



BALLOT INITIATIVE #21-0042A1

LIMITS ABILITY OF VOTERS AND STATE AND LOCAL GOVERNMENTS TO RAISE REVENUES FOR GOVERNMENT SERVICES. INITIATIVE CONSTITUTIONAL AMENDMENT.

November 8, 2022 General Election

BACKGROUND

The purported “Taxpayer Protection and Government Accountability Act,” a statewide initiative measure to amend the California Constitution sponsored by the [California Business Roundtable](#) (“CBRT”), is the most consequential proposal to limit the ability of the state and local governments to enact, modify, or expand taxes, assessments, fees, and property-related charges since the passage of Proposition 218 (1996) and Proposition 26 (2010). If enacted, public agencies would face a drastic rise in litigation that could severely restrict their ability to meet essential services and infrastructure needs.

In order to qualify for the ballot, proponents must collect 997,139 valid signatures from California voters. The California Secretary of State’s recommended last day to submit signatures to counties to qualify for the November 8, 2022 statewide general election is April 29, 2022. The last day for measures to be certified for the ballot or withdrawn from the ballot is June 30, 2022.

SUMMARY

Ballot Initiative [21-0042A1](#) would result in the loss of billions of dollars annually in critical state and local funding, restricting the ability of local agencies and the State of California to fund services and infrastructure by:

- Adopting new and stricter rules for raising taxes, fees, assessments, and property-related fees.
- Amending the State Constitution, including portions of Propositions 13, 218, and 26 among other provisions, to the advantage of the initiative’s proponents and plaintiffs; creating new grounds to challenge these funding sources and disrupting fiscal certainty.
- Restricting the ability of local governments to issue fines and penalties to corporations and property owners that violate local environmental, water quality, public health, public safety, fair housing, nuisance and other laws and ordinances.

The initiative includes provisions that would retroactively void *all* state and local taxes or fees adopted after January 1, 2022 if they did not align with the provisions of this initiative. This may also affect indexed fees that adjust over time for inflation or other factors. Effectively, it would



allow voters throughout California to invalidate the prior actions of local voters, undermining local control and voter-approved decisions about investments needed in their communities.

Specifically, among other provisions effecting the state government, the initiative would impact local agencies through changes to the California Constitution as follows:

Restricting Local Tax and Fee Authority to Provide Local Services

Fees:

- With few exceptions, fees and charges shall not exceed the “actual cost” of providing the product or service for which the fee is charged.
 - “Actual cost” is defined as the “...*minimum amount necessary...less other sources of revenue including, but not limited to taxes, other exempt charges, grants, and state or federal funds...*”
- The burden on the local government to prove the fee or charge does not exceed “actual cost” is heightened from a “*preponderance of the evidence*” to “*clear and convincing evidence*”.
- In addition to limiting fees and charges to the actual cost to the local government for providing the service, fees and charges must also be “reasonable” to the payor themselves; no definition is provided for this new subjective reasonableness test that is separate and apart from the test as to how closely the fee or charge is related to the cost of service.
- Defines *all* sources of revenue as either taxes or “exempt charges.”
- Includes Article XIID charges in Proposition 218 under the definition of “exempt” charges subjecting them to potential litigation.
- Exposes previously established fees indexed to inflation or other metrics to new standards and legal challenges.
- Adds to the Constitution a requirement for a board action to adopt, enact, create, establish, collect, increase, or extend any and all fees.

Taxes:

- Increases the threshold for voters to pass a local special tax initiative placed on the ballot by voters from a simple majority to a two-thirds majority, likely to address concerns over the 2017 California Supreme Court decision in *California Cannabis Coalition v. City of Upland*.
- Requires voter approval when an expansion of boundaries extends existing taxes or fees to new territory.
- New taxes can be imposed only for a specific duration.

Fines and Levees:

- Interferes with local enforcement efforts, by making it more difficult to impose fines and penalties for state and local law violations related to activities such as water discharge, waste recycling, weed abatement, fireworks, and housing code violations and unlawful commercial marijuana sales, just to name a few. The measure converts administratively



imposed fines and penalties into taxes unless a new, undefined, and ambiguous “adjudicatory due process” is followed.

Increasing Litigation Exposure

- Significantly increases a public agency’s burden of proof from “preponderance of evidence” to “clear and convincing evidence” to prove compliance with the new fee requirements. By changing evidence standards to favor corporations suing public agencies, the initiative will promote costly litigation.
- The local government would bear the burden of proving by clear and convincing evidence that a levy, charge or exaction is an “exempt charge” and not a tax. Moreover, the local government would bear the burden of proving by clear and convincing evidence that the amount of the exempt charge is *both* “reasonable” to the payor and that the amount charged does not exceed the “actual cost” of providing the service or product to the payor.
- By enacting a new requirement that all fees must be “reasonable” to the payor but offering no definition as to what “reasonable” means, the initiative provides a new avenue to challenge fees by enabling a plaintiff to claim a fee is not reasonable even if the fee meets the actual costs of service.
- Prop. 218 currently requires fees cover the *reasonable* cost of service. This initiative amends Prop. 218 to require the near-impossible standard of predicting *actual* costs years into the future. To compound this challenge, the new standard also factors in the receipt of external revenues that are constantly shifting and typically outside the control of the local agency. It defines “actual costs” as:
 - “(i) the minimum amount necessary to reimburse the government for the cost of providing the service or product to the payor, and (ii) where the amount charged is not used by the government for any purpose other than reimbursing that cost. In computing “actual cost” the maximum amount that may be imposed is the actual cost less all other sources of revenue including, but not limited to taxes, other exempt charges, grants, and state or federal funds received to provide such service or product.”
- Fosters endless litigation challenging local fees claiming they are not the “minimum amount necessary”. For instance:
 - Do roads need to be paved every 10 years or 50 years?
 - Does infrastructure need to be upgraded or replaced or not improved at all?
 - What is the minimum emergency response time necessary?

IMPACTS

- Could prevent virtually any new fees or assessments to fund water, sewer, trash, fire protection, parks and recreation, and other essential services and infrastructure.
 - Places over \$20 billion of local government fee and charge revenues over 10 years at heightened legal peril.



- Jeopardizes the public health and safety of communities by cutting off new revenue intended to pay for essential local services and infrastructure.
 - Substantially increases the legal and administrative cost of public infrastructure financing.
- With billions of dollars in deferred maintenance and unmet needs for California's infrastructure, exacerbates the neglect and deterioration of our roads, dams, waterways, and other facilities.
- By limiting revenues to the "minimum amount necessary", imposes a "race-to-the-bottom" in California that will halt investment in technological advancements that future generations will depend upon.
- Prevents critical investments in climate adaptation and community resilience to address drought, flooding, and wildfire as well as reduce emissions and harmful pollutants.
- Exposes taxpayers to a new wave of costly litigation, limits the discretion and flexibility of locally elected boards to respond to the needs of their communities, and injects uncertainty into the financing and sustainability of critical infrastructure.
- Restricting local services and infrastructure to the lowest and minimum amount possible will disproportionately impact the most underserved communities the hardest.

SUPPORT

- California Business Roundtable (CBRT) – Sponsor
 - The CBRT website lists the following individuals as Chair and Vice-Chair:
 - Chair, Brett Bittel (Enterprise Rental Car)
 - Vice-Chair, Maryam Brown (SoCal Gas)
 - To date, financial contributors to the initiative and CBRT Issues PAC include, but are not limited to:
 - Aera Energy
 - Albertsons Safeway
 - CJ Segerstrom & Sons
 - Cypress Management Company
 - Dart Container
 - Douglas Emmett Properties
 - Five Point Operating Company
 - Grimmway Enterprises
 - Howard Jarvis Taxpayers Association
 - Kilroy Realty
 - Majestic Realty
 - Michael K. Hayde
 - Pacific Ethanol
 - PEPSICO
 - Pharmaceutical Research and Manufacturers of America
 - Sempra Energy
 - State Farm Insurance



**California Special
Districts Association**

Districts Stronger Together

- Sutter Health
- 7-Eleven

OPPOSITION

- AFSCME California
- California Alliance for Jobs
- California Professional Firefighters
- California Special Districts Association
- CalCities (League of California Cities)
- SEIU California