor instead of the entire council.
- *Redistricting Commission:* establishes a nine-member redistricting commission with the power to establish the boundaries of council districts. Not subject to city council input.
- *Code of Ethics and Conduct:* requires city council to adopt a Code of Ethics and Conduct for all city officials and appointed members of boards, commissions, and committees. Establishes an ethics committee charged with oversight and ongoing review of the code.
- *Sunshine Ordinance:* requires the council to adopt a Sunshine Ordinance with the purpose of transparency in local government meetings, documents, and records.
- *Sunset Provision:* adds a “sunset provision,” establishing an expiration date of December 31, 2020 for all of Measure L’s changes (with the exception of redistricting committee and ordinance), but requires that a ballot measure be placed on the ballot at an election no later than November 2020 to allow voters to consider whether to make Measure L’s changes permanent.

YES on Measure L	NO on Measure L
<ul style="list-style-type: none">• Strong-Mayor is the preferred governmental structure for major cities like Sacramento.• Vesting greater authority in the mayor aligns the mayor’s responsibilities with existing citizen expectations.• Measure L will allow municipal government to mirror state and federal structures.• Veto power will allow the mayor and council to take action on the “big issues.”	<ul style="list-style-type: none">• Not about checks & balances; is a “power grab” by Mayor Johnson.• Vesting power in one person, versus nine, serves special interests – not constituents.• Sacramento has achieved great successes, such as the development of the Kings arena, under its current structure.• Increases approval threshold for ordinances from 55% to 62.5% of council members.• No remedy for tie votes on the council.

STRICT, STRICTEST, AND SOMETHING IN BETWEEN: AN ANALYSIS OF PRISON SENTENCING IN CALIFORNIA BEFORE AND AFTER “THREE STRIKES”

Before Three Strikes:

- Proposition 8, known as the “Victim’s Bill of Rights,” was passed in 1982 through the initiative process and brings sweeping reform to a wide range of issues such as habitual offenders, bail, and the use of prior convictions in criminal proceedings.
- In the early 1990s, 18-year old Kimber Reynolds and 12-year old Polly Klaas are murdered by repeat offenders, setting the stage for the creation of Three Strikes.

Creation and Passage of Three Strikes:

- Mike Reynolds, Kimber’s father, begins a campaign for harsher sentences for repeat offenders and gets Proposition 184, the Three Strikes law, on the November 1994 General Election ballot as an initiative.
- Motivated by the political climate and public support, the California legislature passes Assembly Bill 971 in March of 1994, the text of which is identical to Proposition 184.
- Proposition 184 is subsequently approved through the initiative process and both laws become collectively known as “Three Strikes.”

Legality of Three Strikes:

- In *Ewing v. Andrade*, the U.S. Supreme Court held that “recidivism” statutes like Three Strikes are constitutional, and that states need discretion in making sentencing laws.
 - The Court upheld the sentence of 25 years to life for the grand theft of 3 golf clubs (totaling \$1,200) from a golf pro shop.
- In *Lockyer v. Andrade*, the U.S. Supreme Court held that in determining whether a sentence is “grossly disproportionate” to the crime, the prior criminal history of the defendant can be evaluated.
 - The Court upheld the sentence of two consecutive sentences of 25 years to life sentences for the petty theft of roughly \$150 in videotapes.

Effects of Three Strikes:

- As of 2009, 25 percent of the prison population was made-up of individuals sentenced by the Three Strikes law (43,500 out of the total 171,500 prisoners).
- Three Strikes’ supporters argue that Three Strikes caused crime reduction in California, but critics point out that crime had begun to decline before Three Strikes.
- The fiscal impact of Three Strikes has been substantial, with an estimated \$19.2 billion additional funds needed to operate California prisons.

Future of Three Strikes:

- The Three Strikes initiative and legislation both imposed amendment restrictions. Therefore, it is impossible to modify Three Strikes without a voter-approved initiative or by a statute passed by two-thirds of both houses of the legislature.
- In 2012, Proposition 36 amended Three Strikes to limit when a life sentence could be imposed for a third strike that is a non-violent and non-serious felony.
- On the 2014 ballot, Proposition 47 seeks to make non-serious and non-violent crimes, where the value is less than \$950, misdemeanors rather than felonies.

DIRECT DEMOCRACY: A GLOBAL COMPARATIVE STUDY ON ELECTORAL INITIATIVE AND REFERENDUM MECHANISMS

- There are several features of California's initiative and referendum process that cause voters to doubt the efficiency, legitimacy, and practicality of the system.
- Other nations that utilize direct democracy techniques have developed methods for dealing with the same potential issues that are present in California elections.
- This report explains how the approaches taken by certain foreign nations could be adapted to improve California's system of initiatives and referendums.

Criticism of California's Initiative Process	Potential Solutions Used by Foreign Nations
Amending the California constitution is too easy and happens too often.	<ul style="list-style-type: none"> • The Philippines – Signature Distribution Requirement: requiring a specified percentage of signatures from each county in California. • Kenya – Agenda Initiative (Indirect Initiative): requiring approval from county assemblies. Requires support from the minority and majority party, which could in turn make it more difficult to pass an amendment. • Switzerland and Australia – Double Majority Requirement: requiring all amendments to be passed by a statewide popular majority, as well as by a majority of voters in most of the state's counties. • The Philippines – Frequency of Initiatives: limit citizen initiatives to once every four years.
There are too many initiatives on the ballot.	<ul style="list-style-type: none"> • Australia – Nonbinding Advisory Referendums: would give voters an alternate channel through which to weigh in on important policy issues—could reduce the need to resort to popular initiatives.
Initiatives are complex and difficult to comprehend.	<ul style="list-style-type: none"> • Switzerland- Agenda Initiative: allowing the legislature to approve an initiative before it goes on the ballot could spur dialogue between the legislature and the electorate and avoid the need for citizens to vote on every initiative. • Switzerland – Strict Single Subject Rule: enforcing a strict single subject rule makes initiatives shorter and more concise.
The significant role that money plays in the initiative process.	<ul style="list-style-type: none"> • Switzerland -Agenda Initiative: reintroduction of the Agenda Initiative could be cost-effective because it requires fewer signatures and does not necessitate a large statewide campaign.
Low voter turnout.	<ul style="list-style-type: none"> • Australia – Mandatory Voting: could increase voter turnout, but is not practical in the US. • Kenya – Participation Quorum: minimum level of voter turnout required to pass a constitutional amendment—could increase the legitimacy of referendums. • The Philippines – Frequency of Initiatives: limiting citizen initiatives to once every four years could improve voter turnout because initiatives would only appear during presidential elections.

