

Ballot Box Budgeting in California: The Bane of the Golden State or an Overstated Problem?

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Introduction

California's fiscal crisis is a source of national, if not international concern. The question is: what caused the state's fiscal crisis? This Article addresses one potential cause of the state's current fiscal predicament—ballot box budgeting. This term refers to legislative measures and initiatives that are placed on the ballot and affect the state's budget. This Article will focus on the benefits and detriments of budgeting by initiative. It will also explore the differences between ballot box budgeting and the process of legislative budgeting.

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This Article proposes that all measures calling for increased funding identify funding sources. Further, measures that reduce revenue should identify which program(s) will be cut. Also, any measures that call for the floating of bonds should identify any program(s) that will be cut or taxes that will be increased in order to pay for these bonds in the short term. When making fiscal policy, whether it is by initiative or by legislative measure, the consequences of those decisions must be made clear to the voters. In addition, this Article calls for the reduction of the requirement that two-thirds of the members of both legislative houses pass a budget. This requirement should be reduced to fifty-five percent, allowing lawmakers to pass a budget without dissolving into partisan wrangling. This Article also makes suggestions for ways to improve the initiative process which would be beneficial to the process of budgeting by initiative.

Part I of this Article addresses two facets of California's governmental structure that make California unusual when discussing the issue of budgeting by initiative: The requirement that budgets are passed by a vote of two-thirds of the members of both houses, and the fact that initiatives in California can address fiscal issues. This section of the Article briefly traces the roots and usage of the initiative process in California. Part II of this Article introduces the issue of balloting by initiative. Part III of this Article begins by comparing the legislative and initiative processes and then briefly addresses a few issues raised by ballot box budgeting, including voter competence, the influence of special interests, voter turnout, and implementation of ballot measures. In Part IV of this Article, we address different ways that ballot box budgeting can affect the state's budget—taxes, budget allocations, direct outlays, bond measures, and criminal law issues. Parts V and VI of this Article contain our recommendations for reform. Part VII of this Article contains some reform proposals which we think merit further discussion, but which we do not endorse at this time. We conclude by making some brief predictions about the future of ballot box budgeting.

I. California is Unusual When it Comes to Ballot Box Budgeting

Before discussing the pros and cons of permitting ballot measures to address fiscal issues in California, it is important to note that California is unique in several ways. First, not only is California

the most populous state in the nation,¹ but unlike many other states, the California budget must be passed by a two-thirds vote of both the Assembly and the Senate.² Second, ballot initiatives can affect every aspect of the state budget. An examination of ballot box budgeting is informed by a brief discussion of both of those issues.

A. The Two-Thirds Requirement

Only two other states, Arkansas and Rhode Island, have similar supermajority requirements for the passage of a budget.³ Together the populations of Arkansas, approximately 2.8 million, and Rhode Island, approximately one million, equal about 3.8 million, roughly the same as the population of Los Angeles City.⁴ California's population totals around thirty-seven million.⁵ Taking into account the state's size and diversity of political views, at least as compared to Arkansas and Rhode Island, it is a Herculean task for two-thirds of its elected officials to agree on a budget. It would be difficult to get two-thirds of the electorate to agree on a budget.⁶

The two-thirds requirement means that the party in the majority (currently in California, this is the Democratic Party) must make concessions and compromises in order to get enough members of the minority party (currently, the Republican Party) to approve the

1. U.S. CENSUS BUREAU, ANNUAL ESTIMATES OF THE POPULATION FOR THE UNITED STATES, REGIONS, STATES, AND PUERTO RICO: APRIL 1, 2000 TO JULY 1, 2009, <http://www.census.gov/popest/states/tables/NST-EST2009-01.csv> (last visited Dec. 24, 2009).

2. CAL. CONST. art. IV, § 12.

3. Nat'l Conference of State Legislatures *Supermajority Vote Requirements to Pass the Budget: A Legisbrief*, Vol. 6, No. 48 (Nov./Dec. 1998 – updated Oct. 2008), <http://www.ncsl.org/Default.aspx?TabId=12654>. California also requires two-thirds of the members of both houses pass tax increases. CAL. CONST. art. IV, § 12. California is the only state that has a supermajority requirement to pass the budget and tax increases. In Arkansas, three-fourths of the legislature must agree on appropriations for all purposes except education, highways, and paying down the state debt. Those appropriations require only a simple majority vote. ARK. CONST. art. V, § 39. In Rhode Island, appropriations must be passed by a two-thirds majority. R.I. CONST. art. VI, § 11.

4. U.S. CENSUS BUREAU, STATE & COUNTY QUICKFACTS, <http://quickfacts.census.gov/> (last visited March 25, 2010).

5. U.S. CENSUS BUREAU, STATE & COUNTY QUICK FACTS, <http://quickfacts.census.gov/qfd/states/06000.html> (last visited March 25, 2010).

6. MARK BALDASSARE ET AL., PUB. POLICY INST. OF CAL., PPIC STATEWIDE SURVEY: CALIFORNIANS AND THEIR GOVERNMENT 14 (2010), available at http://www.ppic.org/content/pubs/survey/S_110MBS.pdf (“Californians are divided on how to deal with the state's budget deficit: 37% prefer mostly spending cuts and 41% prefer a mix of spending cuts and tax increases.”). In addition, half of Californians favor lowering the vote requirement to a fifty-five percent majority. *Id.*

budget.⁷ We believe that the budgets enacted as a result of all this partisan wrangling leave much to be desired.⁸ It may come as no surprise then that voters are not always satisfied with the legislative compromises necessary for the passage of a budget in California.⁹ Therefore, California voters may be more likely to take some budget matters into their own hands.¹⁰

While the legislature is required to pass a budget by a vote of two-thirds of the members of both houses, the people can enact budgetary initiatives by a simple majority. This means that those issues important to more than half of the electorate, but which cannot be fully realized in the legislative budgeting process, are ripe for enactment by initiative.¹¹

7. See, e.g., Steve Lawrence, *California's Two-Thirds Budget Vote In The Crosshairs*, ASSOCIATED PRESS, Feb. 22, 2009, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/n/a/2009/02/22/state/n122935S52.DTL>.

8. See, e.g., Claire Suddath, *Spotlight: California's Budget Crisis*, TIME, July 27, 2009, available at <http://www.time.com/time/magazine/article/0,9171,1910985,00.html>; Lenny Goldberg, *A Rational Budget Solution is Within our Grasp*, CAPITOL WEEKLY, May 1, 2008, available at <http://www.capitolweekly.net/article.php?xid=x32mohty0esops>; Lawrence, *supra* note 7 ("The deadlocks have often left the state unable to pay some of its bills, including payments to businesses that supply prisons, state hospitals and other facilities. The latest stalemate, to enact a midyear budget fix because of declining revenue and set the budget for next fiscal year, also held up state income tax refunds."); BALDASSARE, *supra* note 6 ("[N]early all Californians view the state budget situation as a problem. Seventy-five percent call it a big problem, while 21% call it somewhat of a problem." Regarding lowering the vote threshold to pass a state budget, half of residents (51%) call this a good idea and 39% call it a bad one. Among likely voters, 52% call it a good idea and 41% a bad one. Perhaps due to the protracted negotiations of recent years, this idea has grown somewhat more popular. For example, in May 2008, 42% said it was a good idea to lower the voting threshold. By January 2009, the percentage had grown to 54% and to 51% today.).

9. See generally BALDASSARE, *supra* note 6, at 14 ("Most Californians view the budget situation as a big problem . . .").

10. *Id.* at 5 ("On the issue of long-term reform of the budget process, most (72%) Californians believe that they—not their leaders—should make reform decisions at the ballot box.").

11. We will leave for another article an in-depth discussion of the effect of the two-thirds requirement on the budget process. For purposes of this article, we merely point out that the two-thirds requirement creates a structure of legislative budgeting that leads to the creation and enactment of budgets, which may be unpopular with many members of the electorate, and may therefore lead to an increase in so-called ballot box budgeting.

B. Budgeting by Initiative

California is among a little less than half of states that have the initiative process which permit budgeting by initiative.¹² Budgeting by initiative allows citizens to affect “the oldest and most basic prerogative of representative governments—their authority to levy taxes and control public expenditures.”¹³ In order to examine the concept of ballot box budgeting, it is necessary to discuss the roots of one of the two ways that voters can make budgetary policy—the initiative process. The initiative process allows the electorate to propose and enact new laws, including amendments to the state constitution, without any involvement by the legislature or the governor.¹⁴ Through the initiative process, the electorate can exercise many of the legislative and executive powers traditionally reserved for the first and second branches of government.¹⁵

C. The Roots of the Initiative Process

The concept of involving the electorate in lawmaking is far from a novel test in governing. The foundation of what is now known as the initiative process began in Athens, Greece, when men would come together to debate and decide various political issues.¹⁶ In 1898, South Dakota became the first state to adopt the initiative process. The initiative process was adopted before universal women’s suffrage, direct election of U.S. Senators, social security, or the federal income tax.¹⁷ Currently, twenty-four states have adopted initiative

12. NAT’L CONFERENCE OF STATE LEGISLATURES, INITIATIVE AND REFERENDUM IN THE 21ST CENTURY: FINAL REPORT AND RECOMMENDATIONS OF THE NCSL I&R TASK FORCE, 17-20 (July 2002), available at http://www.ncsl.org/Portals/1/documents/legismgt/irtaskfc/landR_report.pdf.

13. Thomas Gais and Gerald Benjamin, *Public Discontent and the Decline of Deliberation: A Dilemma in State Constitutional Reform*, 68 TEMP. L. REV. 1291, 1292 (1995).

14. Chip Lowe, *Public Safety Legislation and Referendum Power: A Reexamination*, 37 HASTINGS L.J. 591, 594 (1986); see also California Secretary of State’s Office, “How to Qualify An Initiative,” available at <http://www.sos.ca.gov/elections/ballot-measures/how-to-qualify-an-initiative/htm>.

15. See generally CTR. FOR GOVERNMENTAL STUDIES, DEMOCRACY BY INITIATIVE (2008), available at http://www.cgs.org/images/publications/cgs_dbi_full_book_f.pdf.

16. Catherine Engberg, *Taking the Initiative: May Congress Reform State Initiative Lawmaking to Guarantee A Republican Form of Government?*, 54 STAN. L. REV. 569, 573 (2001).

17. John G. Matsusaka, *Initiatives: Slouching Toward Respectability?*, 8 ELECTION L.J. 55, 56 (2009).

processes.¹⁸ California adopted the initiative process in 1911, as part of a larger reform package proposed by Progressive Governor Hiram Johnson.¹⁹

California enacted the initiative process in order “to check state legislatures, increase voter turnout, measure public interest and support for various causes, and enact public policies that state legislators would not or could not make law themselves.”²⁰ The state also enacted the initiative process “to allow the people to circumvent the traditional legislative process when it is dominated by powerful narrow interests.”²¹ In the early twentieth century, many Californians believed that the Southern Pacific Railroad all but controlled the legislature.²²

Direct democracy was primarily advocated by two schools of thought Populists and Progressives.²³ Initiative scholar Kenneth P. Miller had argued that the difference between these two schools of thought is that Populists wanted an initiative process which fully bypassed the legislature and gave lawmaking power directly to the people, while Progressives believed the initiative process should merely provide a check on representative government.²⁴

D. The Use of the Initiative Process in California

Nationally and statewide, since the 1970s, the total number of initiatives has increased each decade.²⁵ In California, between 1912

18. Initiative and Referendum Institute, *available at* http://www.iandrinstitute.org/statewide_i&r.htm.

19. Engberg, *supra* note 16, at 574; *see generally* CTR. FOR GOVERNMENTAL STUDIES, *supra* note 15.

20. Elizabeth F. Maher, *When A Majority Does Not Rule: How Supermajority Requirements on Voter Initiatives Distort Elections and Deny Equal Protection*, 15 GEO. MASON L. REV. 1081, 1084 (2008).

21. Elizabeth Garrett, *Democracy in the Wake of the California Recall*, 153 U. PA. L. REV. 239, 243 (2004); *see also* Maher, *supra* note 20.

22. Hank Dempsey, *The ‘Overlooked Hermaphrodite’ of Campaign Finance: Candidate-Controlled Ballot Measure Committees in California Politics*, 95 CAL. L. REV. 123, 128 (2007).

23. John Gildersleeve, *Editing Direct Democracy: Does Limiting the Subject Matter of Ballot Initiatives Offend the First Amendment?*, 107 COLUM. L. REV. 1437, 1441 (2007).

24. Kenneth P. Miller, *Constraining Populism: The Real Challenge of Initiative Reform*, 41 SANTA CLARA L. REV. 1037, 1043 (2001).

25. Matsusaka, *supra* note 17, at 56.

and 2008, 325 initiatives qualified for the ballot, and 111 were approved by the voters.²⁶

The initiative process is deeply ingrained in California's history. In California, initiatives can affect everything from money flowing into the government (taxes and other revenues), to money spent by the government (interest on bonds, forced allocations of portions of the budget to certain programs, such as education) and programs with unspecified costs, such as criminal laws that increase or decrease the prison population.²⁷

Ten of the twenty-four states that have the initiative process restrict initiatives that impose fiscal policies in some way.²⁸ These states either ban or restrict initiatives that affect budget issues, such as

26. University of California, Hastings College of the Law Library, California Ballot Propositions, available at <http://library.uchastings.edu/library/california-research/ca-ballot-pamphlets.html>; Initiative and Referendum Institute, available at <http://www.iandrinstute.org>. See also Dempsey, *supra* note 22.

27. Mildred Wigfall Robinson, *Difficulties in Achieving Coherent State and Local Fiscal Policy at the Intersection of Direct Democracy and Republicanism: The Property Tax as a Case in Point*, 35 U. MICH. J.L. REF. 511, 518 (2002) ("Voters are now deciding whether and how to (1) impose or limit existing taxes including sales and income taxes, (2) impose and limit new taxes, and (3) generally exercise the power to tax. Finally, voters are directly deciding through mandated appropriations how to spend."); see also California Secretary of State's Office, "How to Qualify an Initiative," available at <http://www.sos.ca.gov/elections/ballot-measures/how-to-qualify-an-initiative.htm>.

28. Gildersleeve, *supra* note 23, at 1451; Lowe, *supra* note 14, at 595. In Alaska, initiatives cannot dedicate revenues or make or repeal appropriations. In Florida, initiatives proposing tax or fee increases require a two-thirds vote to pass, and initiatives may not include limits on the ability of the government to raise revenue. In Maine, initiatives which provide for expenditures in excess of available and unappropriated funds are inoperative until forty-five days after the legislature convenes, unless the measure provides for a funding source by raising new revenue to pay for the program. In Massachusetts, initiatives may not be used to make specific appropriations; however initiatives which call for the creation of programs may require the legislature to raise taxes or otherwise find the revenue to fund that program. In Mississippi, initiatives that require a reduction in revenue or reallocation of funds from currently funded programs must identify the program(s) whose funding will be reduced or eliminated if the initiative is passed. In addition, initiative proponents must identify in the initiative the amount and source of the revenue required to fund the proposed program. In Missouri, initiatives may not appropriate money, other than the new revenues created and provided for by the initiative. In Montana, initiatives may not appropriate money. In Nevada, initiatives can only impose a tax or otherwise provide for raising the revenue necessary to fund a proposed program; initiatives cannot otherwise make appropriations or other expenditures of money. In North Dakota, initiatives may not appropriate money to support and maintain state departments and institutions. In Wyoming, initiatives may not dedicate revenue or make or repeal appropriations. NAT'L CONFERENCE OF STATE LEGISLATURES, *supra* note 12.

taxes and appropriations.²⁹ States which place restrictions on initiatives that affect budget issues, as opposed to prohibitions, generally require that initiatives creating a new program identify the funding source for that program.³⁰ These states also require initiatives that reduce revenue to identify which program(s) will be cut as a result.³¹ States restrict budgeting by initiative to protect the budget process “from the volatility of direct democracy.”³² We believe that these states recognize that voters likely want both lower taxes and more services, and without these restrictions legislatures may be left trying to fund mandated programs with fewer resources.

II. A Brief Discussion of Budgeting by Initiative

A. Budgeting by Initiative and California’s Fiscal Crisis

Is budgeting by initiative harmful to the healthy functioning of the state? It may be that “[n]owhere is the current need for critical analysis more compelling than in assessing the cumulative effects of initiatives—both direct and indirect—on the process leading to the formulation and implementation of states’ fiscal policy with regard to taxing and spending.”³³

Many scholars argue that fiscal issues should be decided by representative lawmakers only.³⁴ Initiatives may “bust a state’s budget” or require legislators to balance the budget by raising revenue (taxes and fees) and/or cut funding for programs.³⁵ Critics further contend that budget initiatives leave the legislature with little room to govern, tie up a large portion of the budget, and hurt the legislature’s ability to create budgets that respond to changing

29. Gildersleeve, *supra* note 23; *see also* NAT’L CONFERENCE OF STATE LEGISLATURES, *supra* note 12.

30. NAT’L CONFERENCE OF STATE LEGISLATURES, *supra* note 12

31. *Id.*

32. Gildersleeve, *supra* note 23, at 1437.

33. Robinson, *supra* note 27, at 514.

34. Cody Hoesly, *Reforming Direct Democracy: Lessons from Oregon*, 93 CAL. L. REV. 1191, 1236 (2005); *see also* Hans A. Linde, *Practicing Theory: The Forgotten Law of Initiative Lawmaking*, 45 UCLA L. REV. 1735, 1758 (1998) (describing initiatives which affect the budget as the “incoherent, irresponsible . . . piecemeal dismemberment of a state’s budget”).

35. Thad Kousser and Mathew D. McCubbis, *Social Choice, Crypto-Initiatives, and Policymaking By Direct Democracy*, 78 S. CAL. L. REV. 949, 967-68 (2005).

economic times.³⁶ Some initiatives reduce the options that legislators have when responding to fiscal ups and downs.³⁷ This has a “potentially crippling effect [on] the ability of elective bodies to implement a collectively rationalized financial scheme.”³⁸ Estimates vary widely as to what percentage of California’s budget is tied up as a result of voter mandated initiatives. While at least one scholar has claimed that approximately seventy percent of California’s budget is used according to initiatives,³⁹ others have found that about one-third of the California budget is earmarked by initiatives.⁴⁰ Most of this forced spending is the result of Proposition 98, an education measure passed in 1988 that is discussed later in this article. John Matsusaka’s comprehensive empirical studies have cast considerable doubt on those who claim that a majority of the state’s budget is earmarked by initiatives.⁴¹

Has budgeting by initiative caused California’s current financial crisis? There are many causes of California’s current fiscal crisis—a global economic downturn, a tax structure which heavily relies on the state’s top wage earners; budgeting by initiative is just one factor among many. While we do not believe that budgeting by initiative alone has caused the current fiscal crisis, we do suggest voters should

36. William M. Lunch, *Budgeting by Initiative: An Oxymoron*, 34 WILLAMETTE L. REV. 663, 669 (1998) (many initiatives “have the effect of making it increasingly difficult for legislators who must balance competing interests to craft a balanced state budget.”); see also Linde, *supra* note 34; see also Kevin O’Leary, *The Citizen Assembly: An Alternative to the Initiative*, 78 U. COLO. L. REV. 1489, 1491-92 (2007) (“[T]he biggest negative [of the initiative process] is the cumulative effect of ballot measures—some of them constitutional amendments nearly cast in stone—that severely hamstring state legislators and governors from doing their jobs.”).

37. Garrett, *supra* note 21, at 278.

38. Robinson, *supra* note 27, at 518.

39. Laura D’Andrea Tyson, *A New Governor Won’t Fix What Ails California*, BUS. WK., Sept. 22, 2003, at 24.

40. See, e.g., John G. Matsusaka, *Direct Democracy and Fiscal Gridlock: Have Voter Initiatives Paralyzed the California Budget?*, 5 ST. POL. & POL’Y Q. 248, 248 (2005); see also John W. Ellwood & Mary Sprague, *Options for Reforming the California State Budget Process*, in CONSTITUTIONAL REFORM IN CALIFORNIA: MAKING STATE GOVERNMENT MORE EFFECTIVE AND RESPONSIVE 329, 337, 348 (Bruce E. Cain & Roger G. Noll eds., 1995) (claiming that eighty-eight percent of California’s budget is earmarked because of initiatives and federal mandates, and that Proposition 98 and 184 earmark sixty percent of the state’s budget); see also Elizabeth Garrett, *The Promise and Perils of Hybrid Democracy*, 59 OKLA. L. REV. 227, 249 (2006) (discussing claims by Laura Tyson and John Matsusaka); see also Philip P. Frickey, *The Communion of Strangers: Representative Government, Direct Democracy, and the Privatization of the Public Sphere*, 34 WILLAMETTE L. REV. 421, 421 (1998).

41. Matsusaka, *supra* note 40, at 248.

know the consequences of their ballot box decisions, such that measures which reduce revenue identify which programs will be cut, measures which call for new programs identify where the money for those programs will come from, and measures which call for the issuance of bonds identify the programs that will be cut or taxes that will be increased to pay for those bonds.

B. Budgeting by Initiative and Public Opinion

John Matsusaka has found that successful budget initiatives affect three areas of fiscal policy.⁴² First, Matsusaka has found that states that have the initiative process generally have lower taxation and less government spending than states without the initiative process. States that have the initiative process have comparatively smaller state and local governments than states that do not have the process.⁴³ Second, spending by states that have the initiative process is generally more decentralized, in that local governments spend more and the state spends less.⁴⁴ Third, in states that have the initiative process, local governments tend to raise revenue through fees, rather than by raising taxes.⁴⁵ Matsusaka noted that “the initiative pushed states toward less redistributive revenue structures.”⁴⁶ This means that states which have the initiative process tend to have lower broad-based taxes which tax the wealthier members of society and redistribute that revenue to the lower economic classes.⁴⁷

Matsusaka concluded that all of these developments matched public sentiment.⁴⁸ Hence, states that have the initiative process have

42. John G. Matsusaka, *FOR THE MANY OF THE FEW: THE INITIATIVE, PUBLIC POLICY, AND AMERICAN DEMOCRACY* 206 (2004). See also Matsusaka, *supra* note 40 (2005); John G. Matsusaka, *Subversion of the Many by the Few: Some Scientific Evidence of the Initiative Process*, 13 J. CONTEMP. LEGAL ISSUES 511, 517 (2004).

43. Matsusaka, *FOR THE MANY OF THE FEW*, *supra* note 42; see also Matsusaka, *Subversion of the Many by the Few*, *supra* note 42, at 518.

44. As Matsusaka points out, “[l]ocal governments are generally believed to have superior information to tailor expenditure to public purposes. On the other hand, state governments tend to have more expertise.” Matsusaka, *Subversion of the Many by the Few*, *supra* note 42, at 520.

45. Matsusaka, *FOR THE MANY OF THE FEW*, *supra* note 42; see also Michael S. Kang, *Counting on Initiatives?: An Empirical Assessment*, 4 ELECTION L.J. 217, 218 (2005). Taxes include income, property and sales taxes. Service charges and user fees include tuition for state schools, revenue from the use of public hospitals, trash collection fees, etc. Matsusaka, *Subversion of the Many by the Few*, *supra* note 42, at 525.

46. Matsusaka, *Subversion of the Many by the Few*, *supra* note 42, at 525.

47. *Id.*

48. *Id.* at 529.

fiscal policies that more closely track public opinion than states without the initiative process.⁴⁹ Matsusaka has therefore determined that “the initiative promotes majority rule.”⁵⁰ The fact that successful initiatives reflect public opinion, however, does not mean that those initiatives always embody beneficial or wise policies. Merely because the voters favor a certain policy or development does not mean that that matter is beneficial to the state’s overall fiscal well-being.

III. An Introduction to Ballot Box Budgeting

Ballot box budgeting, whether it is accomplished by legislative measures or by initiatives, has its drawbacks. While the legislative process at its best is superior to the initiative process at its best, neither functions in an ideal world. We believe that it is not clear that voters meaningfully differentiate between legislative measures and initiatives when they go to the ballot box.

The legislative process is designed to be more deliberative, conducive to compromise, and to produce better drafted laws than the initiative process.⁵¹ Laws produced in the legislative process should be discussed and enacted with a comprehensive view as to how that law affects other constitutional or statutory provisions. This is particularly significant with respect to the budget process where legislators should anticipate how one budgetary provision affects another, while the voters likely see such measures in isolation.

However, many legislative bills that affect the budget are not part of the budget process. The legislature, like the voters, may not take a long-term, comprehensive view of the consequences of its decisions. Legislators can waive procedural rules, make middle of the night decisions, and must make compromises to get the required number of votes.⁵² In addition, while ballot initiatives must be

49. *Id.*

50. *Id.*; see also Kousser, *supra* note 35, at 968.

51. Erwin Chemerinsky, *Challenging Direct Democracy*, 2007 MICH. ST. L. REV. 293, 299 (2007). See also K.K. DuVivier, *Fast-Food Government and Physician-Assisted Death: The Role Of Direct Democracy in Federalism*, 86 OR. L. REV. 895, 898 (2007); Richard Briffault, *Distrust of Democracy*, 63 TEX. L. REV. 1347, 1362 (1985) (“Legislators are expert specialists in lawmaking, equipped with staffs and resources that help them reach informed decisions. They work through a process of hearings, amendments, revisions, and debates that promotes reasoned consideration of a bill.”).

52. Briffault, *supra* note 51, at 1362 (“[M]uch legislation is enacted without the informed, thoughtful analysis or extensive consideration contemplated by the legislative ideal. Many state legislatures act on a significant number of their bills in marathon sittings at the end of the legislative session.”); see also H.L. Richardson, WHAT MAKES YOU

available to the public for at least 131 days,⁵³ when the legislature makes laws, those laws are sometimes unseen by the public until they are passed.

Further, the legislative process is run by people whose jobs (unless they are termed out) depend on their ability to win elections, which in turn depends on their ability to raise money and maintain popularity with constituents. The legislative process is susceptible to the influences of contributors and lobbyists.⁵⁴ Hence legislators may be reticent to make wise but unpopular decisions.

The people, by initiative, can enact laws which affect the budget that the legislature may be unwilling, or unable to enact. For instance, initiatives which support mental health programs and early childhood education have been funded by targeting taxes on millionaires and tobacco users.⁵⁵ These measures were not legislatively enacted.

On the other hand, as discussed below, the initiative process is also too susceptible to the influence of special interests. While the initiative process was created in part as a check on the influence of special interests on the legislature, now virtually any initiative can qualify for the ballot if the initiative proponents have enough money. Qualification, however, does not equal success. Moneyed interests also have a great influence in defeating initiative measures.

As compared to the legislative budget process, the problem with budgeting by initiative is that it is done by an electorate that cannot amend proposals, but can vote only “yes” or “no” on isolated proposals drafted approximately one year before they reach the

THINK WE READ THESE BILLS? 37-38 (1978) (A political memoir of former California state senator, stating “[l]egislators consistently vote on legislation without understanding what is in it, especially when the final vote is taken. Every legislator has his own system for judging how he will vote, but reading the bill usually isn’t part of the procedure, and listening to debate on the bill’s merits certainly isn’t either.”).

53. CAL. ELEC. CODE § 9013 (2009); CAL. CONST. art II, § 8(c).

54. See, e.g., Mario J. Rizzo and Douglas Glen Whitman, *Little Brother is Watching You: New Paternalism on the Slippery Slopes*, 51 ARIZ. L. REV. 685, 692 (2009) (“[L]egislators and bureaucrats are subject to the pressures of lobbying by special interests.”); see also Frank Pasquale, *Reclaiming Egalitarianism in the Political Theory of Campaign Finance Reform*, 2008 U. ILL. L. REV. 599, 627 (2008) (“[T]he power of large contributors not only keeps legislators from ‘doing’ on behalf of interests opposed to those of contributors, but from ‘talking’ about them as well.”).

55. In 1998, Californians passed Proposition 10, which imposes an increase in the cigarette tax. The proceeds are used to fund early childhood education. In 2004, Californians passed Proposition 63, which provides a one percent increase in the personal income tax for those with incomes over \$1 million. The proceeds of the tax are spent on mental health services.

ballot, without regard to how they affect the rest of the budget.⁵⁶ In comparison, at least during the budget process, the legislature is privy to a comprehensive view of the budget.

This section will begin by comparing the legislative and initiative processes, and will proceed by discussing: (1) voter competence; (2) the influence of special interests; (3) voter turnout; (4) ballot box budgeting as a piecemeal approach to budgeting; (5) whether ballot box budgeting leads to more ballot box budgeting; (6) ballot measure implementation; and (7) the effects of budgeting by initiative.

A. A Comparison of the Legislative and Initiative Processes

The legislative process is structurally designed to be more deliberative than the initiative process.⁵⁷ James Madison voiced concern about direct democracy, contending that it lacked the consideration and compromise intrinsic in a representative government.⁵⁸ Critics of the initiative process worry that it undermines representative government and lacks the checks and balances and deliberateness of representative government.⁵⁹ The Framers created a representative democracy “to ensure that lawmaking was the product of thoughtful deliberation by elected representatives, rather than the passions or narrow self-interests of the people.”⁶⁰

It is all but universally accepted that “the more deliberation, the better the decision.”⁶¹ Lack of deliberation can lead to less than ideal, or even bad, policy decisions.⁶² There are reasons to believe that there may not be the opportunity for adequate deliberation in initiative elections and the legislative lawmaking process. The

56. It may be that “[t]he fundamental problem with direct democracy is that it allows private citizens to make laws free from the electoral accountability and other structural safeguards of representative democracy.” Glen Staszewski, *Rejecting the Myth of Popular Sovereignty and Applying an Agency Model to Direct Democracy*, 56 VAND. L. REV. 395, 398 (2003).

57. Chemerinsky, *supra* note 51, at 299; *see also* DuVivier, *supra* note 51, at 898.

58. Robinson, *supra* note 27, at 513.

59. Kang, *supra* note 45, at 218; *see also* Staszewski, *supra* note 56, at 402–03.

60. Staszewski, *supra* note 56, at 402.

61. John Gastil et al., *When Good Voters Make Bad Policies: Assessing and Improving the Deliberative Quality of Initiative Elections*, 78 U. COLO. L. REV. 1435, 1436 (2007).

62. *See, e.g.*, Mihui Pak, *The Counter-Majoritarian Difficulty in Focus: Judicial Review of Initiatives*, 32 COLUM. J.L. & SOC. PROBS. 237, 269 (1999) (“The need for a separate approach for reviewing initiatives stems from the lack of deliberation akin to legislative filtering in the current initiative process.”).

legislative process in California does not always function at its best—last minute decisions and waiver of procedural rules allow legislators to short circuit the lawmaking process and discard meaningful deliberation.⁶³ It is useful to contrast the process for enacting laws through both the legislative and initiative processes to test the veracity of claims that the initiative process does not provide for adequate deliberation.⁶⁴

1. *The Legislative Process*

In California, there are a number of different types of legislative measures which must be put to a vote of the people: (1) bond measures (which must also be adopted by a two-thirds vote of both houses and signed by the Governor);⁶⁵ (2) constitutional amendments (which must also be adopted by a two-thirds vote of both houses, but need not be signed by the Governor);⁶⁶ and (3) amendments to initiatives (which must also be adopted by a simple majority vote of both houses and be signed by the Governor).⁶⁷ In each of these areas, the voters, therefore, have the final say. Bond measures, which can cost the state billions of dollars; constitutional amendments, which represent changes to our state's governing document; and amendments to initiatives which have been passed by a vote of the people, are all seen as too important to allow the legislature to alter on its own.

63. See, e.g., Patrick McGreevy, *Assembly Tangles over Taxes*, L.A. TIMES, July 28, 2010, available at <http://latimesblogs.latimes.com/california-politics/2010/01/assembly-tangles-over-taxes.html> ("After a half-hour of acrimonious exchanges, Democrats voted en masse for the tax study and Republicans, suspicious that it is the first step toward actually imposing the tax, voted as a bloc against the measure."). See also Editorial, *The California Legislature's Water Torture*, L.A. TIMES, Oct. 23, 2009, available at <http://articles.latimes.com/2009/oct/23/opinion/ed-water23>; Bettina Boxall, *Water Policy Discussions Roil On*, L.A. TIMES, Oct. 12, 2009, available at <http://articles.latimes.com/2009/oct/12/local/me-water12>.

64. It is important to remember that in many states like California, measures are passed using both the legislative and initiative processes. Hence, the proper comparison should not be between a state with only the legislative process, or a state that only has the initiative process, but rather a state with the legislative process as compared to a state with both the initiative and legislative processes.

65. CAL. CONST. art. XVI, § 1.

66. CAL. CONST. art. XVIII, §§ 1, 4.

67. CAL. CONST. art. II, § 10; see also California Secretary of State, Ballot Initiatives, http://www.sos.ca.gov/elections/elections_j.htm (last visited March 25, 2010).

In the California legislature, members of the Assembly or Senate send an idea to the Legislative Counsel, who then drafts a bill.⁶⁸ The legislator then introduces the bill in her house of origin.⁶⁹ The bill is sent to the Office of State Printing, and no action may be taken for 30 days from the date of the bill's introduction.⁷⁰ The bill then goes to the Rules Committee of either the Assembly or the Senate, depending on whether an Assemblyperson or Senator introduced the bill.⁷¹ The Rules Committee assigns the bill to a policy committee depending on the substantive area of the bill.⁷²

The policy committee will hold hearings on the bill, during which time the author of the bill presents the bill and testimony in support of, or in opposition to, the bill can be heard.⁷³ The bill can be amended a number of times.⁷⁴ In order for the committee to pass the bill, a majority vote of the full committee must approve the bill.⁷⁵ If the bill requires the expenditure of funds, it must also go to the Senate or Assembly Appropriations Committee, where different bill analyses are prepared.⁷⁶

When and if a bill is approved by a majority of the appropriate committee, it is again read on either the Assembly or Senate floor.⁷⁷ Bill analyses are prepared, and then the bill is read for a third time on the floor.⁷⁸ Most bills need to be passed by a simple majority of either house (twenty-one votes in the Senate or forty-one votes in the Assembly), but bills which require an appropriation require a two-thirds vote—twenty-seven votes in the forty-person Senate and fifty-four votes in the eighty-person Assembly.⁷⁹ An author of a bill which is defeated on her house floor may ask for reconsideration and another vote.⁸⁰

68. State of California, Legislative Counsel, Overview of Legislative Process, <http://www.leginfo.ca.gov/bil2lawx.html> (last visited March 25, 2010).

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.* In Congress, by contrast, bills pass by a majority of those voting (as long as there is a quorum).

80. State of California, Legislative Counsel, *supra* note 68.

If a bill is passed by the house of the author of the bill, the entire process is then repeated in the other legislative house.⁸¹ If the second house amends the bill, it goes back to the house of origin to ensure that that house agrees with the amendments.⁸² If the house of origin does not agree to the amendments, the bill is referred to a two house conference committee to resolve the differences, and the bill is then put to another vote by both houses.⁸³

Once both houses approve a bill, the Governor can then sign the bill into law, allow it to become law without his signature, or veto the bill.⁸⁴ If the Governor does veto the bill, that veto can be overridden by a two-thirds vote of each house.⁸⁵

Hence, the legislative process ideally provides for careful consideration of proposals, thoughtful amendments, and productive compromise. However, in reality, the legislative process is clearly far from ideal. That process is plagued by closed door sessions, last minute decisions, and waiver of procedural rules that make the process far from ideal.⁸⁶

2. *The Initiative Process*

Initiative proponents write the text of the proposed initiatives. Initiative proponents have total control over the drafting of their proposed measures and need not obtain the opinions of opponents.⁸⁷ However, in practice, private compromises are likely necessary to obtain support for viable proposals. In addition, initiative proponents have the option of obtaining advice from the Legislative Counsel's office, although this option is rarely employed by proponents.⁸⁸

81. *Id.*

82. *Id.*

83. *Id.*

84. CAL. CONST. art. IV, § 10.

85. *Id.* See also State of California, Legislative Counsel, *supra* note 68.

86. See, e.g., McGreevy, *supra* note 63 ("After a half-hour of acrimonious exchanges, Democrats voted en masse for the tax study and Republicans, suspicious that it is the first step toward actually imposing the tax, voted as a bloc against the measure."). See also Editorial, *supra* note 63; Boxall, *supra* note 63.

87. California Secretary of State's Office, How to Qualify an Initiative, <http://www.sos.ca.gov/elections/ballot-measures/how-to-qualify-an-initiative/htm> (last visited March 25, 2010).

88. CAL. GOV'T CODE § 10243 (2009); see also California Secretary of State's Office, *supra* note 87.

Initiative proponents submit a draft of the proposed measure to the Attorney General.⁸⁹ The Attorney General then provides a ballot title and summary within fifteen days,⁹⁰ unless a fiscal analysis is required, in which case the Department of Finance and the Joint Legislative Budget Committee first perform a fiscal analysis within twenty-five days from the date of receipt of the proposed initiative measure.⁹¹ When the ballot title and summary, which may include a fiscal analysis, is complete, the Attorney General sends it to the proponents, the Senate, the Assembly, and the Secretary of State.⁹² Once an initiative is titled by the Attorney General and sent to the Secretary of State's office, it is not longer amendable.⁹³

At this point proponents can begin circulating the initiatives for signatures. Initiative proponents have 150 days from the date they are given the official summary to obtain a sufficient number of signatures to have the initiative placed on the ballot.⁹⁴ For constitutional amendments, proponents must gather signatures amounting to eight percent of the Californians who voted in the most recent gubernatorial election (about 695,000 people), and for statutory amendments, proponents must gather signatures equaling five percent of that group (about 433,000 people).⁹⁵ If enough signatures are gathered, the initiative is placed on the next statewide election ballot, as long as that election is not sooner than 131 days after the initiative qualifies for the ballot.⁹⁶

While voters in California have at least 131 days to review initiatives, and the legislature sometimes has only a few days, the legislative process is designed to allow for more deliberation and

89. CAL. GOV'T CODE § 9002 (2009); *see also* California Secretary of State's Office, *supra* note 87.

90. CAL. GOV'T CODE § 9004 (2009); *see also* California Secretary of State's Office, *supra* note 87.

91. CAL. GOV'T CODE § 9005 (2009); California Secretary of State's Office, *supra* note 87.

92. CAL. GOV'T CODE §§ 336, 9007 (2009); *see also* California Secretary of State's Office, *supra* note 87.

93. CAL. GOV'T CODE §§ 336, 9007; *see also* California Secretary of State's Office, *supra* note 87; *see also* Miller, *supra* note 24, at 1051-52.

94. CAL. GOV'T CODE § 336; *see also* California Secretary of State's Office, *supra* note 87.

95. CAL. CONST. art. II, § 8; CAL. GOV'T CODE § 9035 (2009).

96. CAL. CONST. art. II, § 8; CAL. GOV'T CODE § 9013 (2009); California Secretary of State's Office, *supra* note 87.

compromise than the initiative process.⁹⁷ In addition, in the legislative process, the governor has the ability to veto bills, and then the legislature has the power to override that veto.⁹⁸

The initiative process is lacking in the deliberative aspects of legislative lawmaking—"committee study, consultation, debate, compromise, and passage by more than one institution."⁹⁹ Unlike many other states which have the initiative process, in California, there is no required formal review of the substance or legality of initiatives. Proponents can draft, qualify, and circulate initiatives without meaningful public hearing.¹⁰⁰ At least one critic of the initiative process describes it as "undisciplined by the limits of negotiation, bargaining, and mutual accommodation that characterize representative legislative bodies throughout the world."¹⁰¹ Initiative proponents are not forced to compromise or build consensus around their proposals the same way the legislative proponents of bills are.¹⁰² The voters may be left with nothing to do except watch thirty-second television advertisements and vote "yes" or "no."¹⁰³

We believe that most initiatives which qualify for the ballot are drafted by expert legislative drafters. For instance, an organization called California Forward is now circulating measures to reform the budget process.¹⁰⁴ California Forward's experts include former Assembly Speaker Bob Hertzberg, the co-chair of the organization,¹⁰⁵ Fred Silva, a former legislative staffer who has worked on developing

97. In the legislature there are thousands of bills. A legislator can present any idea she wants and be all but assured that it will likely be heard in committee.

98. CAL. CONST. art IV, § 10.

99. Linde, *supra* note 34, at 1739; *see generally* Miller, *supra* note 24, at 1051.

100. *See generally* CTR. FOR GOVERNMENTAL STUDIES, *supra* note 15.

101. Lunch, *supra* note 36, at 672.

102. Staszewski, *supra* note 56, at 447-48 ("[T]here are currently no formal mechanisms for requiring the initiative proponents to communicate with interested parties to exchange ideas and make compromises during ballot campaigns.").

103. Susan P. Fino, *A Cure Worse Than the Disease? Taxation and Finance Provisions in State Constitutions*, 34 RUTGERS L.J. 959, 982-83 (2003) (arguing that because of the way the initiative process is structured, and the lack of compromise and negotiation inherent in the process, "a proposed initiative represents the most extreme form of law which is considered politically expedient" (quoting *Brosnahan v. Brown*, 651 P.2d 274, 292 (Cal. 1982) (Bird, C.J., dissenting))); *see generally* Miller, *supra* note 24, at 1052.

104. California Secretary of State's Office, Initiatives and Referenda Cleared for Circulation, <http://www.sos.ca.gov/elections/ballot-measures/cleared-for-circulation.htm#1445> (last visited March 25, 2010); Best Practices Budget Accountability Act, *available at* <http://www.cafwd-action.org/pdf/Initiative-Best-Practices-Budget-Accountability.pdf>.

105. California Forward, Press Release (Mar. 11, 2009), *available at* <http://www.caforward.org/files/HertzbergPressRelease.pdf>.

public policy for four decades,¹⁰⁶ and Jim Mayer, former Executive Director “of the Little Hoover Commission, an independent and bipartisan state panel that reviews state programs and policies for efficiency and effectiveness.”¹⁰⁷

Few things are ideal, including the initiative process. Voters, who lack specialized experience in drafting legislation, are asked to perform heavy lifting when it comes to initiatives. Indeed, the initiative process places voters on a stand above the legislature—while the people can trump legislative measures, it is difficult, if not impossible for legislative measures to override initiatives. Even a competent voter may be at a disadvantage as compared to a legislator.

B. Voter Competence

The ability of the voters to make educated and informed decisions at the ballot box is the subject of ongoing debate, and is an issue when the electorate votes on both legislative measures and initiatives.¹⁰⁸ However, it arguably is of increased importance with respect to the initiative process, where measures have not been filtered through and examined by our elected representatives.¹⁰⁹

Studies have shown that many voters are ignorant about the substance and consequences of many ballot measures.¹¹⁰ Voters may

106. California Forward, *Fred Silva*, available at <http://www.caforward.org/index.cfm/about/staff/fred-silva>.

107. California Forward, *James P. Mayer*, available at <http://www.caforward.org/index.cfm/about/staff/james-p-mayer>.

108. See generally ARTHUR LUPA AND MATHEW D. MCCUBBINS, *THE DEMOCRATIC DILEMMA: CAN CITIZENS LEARN WHAT THEY NEED TO KNOW?* (Cambridge Univ. Press 1998).

109. In addition, it is important to remember that the legislature is far from infallible. In 1996, both houses of the legislature passed, and Governor Pete Wilson signed an energy deregulation bill, Assembly Bill 1890. U.S. ENERGY INFORMATION ADMINISTRATION, CALIFORNIA ELECTRIC ENERGY CRISIS - PROVISIONS OF AB 1890, available at <http://www.eia.doe.gov/cneaf/electricity/california/assemblybill.html>. By 1999, electricity costs were skyrocketing. U.S. ENERGY INFORMATION ADMINISTRATION, SUBSEQUENT EVENTS - CALIFORNIA ELECTRIC ENERGY CRISIS, available at <http://www.eia.doe.gov/cneaf/electricity/california/subsequentevents.html>. By 2000, California was experiencing severe blackouts. *Id.*

110. See, e.g., Michael S. Kang, *Democratizing Direct Democracy: Restoring Voter Competence Through Heuristic Cues and ‘Disclosure Plus,’* 50 UCLA L. REV. 1141, 1143 (2003) (“Voters do not know basic facts about ballot measures, seem confused about the issues, and appear unduly influenced by superficial advertising.”); see also Paula Abrams, *The Majority Will: A Case Study of Misinformation, Manipulation, and the Oregon Initiative Process*, 87 OR. L. REV. 1025, 1052 (2008); see also, Arthur Lupia, *Busy Voters, Agenda Control, and the Power of Information*, 86 Am. Political Sci. Rev. 390-402 (1992)

lack the ability, education, or time to full understand ballot measures. Also, voters may be simply apathetic.

Critics of ballot box budgeting claim that the process is untenable because voters are not capable of making the complex decisions asked of them at the ballot box. The fear of some, bluntly stated, is that “[v]oters are uninformed, manipulated by slanted television ads, and rarely determine the agenda on which they vote.”¹¹¹

These critics contend that even highly sophisticated voters lack important knowledge about the substance of ballot measures and of the identity of many who endorse and oppose those measures.¹¹² Voters may also be confused or do not understand ballot measure language. Measures are sometimes phrased in the negative, or in a counterintuitive fashion, such that voters are asked to vote “no” to keep a program or allow for the exercise of a right.¹¹³ Research has also demonstrated that nearly thirty percent of voters first encounter ballot measures in the voting booth.¹¹⁴ Uninformed voters may decide to approve or disapprove of ballot measures on the basis of little more than the title of the proposal.¹¹⁵

However, there is evidence to suggest that voters may be able to pick up on cues like endorsements and monetary support when voting on ballot measures.¹¹⁶ Even though voters may not be knowledgeable about content of ballot measures, the electorate may be able to use shortcuts to vote their interests.¹¹⁷ For instance, in some cases, knowledge about those who support or oppose a measure can provide

available at http://www-personal.umich.edu/~lupia/Papers/Lupia1992_BusyVoters.pdf (“When information cues increase the likelihood that incompletely informed voters emulate the behavior of informed voters, the probability that the complete information majority preferred alternative (CIMPA) is the direct legislation outcome increases.”).

111. O’Leary, *supra* note 36, at 1492

112. Gastil et al., *supra* note 61, at 1459.

113. *Id.* at 1442.

114. Lurch, *supra* note 36, at 669-70.

115. Fino, *supra* note 103, at 980-81.

116. See Kang, *supra* note 110, at 1157 (“[V]oters can derive heuristic cues by looking to which interest groups support and oppose a particular ballot measure. . . . In fact, the positions taken by interest groups are particularly informative and consistent because interest groups adhere to natural policy orientations dictated by the defining interests of their memberships.”); see also Glenn C. Smith, *Solving the ‘Initiatory Construction’ Puzzle (and Improving Direct Democracy) by Appropriate Refocusing on Sponsor Intent*, 78 U. COLO. L. REV. 257, 265 (2007) (“At most, voters accurately read ‘heuristic’ cues, such as the positions of interest groups, political parties, or individual political officials and develop a ‘general’ or ‘rough’ sense of what an initiative seeks to do.”).

117. Matsusaka, *supra* note 17, at 57 (“While voters are ignorant about the substance of ballot measures, they are surprisingly adept at voting their interests.”).

valuable information about who would benefit or be harmed by the passage of that measure and its impact on the governmental process. It should be noted, however, that ballot measures lack the cues associated with candidates like party affiliation, personal history, and in the case of incumbents, voting records.¹¹⁸

In addition, at least one prominent initiative scholar has argued that the initiative process itself may lead to a more educated and informed citizenry by elevating the public debate and motivating citizens to go to the polls.¹¹⁹ Even unwise initiative proposals could lead to productive debate among the electorate. This in and of itself would arguably be a positive development. On the other hand, as it currently stands, the electorate does not engage in daily debates about ballot initiatives.¹²⁰ This is to be expected. It is not the public's job to make legislative decisions; that is the charge of our elected officials.

It is worth noting that few initiatives that are passed are reversed by the people.¹²¹ This could indicate that generally speaking, the people do not regret decisions they make at the ballot box concerning initiatives. Hence, while the people may not make wise decisions, one could argue that they have not been fooled or duped at the ballot box when they vote yes. It is of course very difficult to know whether the voters are satisfied with their decisions, or if they do not fully appreciate the consequences of those decisions. This could be true of both initiatives and legislative measures.

C. The Influence of Special Interests

1. The Initiative Process

Money plays too important a role in both the initiative and legislative processes. While the initiative process was created in

118. See Kang, *supra* note 110, at 1153 (“The trouble in direct democracy is that heuristic cues like party identification and candidate characteristics are unavailable and cannot help voters to overcome their political ignorance.”); *see id.* at 1157 (“In the absence of politician and party involvement, where can voters find reliable heuristic cues in issue elections?”).

119. Matsusaka, *supra* note 17, at 57; *see also* DANIEL A. SMITH & CAROLINE J. TOLBERT, EDUCATED BY INITIATIVE: THE EFFECTS OF DIRECT DEMOCRACY ON CITIZENS AND POLITICAL ORGANIZATIONS IN THE AMERICAN STATES 252 (2004).

120. Gastil et al., *supra* note 61, at 1443, 1446; *see also* Hoesly, *supra* note 34, at 1203 (“interest groups regularly take advantage of them to enact pet laws without meaningful debate”).

121. *See generally* California Secretary of State's Office, *available at* <http://www.sos.ca.gov/elections> (containing information on successful ballot initiatives).

California as a way to reduce the influence of special interests on the legislature, some believe that the initiative process has been hijacked by the very interests the process was created to guard against.¹²² It is hardly startling to say the initiatives represent the interests of those who place those measures on the ballot. It may, however, be that those interests also coincide with the interests of the voting public.

John G. Matsusaka has performed empirical studies surrounding the affect of initiatives. He has found that in states which have the initiative process, special interests groups are less likely to implement their agendas. His research suggests that the initiative process serves the function it was designed to serve, a counterbalance to the representative process which is sometimes too susceptible to campaign contributors and/or lobbyists.¹²³ Matsusaka has found that while special interests have a greater influence over the initiative process than the average person, by providing an alternative means of lawmaking, the initiative process gives civic organizations a mechanism to counterbalance the power that lobbyists have over the legislature.¹²⁴

Critics, however, contend that direct democracy now only serves the narrow economic interests of well-funded special interest groups or wealthy individuals, who can determine which measures will appear on the ballot.¹²⁵ Given our current legal framework, which prevents prohibitions on paid signature gatherers,¹²⁶ a wealthy individual or a small but well-funded group has the power to obtain enough signatures to place a measure on the ballot, and help to shape the political agenda.¹²⁷ Simply stated, with enough money, anyone can get anything on the ballot. This means that when it comes to initiatives on the ballot, the public generally votes on a few issues put forth by people or groups with a certain level of funding or influence, or on proposals which have garnered little opposition. As prominent

122. Matsusaka, *supra* note 17, at 56. See also Hoesly, *supra* note 34, at 1191; Fino, *supra* note 103, at 981.

123. Matsusaka, *supra* note 17, at 57.

124. *Id.*

125. Lunch, *supra* note 36, at 664 (“So as a practical matter, assuming an interest group (or, for that matter, a wealthy individual) has the money to pay for sufficient signatures, there is literally nothing that cannot be qualified for the ballot, no matter how poorly drafted, bizarre, or destructive.”); O’Leary, *supra* note 36, at 1492 (“[p]owerful interest groups and paid signature gatherers drive the process”); see generally Kang, *supra* note 45, at 218.

126. *Meyer v. Grant*, 486 U.S. 414 (1988).

127. Robinson, *supra* note 27, at 519; see also Garrett, *supra* note 40, at 257.

legal scholar Beth Garrett has stated, “the sure route to ballot access is money.”¹²⁸

While money can all but ensure that a proposed measure is put on the ballot, it by no means guarantees its success.¹²⁹ Spending in opposition to a measure is more effective than spending in favor of a measure.¹³⁰ Special interests therefore also play a significant role in defeating initiatives. Hence while money can determine what we vote on, it does not determine which measures become laws.

2. *The Legislative Process*

The influence of special interests over legislators is an often debated topic. Not only do large campaign contributions pose the risk for actual or apparent corruption, but gifts from lobbyists to legislators do the same. In 2009, in the middle of the budget process, AT&T spent \$1,800 to send eighteen legislators, their staffers and their children to “Disney’s High School Musical: The Ice Tour.”¹³¹ This is but one example of a trend of lobbyists providing gifts and perks to legislators, clearly in hopes of currying favor. In 2009, the *Sacramento Bee* found that in the eighteen months including all of 2008 and the first part of 2009, “California’s legislators and leaders ate about 8,000 free meals, pocketed about 2,000 free event tickets and accepted enough flowers to open their own shop, all courtesy of lobbyists.”¹³² All told, the *Sacramento Bee* found that during that period, lobbyists gave legislators, legislative staff, and the relatives of legislators \$610,000 in gifts.¹³³

Running for the California Senate or Assembly is an expensive undertaking. The vast majority of donations are made to incumbents, as opposed to challengers.¹³⁴ Quite obviously, it is incumbents who can make legislative decisions which benefit campaign contributors. With respect to campaign contributions, in 2008, the total raised by candidates for the Assembly was \$84.4 million. The average raised by

128. Garrett, *supra* note 40, at 257.

129. Matsusaka, *supra* note 17, at 57; *see also* Garrett, *supra* note 21, at 241.

130. Matsusaka, *supra* note 17, at 57.

131. Philip Reese, *Amid budget crisis, California legislators still wined and dined on lobbyists’ dime*, SACRAMENTO BEE, Sept. 13, 2009, available at http://www.caclean.org/problem/sacbee_2009-09-13.php.

132. *Id.*

133. *Id.*

134. National Institute on Money in State Politics, <http://www.followthemoney.org> (last visited March 25, 2010).

an incumbent candidate for the Assembly was \$681,936, while the average raised by a challenger was \$20,409. The total raised by candidates for the Senate was \$35.2 million. For candidates for the Senate, each incumbent raised an average of \$788,754, while each challenger raised an average of \$65,210.¹³⁵

It is beyond the scope of this article to discuss the link between contributions and gifts by special interests to legislators and the voting records of those legislators. However, that large contributors and special interests have more access to and influence over legislators than members of the non-donor public seems obvious.¹³⁶

D. Issues Surrounding Voter Turn Out

Also it is an obvious fact of life, the fact bears repeating that not all eligible voters participate in elections.¹³⁷ Quite obviously, decisions about candidates, legislative measures, and initiatives are made only by those voters who show up at the voting booth on Election Day.¹³⁸ Therefore, ballot box decisions may represent “the action of a majority of a numerical minority of voters.”¹³⁹ The question, which this article does not seek to answer, is whether those voters represent the public at large.

That the voters who come to the ballot box on Election Day make policy decisions for the entire state is the case when it comes to all ballot measures, but there are some differences between initiatives and legislative measures in relation to voter turnout. When the legislature puts a measure on the ballot, elected representatives have discussed and passed that measure. In addition, members of the voting public are not accountable to anyone but themselves, and hence will rationally vote in what they believe to be their self-interest.

135. National Institute on Money in State Politics, Candidates, http://www.followthefollowing.org/database/StateGlance/state_candidates.phtml?s=CA&y=2008 (last visited March 25, 2010).

136. See Dorie Apollonio et al., *Access and Lobbying: Looking Beyond the Corruption Paradigm*, 36 HASTINGS CONST. L.Q. 13, 24–26 (2008).

137. According to a poll taken after the 2008 Presidential Election, “[s]tate agencies estimate that the state’s population stands at about 38 million, of whom about 23 million are citizens and eligible to vote, and 17.3 million are registered. All are record highs. If 13.6 million votes are indeed cast in today’s statewide election, it would represent a turnout of 78.9% of registered voters and a participation rate of 58.8% of citizens eligible to vote. The former would be the highest turnout rate in thirty-two years, while the latter would be the highest participation rate since 1972.” The Field Poll, <http://www.field.com/fieldpollonline/subscribers/RIs2294.pdf>.

138. Linde, *supra* note 34, at 1741.

139. Robinson, *supra* note 27, at 518.

However, legislators are accountable to their constituents. Whether legislators take this responsibility seriously is an entirely different matter.

On the other hand, the initiative process allows the public to enact laws which the legislature may be unwilling or unable to pass. For instance, the legislature is not likely to pass reforms which interfere with their ability to raise money, such as campaign finance reforms, or reforms which take away their ability to draw their own district boundaries, like the recently-passed redistricting law. In addition, when the legislature refused to do so, the people by initiative passed a drug diversion program which reduced prison costs.¹⁴⁰

E. A Piecemeal Approach to Budgeting

Ballot box budgeting, whether accomplished by legislative measures which have first been passed by elected officials or by the initiative process, allows the voters to have a voice in budgetary policy, but permits considerations of proposed measures in isolation only, and only on a piecemeal basis.

The biggest problem with ballot box budgeting is that voters do not have a complete view of the budget when deciding important issues which will affect the budget. Ballot box budgeting by definition, does not allow for a comprehensive approach to the budgeting process, and arguably “cannot be informed by a coherent tax or fiscal policy.”¹⁴¹ Legislative measures and initiatives that affect the budget process do so only on an ad hoc basis. Voters are presented with one issue at a time, and it may be difficult for voters to appropriately consider the pros and cons of any single measure in the larger context of the state’s budget.¹⁴² In addition, voters face a binary choice, they may vote only “yes” or “no” on a proposed measure, there is no room for compromise or alternative proposals in light of other considerations.¹⁴³ The single subject rule (which limits measures

140. In 2000, voters passed Proposition 36 which mandates that drug offenders treatment programs instead of jail. California Secretary of State’s Office, 2000 Ballot Measures, http://www.sos.ca.gov/elections/elections_bm.htm (last visited March 25, 2010). See also California Secretary of State’s Office, http://www.sos.ca.gov/elections/init_history.pdf (containing a chart listing the voter percentages of ninety-nine ballot initiatives that were approved between 1914 and 2002).

141. Robinson, *supra* note 27, at 518.

142. Elizabeth Garrett, *Hybrid Democracy*, 73 GEO. WASH. L. REV. 1096, 1118 (2005).

143. Garrett, *supra* note 40, at 251; see also Susan P. Fino, *A Cure Worse Than the Disease? Taxation and Finance Provisions in State Constitutions*, 34 RUTGERS L.J. 959, 981

to only one subject) also limits the ability of the voters to consider comprehensive reform proposals.¹⁴⁴

Voters may approve ballot measures which cut taxes and call for the creation or enlargement of government programs.¹⁴⁵ There may be an “inherent contradiction” in these two types of initiatives.¹⁴⁶ Voters may not understand the connection between taxes or fees and services.¹⁴⁷ Voters, for instance, may not fully comprehend that their choices will affect the availability of services for programs not mentioned in the initiative or the initiative campaign.¹⁴⁸ Voters may want both more services and lower taxes.¹⁴⁹ “Americans’ reservations about taxes are paradoxically coupled with an enthusiasm for spending.”¹⁵⁰ It is difficult for voters voting on tax and spending measures in different initiatives, and likely in different elections, to take into consideration the need for a balanced budget.¹⁵¹ Voters need not be concerned with how those measures will be implemented. Voters only make a binary choice of approving or disproving a measure. Because of this, the ability of initiatives to affect the budget has led some to write about the “piecemeal destruction of state fiscal systems by initiative measures.”¹⁵²

F. A Cycle of Discontent

Budget measures can lead to a cycle of voter discontent. Voters may approve of a measure that lowers property taxes, such as Proposition 13, in one election. As a result of that ballot measure, there may be less funding available for other public programs which are highly valued by voters, such as education. Now discontented, voters may pass a measure mandating that a certain amount of funding be allocated to their favorite programs, as voters did in 1988

(2003) (“Propositions are placed before the people in a ‘take it or leave it’ fashion, with no room for discussion, or modification, or accommodation as in a legislature.”).

144. Garrett, *supra* note 40, at 251.

145. Lunch, *supra* note 36, at 663.

146. *Id.*

147. *Id.* at 670.

148. *Id.* at 670–71.

149. Fino, *supra* note 143, at 985 (citing Susan Welch, *The ‘More for Less’ Paradox: Public Attitudes on Taxing and Spending*, 49 PUB. OPINION Q. 310 (1985)).

150. Fino, *supra* note 143, at 985.

151. Linde, *supra* note 34, at 1756.

152. *Id.*

when they passed Proposition 98.¹⁵³ This cycle breeds voter dissatisfaction and puts a rising percentage of the state's budget off-limits to the legislature. Having tied the hands of the legislature, voters then feel the need to circumvent the legislature and do what the legislature may have in fact done on its own: provide funding for certain favored programs. As Garrett has stated, "The relationship between direct democracy and traditional representative institutions is circular—each reacts to the other."¹⁵⁴

G. Implementation Issues

Even when voters pass a measure at the ballot box, there is no guarantee that it will be implemented. In California today, almost half of the General Fund bonds that have been authorized remain unissued. As of October 1, 2009, California had \$66.5 billion of outstanding General Fund debt and \$64 billion of authorized and unissued General Fund bonds.¹⁵⁵ Additionally, constitutional challenges delay the implementation of ballot measures—even those that are ultimately upheld by courts.

H. The Effects of Ballot Box Budgeting on the Budget Process

There is no doubt that ballot box budgeting has deeply affected California's fiscal affairs. Californians have passed initiatives that affect every element of the budget process—from cutting taxes,¹⁵⁶ to

153. "Initiatives constrain lawmakers as they budget, a situation that, in turn, forces groups to turn to initiatives to enact taxes and other revenue raises earmarked for particular programs. Moreover, the entire cycle may have been started by voters' perception that their representatives were irresponsible with the public's money and more accountable to special interests than the public interest. In response, the public may have voted for initiatives that reduced the lawmakers' power over budgeting." Garrett, *supra* note 142, at 1129.

154. Garrett, *supra* note 21, at 278; see also Wesley Hussey, *Direct Democracy in California*, 7 ELECTION L.J. 256, 257 (2008) ("The more citizens interfere by passing initiatives, the more difficult it is for their legislators to govern, increasing the desire to of citizens to pass another initiative that will fix the new problem.").

155. Memorandum from Jason Dickerson, Director, State Administration, to Members, Senate Natural Resources and Water Committee and Assembly Water, Parks, and Wildlife Committee (Oct. 30, 2009), available at http://www.lao.ca.gov/2009/stadm/debt_service/Debt_Service_Information_Memo_10_30_09.pdf.

156. Proposition 6: Gift and Inheritance Taxes. Taxes. Repeal existing statues on Gift and Inheritance Taxes. Initiative Statute, reprinted in Official Voter Information Guide 24-27 (1982), available at http://traynor.uchastings.edu/ballot_pdf/1982p.pdf; see also Proposition 7: Income Tax Indexing. Tax Indexing. Annual adjustment of graduated state personal income tax brackets. Initiative Statute, reprinted in Official Voter Information Guide 28-31 (1982), available at http://traynor.uchastings.edu/ballot_pdf/1982p.pdf; see

requiring voter approval for new local taxes,¹⁵⁷ to earmarking funds for certain programs,¹⁵⁸ to cutting the legislature's budget,¹⁵⁹ to limiting spending.¹⁶⁰ Successful measures that create new programs and require the floating of bonds have cost the state billions of dollars in interest alone.¹⁶¹ Measures that are not even seen as budget measures have cost the state tremendous amounts of money. Two examples are Proposition 21, which increased penalties for certain crimes,¹⁶² and Proposition 83, which increased penalties for sex crimes.¹⁶³ The following is an examination of the different areas of the budget that have been affected by voters' decisions at the ballot box.

also Proposition 13: Tax Limitation. Taxes. Limitation on Property Taxes. Initiative Constitutional Amendment, *reprinted in* Official Voter Information Guide 57-63 (1978), *available at* http://library.uchastings.edu/ballot_pdf/1978p.pdf.

157. Proposition 13: Tax Limitation. Taxes. Limitation on Property Taxes. Initiative Constitutional Amendment, *reprinted in* Official Voter Information Guide 57-63 (1978), *available at* http://library.uchastings.edu/ballot_pdf/1978p.pdf; *see also* Proposition 218: Voter Approval for Local Government. Taxes. Limitation on Fees, Assessments and Charges. Initiative Constitutional Amendment, published by the California Legislative Analyst's Office (1996), *available at* http://www.lao.ca.gov/ballot/1996/prop218_11_1996.html.

158. Proposition 10: State and County Early Childhood Development Programs. Additional Tobacco Surtax. Initiative Constitutional Amendment and Statute, *reprinted in* Official Voter Guide 44-49 (1998), *available at* http://traynor.uchastings.edu/ballot_pdf/1998g.pdf; *see also* Proposition 37: State Lottery. Initiative Constitutional Amendment and Statute, *reprinted in* Official Voter Guide 46-49 (1984), *available at* http://traynor.uchastings.edu/ballot_pdf/1984g.pdf; *see also* Proposition 98: School Funding. Initiative Constitutional Amendment and Statute, *reprinted in* Official Voter Information Guide 79-82 (1988), *available at* http://traynor.uchastings.edu/ballot_pdf/1988g.pdf; *see also* Proposition 99: Cigarette and Tobacco Tax. Benefit Fund. Initiative Constitutional Amendment and Statute, *reprinted in* Official Voter Information Guide 82-85 (1988), *available at* http://traynor.uchastings.edu/ballot_pdf/1988g.pdf.

159. Proposition 140: Limits on Terms of Office, Legislators' Retirement, Legislative Operating Costs. Initiative Constitutional Amendment, *reprinted in* Official Voter Guide 68-71 (1990), *available at* http://traynor.uchastings.edu/ballot_pdf/1990g.pdf.

160. Miller, *supra* note 24, at 1055; *see also* Richard A. Briffault, *Beyond Congress: The Study of State and Local Legislatures*, 7 N.Y.U. J. LEGIS. & PUB. POL'Y 23, 29 (2003-2004) ("For more than twenty-five years, government and politics in California, our largest state, have been strongly shaped by voter initiatives, which have curbed taxes, changed the procedures for adopting new taxes, mandated new expenses, imposed term limits, and addressed campaign finance laws.").

161. Dickerson, *supra* note 155.

162. Proposition 21: Juvenile Crime. Initiative Statute, *reprinted in* Official Voter Guide 44-49 (2000), *available at* http://traynor.uchastings.edu/ballot_pdf/2000p.pdf.

163. Proposition 83: Sex Offenders. Sexually Violent Predators. Punishment, Residence Restrictions and Monitoring. Initiative Statute, *reprinted in* Official Voter Guide 42-46 (2006), *available at* http://traynor.uchastings.edu/ballot_pdf/2006g.pdf.

IV. The Effects of Ballot Box Budgeting

A. An Overview of Measures Affecting Taxes

From 1988 to 2008, there were three successful initiatives and two successful legislative measures that called for higher taxes. Significantly, all of the successful measures in both categories earmarked the increased revenue to fund a specific type of program.¹⁶⁴

The three successful initiatives were Propositions 99 (1988),¹⁶⁵ 10 (1998),¹⁶⁶ and 63 (2004).¹⁶⁷ Proposition 99 increased the tax on cigarettes to fund environmental, health care, and anti-tobacco programs.¹⁶⁸ Proposition 10 increased the tax on cigarettes to fund early childhood development programs.¹⁶⁹ Proposition 63 increased the tax on individuals making over \$1 million per year to fund mental health services.¹⁷⁰ Because the revenue raised by each initiative was earmarked for a specific purpose, the increased taxes did not increase revenue for the general fund.

The two successful legislative measures that increased taxes were Proposition 111 in 1990¹⁷¹ and Proposition 172 in 1993.¹⁷² Proposition

164. Data compiled by authors from the California Secretary of State's Office, available at <http://www.sos.ca.gov/elections>.

165. Proposition 99: Cigarette and Tobacco Tax. Benefit Fund. Initiative Constitutional Amendment and Statute, *reprinted in* Official Voter Information Guide 82-85 (1988), available at http://traynor.uchastings.edu/ballot_pdf/1988g.pdf.

166. Proposition 10: State and County Early Childhood Development Programs. Additional Tobacco Surtax. Initiative Constitutional Amendment and Statute, *reprinted in* Official Voter Guide 44-49 (1998), available at http://traynor.uchastings.edu/ballot_pdf/1998g.pdf.

167. Proposition 63: Mental Health Services Expansion Funding. Tax on Personal Incomes Above \$1 Million. Initiative Statute, *reprinted in* Official Voter Guide (2004), available at http://traynor.uchastings.edu/ballot_pdf/2004g.pdf.

168. Proposition 99: Cigarette and Tobacco Tax. Benefit Fund. Initiative Constitutional Amendment and Statute, *reprinted in* Official Voter Information Guide 82-85 (1988), available at http://traynor.uchastings.edu/ballot_pdf/1988g.pdf.

169. Proposition 10: State and County Early Childhood Development Programs. Additional Tobacco Surtax. Initiative Constitutional Amendment and Statute, *reprinted in* Official Voter Guide 44-49 (1998), available at http://traynor.uchastings.edu/ballot_pdf/1998g.pdf.

170. Proposition 63: Mental Health Services Expansion Funding. Tax on Personal Incomes Above \$1 Million. Initiative Statute, *reprinted in* Official Voter Guide (2004), available at http://traynor.uchastings.edu/ballot_pdf/2004g.pdf.

171. Proposition 111: The Traffic Congestion Relief and Spending Limitation Act of 1990. Legislative Constitutional Amendment, *reprinted in* Official Voter Guide 18-21 (1990), available at http://traynor.uchastings.edu/ballot_pdf/1990p.pdf.

111 increased taxes on gasoline to pay for traffic congestion relief.¹⁷³ Proposition 172 increased the sales tax to pay for public safety protection.¹⁷⁴

From 1988 to 2008, only one initiative decreased the tax burden on Californians: 1992's Proposition 163, which exempted certain food products from a sales tax.¹⁷⁵

B. Propositions 13, 62, and 218

The passage of Proposition 13 in 1978 was a watershed moment in California politics and highlighted the importance of the initiative process.¹⁷⁶ Proposition 13 amended the state constitution to fix assessed property values at 1975–76 levels, limit property tax rates to one percent of assessed value, and limit assessment increases on properties purchased before 1978 to two percent per year unless the property is sold.¹⁷⁷ Proposition 13 underscored the trend of ballot box budgeting in California¹⁷⁸ and ushered in the so-called “tax revolt.”¹⁷⁹

By lowering property taxes and limiting the amount by which they could increase in any year, Proposition 13 limited the resources available to the state and made local jurisdictions more dependent on the state for funds.¹⁸⁰ Proposition 13 gave the state legislature the power to allocate property tax revenue among local jurisdictions.¹⁸¹ This placed a substantial fiscal constraint on local governments that

172. Proposition 172: Local Public Safety Protection and Improvement Act of 1993. Legislative Constitutional Amendment, *reprinted in* Official Voter Guide 24-27 (1993), available at http://traynor.uchastings.edu/ballot_pdf/1993s.pdf.

173. Proposition 111: The Traffic Congestion Relief and Spending Limitation Act of 1990. Legislative Constitutional Amendment, *reprinted in* Official Voter Guide 18-21 (1990), available at http://traynor.uchastings.edu/ballot_pdf/1990p.pdf.

174. Proposition 172: Local Public Safety Protection and Improvement Act of 1993. Legislative Constitutional Amendment, *reprinted in* Official Voter Guide 24-27 (1993), available at http://traynor.uchastings.edu/ballot_pdf/1993s.pdf.

175. Proposition 163: Ends Taxation of Certain Food Products. Initiative Constitutional Amendment and Statute, *reprinted in* Official Voter Guide 40-41 (1992), available at http://traynor.uchastings.edu/ballot_pdf/1992g.pdf.

176. Hoesly, *supra* note 34, at 1196; *see also* Frickey, *supra* note 40, at 421

177. Proposition 13: Tax Limitation. Initiative Constitutional Amendment, *reprinted in* Official Voter Guide 56–60 (1978), available at http://traynor.uchastings.edu/ballot_pdf/1978p.pdf.

178. Lunch, *supra* note 36, at 664.

179. Dempsey, *supra* note 22, at 130 (“Proposition 13 capitalized on an anti-tax backlash among homeowners angered by skyrocketing property taxes.”).

180. Garrett, *supra* note 22, at 276-77.

181. Kirk J. Stark, *The Right to Vote on Taxes*, 96 NW. U. L. REV. 191, 198 (2001).

had historically relied on local property tax revenues.¹⁸² Proposition 13 reduced the revenue available to local governments to fund local public services like education.¹⁸³ Critics have charged that Proposition 13 “left education, welfare, public safety, the economy, and the infrastructure in shambles.”¹⁸⁴

Proposition 13 also mandated that any state tax increases be passed by two-thirds of each legislative house and that any local “special” tax increases be passed by a two-thirds vote of the electorate.¹⁸⁵ Proposition 13 made it even more difficult for California’s legislature to raise taxes and agree on a budget.¹⁸⁶ Because Proposition 13 is a constitutional amendment, it can be amended only by another initiative, or a vote of both of the both legislative houses which is later put to a vote of the people.¹⁸⁷

Propositions 62 and 218, enacted after Proposition 13, closed loopholes left open by Proposition 13 by requiring a popular vote for the passage of new local taxes. Proposition 62, passed in 1986, was a statutory provision that restated the requirement that “special” taxes be passed by a two-thirds vote, and requires local legislative bodies to put general tax increases on the ballot only by a two-thirds vote of their members at a public hearing. Those general taxes must also be approved by a two-thirds vote of the people.¹⁸⁸ Proposition 218, a constitutional amendment passed by the voters in 1996, requires that a majority of property owners approve local property tax increases

182. *Id.* at 199

183. Lunch, *supra* note 36, at 666.

184. Julian N. Eule, *Crocodiles in the Bathtub: State Courts, Voter Initiatives and the Threat of Electoral Reprisal*, 65 U. COLO. L. REV. 733 (1994).

185. In 2000, voters passed Proposition 39, which allows for the passage of school construction bonds by a 55% vote, rather than a two-thirds vote. In addition, the two-thirds requirement imposed by Proposition 13 does not apply to fee increases. Information from the University of California, Hastings College of Law, Hastings Law Library, available at <http://holmes.uchastings.edu/cgi-bin/starfinder/15722/calprop.txt>.

186. Todd Donovan, *Direct Democracy as ‘Super-Precedent’?: Political Constraints of Citizen Initiated Laws*, 43 WILLAMETTE L. REV. 191, 216 (2007). Garrett has criticized the two-thirds requirement for raising taxes stating that while the initiative process can serve many important functions, it has also led to “changes in democratic institutions that I believe have been unwise, such as . . . limitations on the ability of legislatures to raise taxes.” Garrett, *supra* note 40, at 247.

187. CAL. CONST. art. XVII, §§ 1, 3.

188. Proposition 62: Taxation. Local Governments and Districts. Initiative Statute, reprinted in Official Voter Guide 40-43 (1986), available at http://traynor.uchastings.edu/ballot_pdf/1986g.pdf.

and that local general taxes be approved by two-thirds of the local electorate.¹⁸⁹

The propriety of Proposition 62 and 218's requirements that changes in local tax burdens be put to a popular vote is not clear. On the one hand, this requirement asks the voters to make a fiscal decision in isolation, based on an issue that is multifaceted. Voters are simply asked whether to increase their own tax burden and may not fully understand the costs and benefits of the decision. On the other hand, the requirement of putting local tax changes to a vote of the people adds legitimacy to legislators' decisions by ensuring that the legislation enjoys popular support.¹⁹⁰ Further, the right to vote on taxes could stimulate greater public debate about the allocation of local taxes and increased taxpayer consensus about local fiscal decisions.¹⁹¹

C. Budget Allocation

As a result of Proposition 13's depletion of educational funding, California voters passed Proposition 98 in 1988, which mandates that approximately forty percent of the budget be dedicated to K-12 and community college education.¹⁹² Proposition 98 requires that

189. Proposition 218: Voter Approval for Local Government. Taxes. Limitation on Fees, Assessments and Charges. Initiative Constitutional Amendment, published by the California Legislative Analyst's Office (1996), available at http://www.lao.ca.gov/ballot/1996/prop218_11_1996.html; ANALYSIS BY THE SENATE LOCAL GOVERNMENT COMMITTEE, THE GUARDINO DECISION AND LOCAL TAX VALIDATION, available at http://info.sen.ca.gov/pub/97-98/bill/asm/ab_1351-1400/ab_1362_cfa_19970711_162210_sen_comm.html. In addition, from 1986 to 1996, there were twenty-two ballot measures on the subject of taxes: twelve legislative measures and ten initiatives. Nine of the twelve legislative measures passed, and three of the ten initiatives were successful. From 1998 to 2009, when Propositions 13, 62, and 218 were all in place, there were twelve ballot measures regarding taxes: one legislative measure and eleven initiatives. The legislative measure passed along with four out of eleven initiatives. In all, there were a total of half as many legislative measures dealing with taxes after these three propositions were in place as there had been in the pre-1986 period. This statistic demonstrates that the legislature represented the anti-tax sentiments of the people. Data compiled from information available at the California Secretary of State's Office website, <http://www.sos.ca.gov/elections>.

190. Stark, *supra* note 181, at 207, 233. However, Professor Kirk J. Stark has argued that because of a number of features of local tax structure, including that fact that nonresidential property is included in the local property tax base and taxes of income are based on source not residence, a local referendum does not measure taxpayer consent.

191. *Id.* at 237.

192. William M. Luch has argued that this decrease in funding for education caused by Proposition 13 led to "budgetary cannibalism" and the passage of Prop 98 in 1988. Luch, *supra* note 36, at 666.

spending on education be at least equal to spending in the prior year. Further, under Proposition 98 the state must spend at least half of any budget surplus on education.¹⁹³ It is important to understand that Proposition 98 does not designate a new funding source for education; instead it requires that when making the state's annual budget, legislators dedicate a percentage of the budget for education.

Proposition 98 represents the worst example of ballot box budgeting by initiative. Although the measure does allow legislators some flexibility in changing economic times, Proposition 98 still dictates that a certain percentage of the budget is off limits to the legislature. Further, the measure's restrictions have created budgetary problems each year since its enactment, forcing the legislature to take complex funding formulas into account and making the legislature jump through unnecessary hoops to accommodate its provisions.¹⁹⁴

D. Direct Outlays

While the vast majority of initiatives that call for the creation or enlargement of programs fund those services by issuing bonds, a few measures call for direct outlays from the general fund without calling for the floating of bonds. For instance, in 1990 voters passed Proposition 117, an initiative which mandated that California spend at least \$30 million a year on wildlife and habitat protection.¹⁹⁵ In 2002, voters passed Proposition 49, an initiative sponsored by Arnold Schwarzenegger before he was governor, which increased funding for after-school programs.¹⁹⁶

E. Bond Measures

Ballot measures can also affect the budget by calling for programs funded by issuing bonds. (For a detailed chart of ballot measures from 1988 to 2008 which call for the issuance of bonds, please see Appendix 1.) While these measures are advertised as

193. California Department of Education, Text of Proposition 98, *available at* <http://www.cde.ca.gov/ta/ac/sa/prop98.asp>; Proposition 98: School Funding. Initiative Constitutional Amendment and Statute, *reprinted in* Official Voter Information Guide 79-82 (1988), *available at* http://traynor.uchastings.edu/ballot_pdf/1988g.pdf.

194. *See generally* Garrett, *supra* note 22, at 275.

195. Proposition 117: Wildlife Protection. Initiative Statute, *reprinted in* Official Voter Guide 40-43 (1990), *available at* http://traynor.uchastings.edu/ballot_pdf/1990p.pdf.

196. Proposition 49: Before and After School Programs. State Grants. Initiative Statute, *reprinted in* Official Voter Guide 18-24 (2002), *available at* http://traynor.uchastings.edu/ballot_pdf/2002g.pdf.

being possible without raising taxes, they do cost the state and its taxpayers because the state must pay back the principal and the interest on these bonds.

As of October 1, 2009, California had \$130.5 billion in authorized General Fund debt; \$66.5 billion of outstanding General Fund debt and \$64 billion of unissued, but authorized, General Fund bonds.¹⁹⁷

In 2009-10, California's debt-service payments on outstanding General Fund debt are projected to be \$5.75 billion.¹⁹⁸ When the state issues additional bonds already authorized by the voters, the debt-service obligations from the General Fund will be even higher. The California Treasurer's Office has estimated that the General Fund debt service will hit a peak of \$9.75 billion in 2017-18.¹⁹⁹

The Treasurer's Office has estimated that in 2009-10 the debt service will consume 6.7% of the General Fund.²⁰⁰ It is further projected the percentage of the General Fund consumed by debt service will peak at just under 9% in 2013-14.²⁰¹ These numbers do not reflect the fact that voters will likely continue to approve bond authorizations such that debt service may in reality constitute a much larger percentage of the General Fund in the future.

How much have initiatives that call for the issuing of bonds cost the state as compared to analogous legislative measures? Both initiative and legislative measures enacting bonds from 1988 to 2008 will cost the state \$273.5 billion: \$143.05 billion in principal and \$130.45 billion in interest. From 1988 to 2008, there were seven successful bond initiatives, and forty-five successful legislative bond measures. Since 1988, successful initiatives that have called for the floating of bonds will cost the state approximately \$31.8 billion: \$16.3 billion in principal and \$15.5 billion in interest. The cost per year is approximately \$1.01 billion. Since 1988, successful legislative ballot measures which have called for the issuing of bonds will cost the state a total of \$241.72 billion: \$126.7 billion in principal and \$115 billion in interest. The cost per year is approximately \$7.4 billion,

197. Dickerson, *supra* note 155. Specifically, California had \$58.5 billion of General Obligation debt which is expected to be paid from the General Fund. California also had \$53.2 billion of unissued by authorized General Obligation debt to be paid from the General Fund. In addition, the state had \$8 billion of outstanding lease revenue bond debt ("LRB") to be paid from the General Fund, and \$11 billion of unissued but authorized LRBs to be sold.

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.*

approximately seven times the cost per year of initiative bond measures.²⁰²

F. Examples of Legislative Measures Calling for the Issuance of Bonds

The legislature was responsible for the passage of measures which allowed for the issuance of the largest bonds in our state's history. An unusual example of ballot box budgeting in recent years occurred in 2004, when the legislature asked the public to approve bonds to cure that year's deficit.²⁰³ Until then, bond measures had been used for infrastructure, such as roads, water, education, and housing. By asking the public to use a long term financing system for a short term problem, the legislature (and the public when it approved the bonds) asked future taxpayers to pay for that year's deficit. Californians used bonds to go into debt in the same way that the federal government engages in deficit spending. This bond measure hurt the state's credit rating, pushed interest rates higher for other bonds, and arguably set an example of deferring the problem of the deficit.²⁰⁴ On the other hand, if the state's economy had improved after 2004, this bond measure would have avoided painful cuts in

202. Data compiled by the authors. These calculations are based on estimates made by the Legislative Analyst's Office and may not reflect actual costs because of changing interest rates. We have based interest payments on projected selling and repayment of bonds with fixed percentages over 20 to 30 years. None of these numbers have been indexed for inflation. See CALIFORNIA LEGISLATIVE ANALYST'S OFFICE, *BALLOT PROPOSITIONS HISTORICAL DATA*, http://www.lao.ca.gov/laoapp/LAOMenus/lao_menu_propositions_historicaldata.aspx (last visited March 25, 2010).

203. In 2004, Californians passed Propositions 57 and 58. Proposition 57 allowed the state to issue bonds of \$15 billion to cover the state's deficit. Proposition 57 was contingent on the passage of Proposition 58, which requires that the state pass a balanced budget each year. California voter guide, http://primary2004.sos.ca.gov/propositions/prop_summary.html (last visited March 25, 2010). Proposition 57: The Economic Recovery Bond Act. Legislative Bond Measure, *reprinted in* Official Voter Guide Supplement 4-10 (2004), *available at* http://traynor.uchastings.edu/ballot_pdf/2004pu.pdf; *see also* Proposition 58: The California Balanced Budget Act. Legislative Bond Measure, *reprinted in* Official Voter Guide Supplement 10-16 (2004), *available at* http://traynor.uchastings.edu/ballot_pdf/2004pu.pdf. *See also* Legislative Analyst's Office, http://lao.ca.gov/ballot/2004/57_03_2004.htm; Legislative Analyst's Office, http://lao.ca.gov/ballot/2004/58_03_2004.htm.

204. *See* OFFICE OF THE STATE TREASURER, STATE OF CALIFORNIA DEBT AFFORDABILITY REPORT (2005), *available at* <http://www.treasurer.ca.gov/publications/2005dar.pdf>. *See also* OFFICE OF THE STATE TREASURER, STATE OF CALIFORNIA DEBT AFFORDABILITY REPORT (2006), *available at* <http://www.treasurer.ca.gov/publications/2006dar.pdf>. *See also* California State Treasurer, Public Finance Division – History of General Obligations Credit Ratings, <http://www.treasurer.ca.gov/ratings/history.asp> (last visited Mar. 25, 2010).

2004, and in any event spread the deficit over future years of prosperity without the state having to cut funding in the short-term.

In 2006 California voters at the request of the legislature passed Propositions 1B–1E which together authorized approximately \$37 billion in general obligation bonds to cover costs of transportation, education, resources and housing. The Legislative Analyst's Office estimated that including interest, the cost of this bond package was \$72.9 billion.²⁰⁵

At the request of the legislature, Californians have also repeatedly passed measures calling for the issuance of bonds to fund public education facilities: Proposition 1A in 1998, which called for the issuance of \$9.2 billion in bonds,²⁰⁶ Proposition 47 in 2002, which called for the issuance of over \$13 billion in bonds,²⁰⁷ and Proposition 55 in 2004, which called for the issuance of over \$12 billion in bonds.²⁰⁸

G. Examples of Initiatives Calling for the Issuance of Bonds

Voters have passed a number of initiatives calling for the issuance of bonds, costing the state billions of dollars to date. In 1990, California voters passed Proposition 116, which called for the issuance of \$1.9 billion in bonds to pay for clean air and transportation improvement. In 2002, California voters passed Proposition 50, which called for the issuance of \$3.4 billion in bonds to pay for a variety of water projects. In 2004, California voters passed Proposition 71, which allowed \$3 billion in bonds to finance stem cell research. The Legislative Analyst's Office estimated that this initiative would cost the state approximately \$6 billion over thirty years, \$3 billion to pay off the principal and \$3 billion to pay off the interest, with average state payments of \$200 million per year.²⁰⁹ In

205. Legislative Analyst's Office, *Governor's Infrastructure Bond Proposal*, ANALYSIS OF THE 2008-09 BUDGET BILL, available at http://www.lao.ca.gov/analysis_2008/cap_outlay/infra_anl08002.aspx.

206. Proposition 1A: Class Size Reduction Kindergarten-University Public Education Facilities Bond Act of 1998. Legislative Bond Measure, *reprinted in* Official Voter Guide 4–7 (1998), available at http://traynor.uchastings.edu/ballot_pdf/1998gu.pdf.

207. Proposition 47: Kindergarten-University Public Education Facilities Bond Act of 2002. Legislative Bond Measure, *reprinted in* Official Voter Guide 8-13 (2002), available at http://traynor.uchastings.edu/ballot_pdf/2002g.pdf.

208. Proposition 55: Kindergarten-University Public Education Facilities Bond Act of 2004. Legislative Bond Measure, *reprinted in* Official Voter Guide 4–5 (2004), available at http://traynor.uchastings.edu/ballot_pdf/2004p.pdf.

209. Proposition 71: Health Care Coverage Requirements. Referendum, *reprinted in* Official Voter Guide 74–80 (2004), available at http://traynor.uchastings.edu/ballot_pdf/

2006, voters passed Proposition 84, which called for the issuance of \$5.4 billion in bonds to fund a safe drinking water program.²¹⁰

H. Criminal Law Issues: Proposition 184

Proposition 184, passed by voters in 1994, is the so-called three strikes law.²¹¹ While this initiative was being circulated, the legislature passed a similar measure. When voters passed the initiative, it superseded the legislative measure.²¹² While Proposition 184 ties the hands of the legislature and can only be amended by a vote of the people, the legislature passed a similar bill that did not represent ballot box budgeting. A discussion of ballot box budgeting may still be enhanced by a brief overview of the three strikes law.

Proposition 184 lengthened prison terms for conviction based on a number of crimes and required that certain criminals be imprisoned for specified periods of time. Proposition 184 has required that the state commit untold resources for criminal prosecutions and the maintenance and construction of prisons.²¹³ The Legislative Analyst's Office estimated that Proposition 184 would cost the state \$20 billion in prison construction costs and \$6 billion annually.²¹⁴

Proposition 184 did not designate where the money to pay for the implementation of the law would come from.²¹⁵ As a result, those funds were potentially taken out of projects "with more vulnerable constituents less able to defend themselves by sponsoring initiatives

2004g.pdf; California Legislative Analyst's Office, *available at* http://www.lao.ca.gov/ballot/2004/71_11_2004.htm.

210. Proposition 84: Water Quality, Safety and Supply. Flood Control. Natural Resources Protection. Park Improvements. Bonds. Initiative Statute, *reprinted in* Official Voter Guide 48–53 (2006), *available at* http://traynor.uchastings.edu/ballot_pdf/2006g.pdf; California Legislative Analyst's Office, *available at* <http://www.lao.ca.gov>.

211. California Legislative Analyst's Office, *available at* http://www.lao.ca.gov/2005/3_strikes/3_strikes_102005.htm.

212. John Borland, #184 *Sentence Enhancement: Repeat Offenders*, CAL. JOURNAL (1994), *reprinted in* CAL. VOTER FOUND. (1994), *available at* http://calvoter.org/archive/94_general/props/184.html.

213. *See generally* BRIAN BROWN AND GREG JOLIVETTE, THE LEGISLATIVE ANALYST'S OFFICE, A PRIMER: THREE STRIKES - THE IMPACT AFTER MORE THAN A DECADE (2005), http://www.lao.ca.gov/2005/3_strikes/3_strikes_102005.htm (last visited March 25, 2010).

214. Garrett, *supra* note 21, at 275.

215. MARIANNE O'MALLEY, LEGISLATIVE ANALYST'S OFFICE, UNDERSTANDING PROPOSITION 218 (1996), http://www.lao.ca.gov/1996/120196_prop_218/understanding_prop218_1296.html#chapter2 (last visited March 25, 2010).

of their own.”²¹⁶ Although Proposition 184 was never debated as a budget measure, it clearly has cost the state tens of billions of dollars.

In 2000, California voters passed Proposition 36, an initiative that altered the three strikes law by mandating drug treatment instead of life imprisonment for some individuals convicted of drug-related crimes.²¹⁷ In 2000, it was estimated that Proposition 36 would save the state \$100 million to \$150 million per year and potentially avoid one-time capital outlays of \$450 million to \$550 million.²¹⁸

The three strikes law is not the only initiative dealing with criminal law issues that has cost the state money. In 2000, voters passed Proposition 21, which increased penalties for certain crimes, costing the state money in terms of lengthier sentences for individuals convicted of those crimes. The Legislative Analyst’s Office estimated that Proposition 21 would cost the state a one-time cost of about \$750 million and an annual cost of more than \$330 million. Further, the Legislative Analyst’s Office concluded that local governments would face a potential one-time cost of \$200 million to \$300 million and annual costs between the tens of millions to \$100 million.²¹⁹

In 2006, voters approved Proposition 83, an initiative that increased penalties for people convicted of certain sex crimes. This initiative similarly cost the state money by increasing criminal prosecutions and the prison population. Proposition 83 means the state has incurred additional state parole costs, court costs, and jail costs. The Legislative Analyst’s Office could not estimate what Proposition 83 would cost the state.²²⁰

216. Lunch, *supra* note 36, at 666.

217. California Secretary of State, Proposition 36: Drugs, Probation and Treatment Program. Initiative Statute, *reprinted in* Official Voter Guide 22-27 (2000), available at http://traynor.uchastings.edu/ballot_pdf/2000g.pdf.

218. *Id.*

219. See generally California Secretary of State’s Office, available at <http://primary2000.sos.ca.gov/VoterGuide/Propositions/21.htm>.

220. CALIFORNIA LEGISLATIVE ANALYST’S OFFICE, PROPOSITION 83. SEX OFFENDERS. SEXUALLY VIOLENT PREDATORS. PUNISHMENT, RESIDENCE RESTRICTIONS AND MONITORING. INITIATIVE STATUTE (2006), http://www.lao.ca.gov/ballot/2006/83_11_2006.htm (last visited March 25, 2010).

I. Initiatives Directly Reducing the Legislature's Budget

In 1996, the voters passed Proposition 140, an initiative that targeted the legislature and had an effect on the budget process.²²¹ Proposition 140 cut the legislature's budget by almost forty percent and imposed term limits on legislators.²²² Legislators were forced to dramatically reduce their staffs. Arguably, term limits mean that legislators are not able to build expertise in the budgeting process. The Legislative Analyst's Office estimated that in 1991-92, Proposition 140 would reduce legislative expenditures by about thirty-eight, or \$70 million.²²³ This type of direct initiative is yet another effect of the ballot box on the budget process.²²⁴

V. Two Proposed Reforms for Ballot Box Budgeting

A. Require Proposed Initiatives to Identify Their Funding Source(s)

Ballot box budgeting can create costly programs without regard to how those programs will be funded, can cut revenue without designating which program(s) will be cut, and can call for the issuance of bonds without identifying how those bonds will be repaid. Because the biggest problem surrounding ballot box budgeting is that voters do not readily see the consequences of their decisions to cut revenue or increase services, we suggest the following requirements: (1) measures that create programs must identify the funding source for that program; (2) measures that reduce revenue must identify which program(s) will be cut; and (3) measures that call for the issuing of bonds must specify how it will be paid back in the short term, perhaps the first five years after the issuance. Instead of merely voting for a program, these reforms would require voters to decide whether that program was worth funding based on how other programs would be affected. It would also mean that the legislature would not have to find funding sources by increasing taxes, imposing fees, and/or cutting popular programs in order to implement measures calling for the creation of programs.²²⁵ Similarly, voters would have to decide not merely whether to reduce state funds, but also whether to reduce

221. Proposition 140: Limits on Terms of Office, Legislators' Retirement, Legislative Operating Costs. Initiative Constitutional Amendment, *reprinted in* Official Voter Guide 68-71 (1990), available at http://traynor.uchastings.edu/ballot_pdf/1990g.pdf.

222. *Id.*

223. *Id.*

224. See generally Garrett, *supra* note 40, at 248.

225. See generally Hoesly, *supra* note 34, at 1237.

those funds knowing the consequences of that reduction. Finally, when voting on bond measures, the voters would know how those bonds would be repaid in the short term.²²⁶

Another option would be to require that all revenue-reducing initiative measures automatically lead to a pro rata reduction of a small percentage of all budget items. California would not be alone in imposing this restriction: about forty percent of the states that have the initiative process limit or ban initiatives that affect taxes and appropriations.²²⁷ In addition, there is already precedent in California for requiring initiatives to identify their funding source. In 2004, California voters passed Proposition 63, which provides for mental health services funded by a tax of an additional one percent on taxable personal income over \$1 million.²²⁸ Garrett has pointed out that “[t]he success of Proposition 63 demonstrates that voters are willing to support higher taxes—as long as they only apply to a small handful of the very wealthy and the proceeds are earmarked for popular programs.”²²⁹ In addition, voters have not only approved taxes that target the wealthy, but also those that target “bad behavior.” In 1988, California voters approved Proposition 99, an initiative which increased the tobacco tax and used that revenue to fund environmental, health care, and anti-tobacco programs.²³⁰ In 1998, voters approved Proposition 10, an initiative which raised tobacco taxes and allocated the revenue to fund early childhood development and anti-smoking programs.²³¹

This proposal is not, however, without its drawbacks: requiring measures that reduce revenue to identify the program(s) that will be cut or to identify their funding source(s) could hurt unpopular programs. For instance, voters likely would support cutting

226. In addition, it may be wise to prevent bond measures which would be used to pay off the state debt. On the one hand, perhaps the state should not take out a loan for thirty years to pay off its debt in one year. On the other hand, it could be beneficial to pay off the state's debt in one year, and spread that debt over a number of decades.

227. Gildersleeve, *supra* note 23, at 1451.

228. Proposition 63: Mental Health Services Expansion Funding. Tax on Personal Incomes About \$1 Million. Initiative Statute, *reprinted in* Official Voter Guide (2004), available at http://traynor.uchastings.edu/ballot_pdf/2004g.pdf.

229. Garrett, *supra* note 142, at 1128.

230. Proposition 99: Cigarette and Tobacco Tax. Benefit Fund. Initiative Constitutional Amendment and Statute, *reprinted in* Official Voter Information Guide 82-85 (1988), available at http://traynor.uchastings.edu/ballot_pdf/1988g.pdf.

231. In May of 2009, the legislature placed a number of measures on the ballot meant to help balance the state's budget. Those measures, all unsuccessful, would have raided the funding source for the initiatives described above, available at <http://vote.ss.ca.gov>.

expenditures for welfare recipients or illegal immigrants. In addition, this proposal could hurt the most unpopular government program of all: the legislature itself. The fact that a program or policy is unpopular does not mean that that program is unwise. Further, this proposal would increase the complexity of fiscal decisions made by the voters at the ballot box. Instead of merely deciding whether or not to approve a program, issue bonds, or reduce taxes and fees, the voters would also have to make detailed decisions about cutting other programs and identifying funding sources to make up for reduced revenue. Accordingly, this reform could exacerbate the concerns over voter competence already associated with ballot box budgeting.

On balance, requiring measures creating new public programs to identify their funding source, measures reducing taxes or fees to specify the programs that should be cut, and measures that call for the issuance of bonds to identify how those bonds will be paid back in the short term, is a reasonable response to the problems associated with ballot box budgeting. This reform would prevent voters from approving funding cuts and new programs without having to consider the consequences of those actions on the budget. It would also prevent the legislature, who must pass a balanced budget, from facing voter mandates to fund certain programs and reduce taxes without determining how those competing goals would be accomplished.

B. Reduce the Two-Thirds Requirement for Budget Passage

In forty-two states, legislators can pass budgets by a simple majority vote.²³² Only California, Arkansas, and Rhode Island require a supermajority of the legislators to vote to pass a budget.²³³ This leads to gridlock in Sacramento that causes California to be chronically late in passing its budget.²³⁴ As discussed earlier, legislators must barter for the required number of votes, and often make less than ideal compromises. The budget process often dissolves into stalemates, threats of vetoes, and partisan bickering.²³⁵

232. Nat'l Conference of State Legislatures, *supra* note 3.

233. *Id.*

234. *See, e.g.,* Lawrence, *supra* note 7 (“The deadlocks have often left the state unable to pay some of its bills, including payments to businesses that supply prisons, state hospitals and other facilities. The latest stalemate, to enact a midyear budget fix because of declining revenue and set the budget for next fiscal year, also held up state income tax refunds.”).

235. Shane Goldmacher, *Arnold Schwarzenegger Says Democrats Are Wasting Time on Flawed Budget Plans*, L.A. TIMES, June 30, 2009, available at <http://articles.latimes.com/2009/jun/30/local/me-budget30>.

A few legislators have the ability to hold the state hostage and give their vote only on the condition that there is increased state spending in their district. In addition, political parties can refuse to take responsibility for unpopular budgets and blame the other party. Budgets that are cobbled together under these circumstances create an environment ripe for ballot box budgeting. Therefore, one way to reduce the number of initiatives that address fiscal issues is to reduce the two-thirds requirement to pass a budget.²³⁶

VI. Recommendations to Improve the Initiative Process

This section proposes some recommendations for improving the initiative process, which in turn would reduce the negative impact of ballot box budgeting. While budgeting by initiative may lead to fiscal policies that closely track popular opinion, the process of budgeting by initiative can also lead to expensive policy decisions made without a comprehensive view of the budget.

A. Institute the Indirect Initiative

California should reinstitute the indirect initiative process, which it had until it was repealed from the Constitution in 1966.²³⁷ The indirect initiative process requires proponents of an initiative who have gathered enough signatures to put that measure on the ballot to first bring their proposal to the legislature and see if the measure can be legislatively enacted.²³⁸ If the legislature and the initiative proponents can come to an agreement, the legislature would enact that law.²³⁹ This saves the time and expense of an initiative campaign, and saves the voters from making another decision at the ballot box. In addition, it could lead to better laws, which have been amended and refined by the legislature.²⁴⁰ The indirect initiative could also serve as a check on the legislature, allowing them to enact laws which

236. CENTER FOR GOVERNMENTAL STUDIES, A 21ST CENTURY BUDGET PROCESS FOR CALIFORNIA: RECOMMENDATIONS OF THE CALIFORNIA CITIZENS BUDGET COMMISSION 24–25 (1998), <http://www.cgs.org/images/publications/21stCBudgetProcessforCalifornia.pdf>.

237. Miller, *supra* note 24, at 1047.

238. J. FRED SILVA, PUB. POLICY INST. OF CAL., THE CALIFORNIA INITIATIVE PROCESS: BACKGROUND AND PERSPECTIVE (2000), http://www.ppic.org/content/pubs/op/OP_1100FSOP.pdf.

239. *Id.*

240. See generally Miller, *supra* note 24, at 1065.

they might not otherwise consider, but which they would prefer to enact themselves than have passed via the initiative process.

B. Allow Post-Qualification Modification of Proposed Initiatives

Once a proposed initiative is submitted to the Secretary of State by the Attorney General, the text of the initiative cannot be changed regardless of newly discovered information or errors or a desire to compromise.²⁴¹ In this way, initiative proponents are hamstrung. The legislative process, by comparison, allows bill sponsors many opportunities to improve the text of their proposals.²⁴² To a certain extent, the same should be true for initiative proponents.

Initiative proponents should be able to alter the text of an initiative measure after it qualifies for the ballot and before it is put to the electorate for a vote. Changes should be permitted to correct drafting or other technical errors. This will make for better-drafted and more carefully considered initiatives.

C. Increase Financial Disclosure Requirements

It is vitally important to make sure that the voters are aware of which individuals and groups support or oppose ballot measures and which interests have provided financial support or opposition to ballot measures. This gives the voters important information about who would be benefited or harmed by an initiative.

This is particularly true with respect to initiatives that affect the budget. Initiatives calling for the creation or enlargement of costly programs may be supported only by businesses which provide goods or services for such programs. In addition, certain initiatives may benefit only the proponent of that initiative.

Therefore, we suggest that the top five biggest donors for and against ballot measures be printed in the ballot pamphlet (if time permits) and listed online through the Secretary of State's official website. In addition to more financial disclosure, a page should be added to the ballot pamphlet listings the groups who support and oppose the initiative measure.²⁴³

241. Garrett, *supra* note 40, at 265.

242. See generally LEGISLATIVE COUNSEL OF CALIFORNIA, OVERVIEW OF LEGISLATIVE PROCESS, <http://www.leginfo.ca.gov/bil2lawx.html> (last visited March 25, 2010).

243. In addition, measures that cover the same subject should be identified and placed next to each other and the public should be notified that only one may be enacted.

D. Initiatives Prescribing Supermajority Voting Requirements Must be Passed by a Supermajority of Voters

Those initiatives that mandate supermajority voting requirements should require supermajority approval for their enactment.²⁴⁴ For example, a measure that provides that new tax increases should have to be approved by two-thirds of the voters should itself have to be approved by two-thirds of the voters. It is not fair to allow a simple majority of voters to impose a super majority requirement for future elections.

E. Allow Post-Enactment Legislative Changes to Statutory Initiatives

California is the only state that has the initiative process that does not allow the legislature to modify statutory initiatives.²⁴⁵ At least one scholar has argued that budgeting by initiative should only be allowed if the legislature has the power to change those laws.²⁴⁶ It is worth exploring the possibility of making initiatives less permanent by allowing statutory initiatives to be revised or repealed by the legislature. This would recognize the need for statutes to be altered depending on changing circumstances and it would put statutes enacted by initiative on the same footing as statutes that were legislatively enacted.²⁴⁷

However, in recognition of the fact that some initiatives may not be popular with the legislature but may still embody wise policies, changes should be allowed only if they further the purposes of the initiative, are passed by two-thirds of the legislature, and are in print at least fifteen days before passage.²⁴⁸ Garrett has concluded that the benefits “of allowing some subsequent legislative involvement—which facilitates amendments to take account of changed circumstances, drafting errors, or unintended consequences—outweigh the risks.”²⁴⁹ We agree. Legislative measures are not set in stone. Initiatives should not be either. Many laws can be amended and improved as time goes on. Initiatives should not be beyond the reach of the legislature for time immemorial.²⁵⁰

244. Miller, *supra* note 24, at 1064.

245. Garrett, *supra* note 40, at 235; *see also* Miller, *supra* note 24, at 1067.

246. Linde, *supra* note 34, at 1757.

247. Miller, *supra* note 24, at 1067.

248. *See generally* Garrett, *supra* note 40, at 235.

249. Garrett, *supra* note 142, at 1120.

250. It is important to note that many initiatives already state that they are amendable by the legislature under certain circumstances.

VII. Proposals to Reform the Initiative Process That Merit Further Discussion

A. Sunset Provisions and Constitutional Amendments

Some proposals to reform the initiative process raise the possibility of imposing sunset provisions on constitutional initiatives so that they expire approximately one decade after enactment unless they are reenacted.²⁵¹ This would allow the voters to consider whether laws that they have added to our constitution have worked as intended and whether those laws should be maintained. However, this would greatly increase the number of measures on the ballot, as proponents would likely seek reenactment in most cases.

B. Pre-election Legal Review of Initiatives

Approximately two-thirds of successful initiatives are challenged in court, and half of those challenged are invalidated, at least in part.²⁵² Californians may want to consider some type of legal review of initiatives before they are placed on the ballot. However, Californians must do this in a way that does not cause more strain on the judicial system, the Attorney General, or the Legislative Analyst.

Initiatives could be legally vetted based on a number of concerns: (1) procedural requirements like qualification rules; (2) subject matter requirements like the single-subject rule; and (3) compliance with state and federal constitutional requirements.²⁵³ It makes sense to ensure that procedural requirements have been fulfilled before an election. It may, however, not make sense for the courts to insert themselves into initiative campaigns to rule on the state or federal constitutionality of proposal before it becomes law. Such disputes may not be ripe for judicial review, overtax the court system, and/or raise questions about the separation of powers.²⁵⁴ This leaves open the question of whether the courts should conduct substantive pre-election review of initiatives. This type of review would raise similar questions as to whether courts should become part of the initiative process prior to the election and whether it might spread the already

251. Garrett, *supra* note 40, at 235. Constitutional initiatives and constitutional legislative measures can be amended in the same way: a two-thirds vote of the legislature and a majority vote of the people. CAL. CONST. art. XVII, § 1.

252. Miller, *supra* note 24, at 1068-69.

253. *Id.* at 1069.

254. *Id.*

busy court system too thin. Reformers must determine whether they want the courts to perform a gate-keeping function.²⁵⁵

Instead of asking the courts to legally vet initiatives prior to the election, some have called for the Attorney General to perform this duty.²⁵⁶ The Attorney General could be given the power to remove an initiative from the ballot if it did not meet certain procedural requirements, or if it violated subject matter restrictions. The Attorney General could also issue advisory opinions regarding the state and federal constitutionality of the initiative.²⁵⁷ In California, the Attorney General is a partisan elected official and drafts the ballot title and summary. Some have therefore called for this duty to be taken over by the Legislative Analyst.²⁵⁸

On balance, we caution against implementing this proposal.

C. Make It More Difficult To Pass Initiatives

1. *Require Two-Thirds Approval for Initiatives that Affect the Budget*

While the goal of the initiative process may be to put the electorate on the same footing as the legislature, the people should not be on higher ground than their elected representatives. By initiative, the people can pass measures which affect the budget by a simple majority. California's representatives, however, can enact a budget only by a two-thirds vote of both the Assembly and the Senate.²⁵⁹ While the initiative may serve the valid purpose of acting as a check on the legislature, this does not mean that it should be easier to do by initiative than which should be done by the legislature.

This proposal would make it more difficult to alter the budget by initiative but it would not address the reasons why ballot box budgeting is so problematic. The primary problem with budgeting by initiative is that the voters lack a comprehensive view of the budget and are not unaccountable to their fellow citizens in the way that elected legislators are politically accountable to their constituents.

Instead of advocating for the implementation of this proposal, we favor a simple majority vote both for initiatives and legislative measures that impact the state's budget. California's current two-

255. *Id.*

256. *Id.* at 1072.

257. *Id.*

258. *Id.* at 1072-73.

259. CAL. CONST. art IV, § 12.

thirds requirement to pass a budget has led to gridlock, partisan bickering, and less than ideal compromises.

2. *Make It More Difficult To Pass Constitutional Initiatives*

Voters can amend our state's constitution by a simple majority vote. The legislature can amend the constitution only by a two-thirds vote that is later put to a ratifying vote of the people.²⁶⁰ It should be harder to amend our state constitution, particularly with respect to measures that affect the legislature's ability to pass a balanced budget. Linde has argued that "[i]f an expenditure or a tax law is to be locked into a constitution, it requires prior legislative deliberation."²⁶¹

Our state constitution is one of the longest constitutions currently in force and has been amended more than 500 times. A constitution should embody a relatively timeless set of norms rather than the changing opinions and passions of the electorate.²⁶² Constitutional initiatives, particularly those that apply to budgetary issues and may depend on the state's fiscal well-being, however, may "not transcend time, change political mores, or represent general fundamental values."²⁶³

One way to make it more difficult to amend our state constitution would be to require sixty percent of the voters to approve initiatives that amend the constitution. Similarly, many have proposed requiring that constitutional amendments pass in two consecutive elections before they take effect.²⁶⁴

At this time, we do not endorse either of those proposals. Our constitution is full of measures which are not traditionally constitutional and which do not represent a timeless set of norms. In an ideal world, we would recommend making it more difficult to amend our constitution by initiative in certain situations, including initiatives which affect the budget.

260. Frickey, *supra* note 40, at 430.

261. Linde, *supra* note 34.

262. See generally Miller, *supra* note 24, at 1045–46; see also Ryan Maloney, *Smoking Laws, High-Speed Trains, and Fishing News A State Constitution Does Not Make: Florida's Desperate Need for A Statutory Citizens Initiative*, 14 U. FLA. J.L. & PUB. POL'Y 93, 100 (2002) ("By transcending time and changing political mores, the constitution is a document that provides stability in the law and society's consensus on general, fundamental values.").

263. *Id.*

264. Miller, *supra* note 24, at 1063–64.

Conclusion

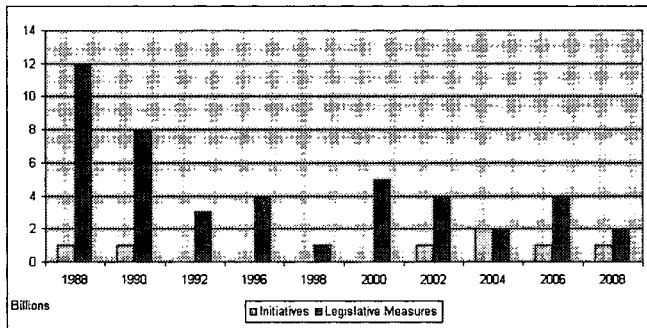
Ballot box budgeting in California has become a hot button topic as the economy of the state dominates political debate. Many observers believe that if the initiative process had been prevented from adding programs, guaranteeing funding for schools, cutting taxes or floating bond measures that California would not be in today's fiscal mess. We think that is a valid but exaggerated argument. Both the electorate and California's elected officials bear a significant portion of the responsibility for the state of our state. The time for endless, and perhaps unrealistic, optimism with respect to California's economy is over.

One solution to ballot box budgeting is to require any ballot measures affecting the budget to identify which programs will be cut, which taxes will be increased, and/or how bonds will be paid back. This solution will do at least two things. First, fewer measures will be approved because the debate on these measures will include not just the merits of the program being proposed but also how the measure will be implemented. Second, the legislature will not be forced to enact future budgets that must account for the newly enacted and unfunded ballot measure through cuts to other programs or tax increases. While there are advantages to requiring all initiative measures to identify their funding sources, there are also downsides to such a requirement. It may mean more ballot box budgeting by the public and less legislative decision-making. If every initiative that has an impact on the budget must identify programs to be cut, the proponents will be engaging in two (rather than one) act of ballot box budgeting. First, they will be proposing new programs or increases in existing programs. Second, they will be using their scalpel on existing programs by telling the legislature which programs must be slashed to pay for the new law. The other problem with this proposed reform is that unpopular programs will be slashed or eliminated. The first agency to be cut could be the most unpopular agency in the state: the legislature itself. The next programs to be cut will be those that only affect minority groups rather than the public at large: welfare, immigration, health care for poor children, among others. Other ways to reduce the impact of ballot box budgeting on the state's fiscal decision-making process should also be seriously explored, including reducing the two-thirds requirement needed to pass a budget in California, reinstating the indirect initiative, and increasing financial disclosures.

Finally, the state's ballot box budgeting epidemic may correct itself if fewer measures are approved by the public due to harder economic times. It is likely that fewer ballot measures that increase state spending or cut revenues will be passed in the near future. Sooner or later, the public may realize that there is no such thing as a free lunch—even in California.

APPENDIX 1

Number of Bond Measures Initiative vs. Legislative



CENTER for GOVERNMENTAL STUDIES

COSTS OF SUCCESSFUL BOND MEASURES IN CALIFORNIA, 1988-2008								
Y E A R	PR OP #	PROP TITLE	Leg / Init	PROJECTED*				Fundi ng Sourc e
				Funding**	Interest**	Total Cost**	Per Yr Cost****	
1 9 8 8	70	Wildlife, coastal, and park land conservation bond act. Initiative statute	I	\$776	\$600	\$1,376	20 yr Bond @ 7.5% =\$65/yr	Bonds
	75	School facilities bond act of 1988. 1988 Cal. Stat. 25 AB 48	L	\$800	\$630	\$1,430	20 yr Bond @ 7.5% =\$70/yr	Bonds
	76	Veterans bond act of 1988. 1988 Cal. Stat. 26 AB 69	L	\$510	\$610	\$1,120	25 yr Bond @ 7.5% =\$45/yr	Bonds
	77	California earthquake safety & housing rehabilitation bond act of 1988. 1988 Cal. Stat. 27 AB 2032	L	\$150	\$120	\$ 270	20 yr Bond @ 7.5% =\$13/yr	Bonds
	78	Higher education facilities bond act of 1988. 1988 Cal. Stat. 44 SB 703	L	\$600	\$475	\$1,075	20 yr Bond @ 7.5% =\$50/yr	Bonds
	79	1988 school facilities bond act. 1988 Cal. Stat. 42 SB 22	L	\$800	\$630	\$1,430	20 yr Bond @ 7.5% =\$70/yr	Bonds
1 9 8 8	80	New prison construction bond of 1988. 1988 Cal. Stat. 43 SB 468	L	\$817	\$650	\$1,467	20 yr Bond @ 7.5% =\$70/yr	Bonds

	81	California safe drinking water bond law of 1988. 1988 Cal. Stat. 45 AB 1439	L	\$75	\$125	\$ 200	35 yr Bond @ 7.5% = \$3/yr	Bonds
	82	Water conservation bond law of 1988. 1988 Cal. Stat. 46 AB 1715	L	\$60	\$58	\$ 118	20 yr Bond @ 7.5% = \$1.2/yr	Bonds
	83	Clean water & reclamation bond law of 1988. 1988 Cal Stat. 47 SB 997	L	\$65	\$55	\$ 120	20 yr Bond @ 7.5% = \$4/yr	Bonds
	84	Housing & homeless bond act of 1988. 1988 Cal. Stat. 48 SB 1693	L	\$300	\$235	\$ 535	20 yr Bond @ 7.5% = \$25/yr	Bonds
	85	Library construction & renovation bond act of 1988. 1988 Cal Stat. 49 SB 181	L	\$75	\$59	\$134	20 yr Bond @ 7.5% = \$6/yr	Bonds
	86	County correctional facility capital expenditure & youth facility bond act of 1988. 1988 Cal. Stat. 264 SB 1664	L	\$500	\$400	\$900	20 yr Bond @ 7.5% = \$40/yr	Bonds
1 9 9 0	107	Housing & homeless bond act of 1990 1988 Cal. Stat. 48 SB 1693	L	\$150	\$145	\$295	20 yr Bond @ 9% = \$15/yr	Bonds
	108	Passenger rail & clean air bond act of 1990 1989 Cal. Stat. 108 AB 973	L	\$1,000	\$790	\$1,790	20 yr Bond @ 7.5% = \$90/yr	Bonds
	116	<i>Rail transportation. Initiative statute. (Clean air and transportation improvement act of 1990)</i>	I	\$1,990	\$1,600	\$3,590	20 yr Bond @ 7.5% = \$180/yr	Bonds

	120	New prison construction bond act of 1990. 1989 Cal Stat. 5 SB 842	L	\$450	\$355	\$805	20 yr Bond @ 7.5% = \$40/yr	Bonds
	121	Higher education facilities bond act of June 1990 1989 Cal. Stat. 6 SB 147	L	\$450	\$355	\$805	20 yr Bond @ 7.5% = \$40/yr	Bonds
	122	Earthquake safety & public buildings rehabilitation	L	\$300	\$235	\$535	20 yr Bond @ 7.5% = \$27/yr	Bonds
	123	School facilities bond act	L	\$800	\$630	\$1,430	20 yr Bond @ 7.5% = \$70/yr	Bonds
	142	Veterans bond act of 1990. 1990 Cal. Stat. 573 (SB 2755)	L	\$400	\$500	\$900	25 yr Bond @ 7.5% = \$37/yr	Bonds
	146	School facilities bond act of 1990. 1990 Cal. Stat. 578 (AB 236)	L	\$800	\$630	\$1,430	20 yr Bond @ 7.5% = \$60/yr	Bonds
1 9 9 2	152	School facilities bond act of 1992. 1992 Cal. Stat. 12 AB 880	L	\$1,900	\$1,400	\$3,300	20 yr Bond @ 7% = \$165/yr	Bonds
	153	Higher education facilities bond act of June 1992. 1992 Cal. Stat. 13 SB 119	L	\$900	\$660	\$1,560	20 yr Bond @ 7% = \$78/yr	Bonds
	155	School facilities bond act 1992 Cal. Stat. 117 SB 34	L	\$900	\$700	\$1,600	20 yr Bond @ 7% = \$80/yr	Bonds
1 9 9 6	192	Seismic Retrofit Bond Act of 1996	L	\$2,000	\$1,400	\$3,400	25 yr Bond @ 5.5% = \$136/yr	Bonds
	203	Public Education Facilities Bond Act of 1996	L	\$3,000	\$2,200	\$5,200	25 yr Bond @ 5.5% = \$208/yr	Bonds
	204	Safe, Clean, Reliable Water Supply Act	L	\$995	\$776	\$1,771	25 yr Bond @ 5.5% = \$71/yr	Bonds
	206	Veteran's Bond Act of 1996	L	\$400	\$300	\$700	25 yr Bond @ 6% = \$28/yr	Bonds
1 9 9 8	1A	Class Size Reduction Kindergarten-University Public Education Facilities Bond Act of 1998	L	\$9,200	\$6,000	\$15,200	25 yr Bond @ 5% = \$600/yr	Bonds

2 0 0 0	12	Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Act of 2000	L	\$2,100	\$1,500	\$3,600	25 yr Bond @ 5.5% = \$144/yr	Bonds
	13	Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Bond Act	L	\$1,970	\$1,400	\$3,370	25 yr Bond @ 5.5% = \$135/yr	Bonds
	14	California Reading and Literacy Improvement and Public Library	L	\$350	\$250	\$600	25 yr Bond @ 5.5% = \$24/yr	Bonds
	16	Veterans Homes Bond Act of 2000.	L	\$26	\$7	\$33	25 yr Bond @ Unknown Interest = \$1/yr	Bonds
	32	Veterans' Bond Act of 2000	L	\$500	\$358	\$858	25 yr Bond @ 5.5% = \$34/yr	Bonds
2 0 0 2	40	The California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002	L	\$2,600	\$1,700	\$4,300	25 yr Bond @ 5% = \$172/yr	Bonds
	41	Voting Modernization Bond Act of 2002. (Shelley-Hertzberg Act)	L	\$200	\$55	\$255	10 yr Bond @ 5% = \$26/yr	Bonds
	46	Housing and Emergency Shelter Trust Fund Act of 2002	L	\$2,100	\$2,600	\$4,700	30 yr Bond @ 6.25% = \$157/yr	Bonds
	47	Kindergarten-University Public Education Facilities Bond Act of 2002	L	\$13,050	\$13,150	\$26,200	30 yr Bond @ 5.25% = \$873/yr	Bonds
	50	<i>Water Quality, Supply and Safe Drinking Water Projects. Coastal Wetlands Purchase and Protection. Bonds</i>	<i>I</i>	<i>\$3,440</i>	<i>\$3,460</i>	<i>\$6,900</i>	<i>30 yr Bond @ 5.25% = \$230/yr</i>	<i>Bonds</i>

2 0 0 4	55	Kindergarten- University Public Education Facilities Bond Act of 2004	L	\$12,300	\$12,400	\$24,700	30 yr Bond @ 5.25% =\$823/yr	Bonds
	57	The Economic Recovery Bond Act	L	\$15,000	\$14,100	\$29,100	Differing Estimates. 14 Yrs if Only Sales Tax is Used to Pay OR 9 Yrs if a \$5,000 Allocation from Reserve Funds	Bonds
	61	<i>Children's Hospital Projects. Grant Program</i>	<i>I</i>	<i>\$750</i>	<i>\$756</i>	<i>\$1,506</i>	<i>30 yr Bond @ 5.25% =\$50/yr</i>	<i>Bonds</i>
	71	<i>Stem Cell Research Funding Bonds</i>	<i>I</i>	<i>\$3,000</i>	<i>\$3,000</i>	<i>\$6,000</i>	<i>30 yr Bond @ 5.25% =\$200/yr</i>	<i>Bonds</i>
2 0 0 6	1B	Highway Safety, Traffic Reduction, Air Quality and Port Security Bond Act of 2006	L	\$19,925	\$19,000	\$38,925	30 yr Bond @ 5% =\$1300/yr	Bonds
	1C	Housing and Emergency Shelter Trust Fund Act of 2006	L	\$ 2,850	\$3,250	\$6,100	30 yr Bond @ 6% =\$204/yr	Bonds
	1D	Kindergarten- University Public Education Facilities Bond Act of 2006	L	\$10,416	\$9,900	\$20,316	30 yr Bond @ 5% =\$680/yr	Bonds
	1E	Disaster Preparedness and Flood Prevention Bond Act of 2006	L	\$4,090	\$3,900	\$7,990	30 yr Bond @ 5% =\$266/yr	Bonds
	84	<i>Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006</i>	<i>I</i>	<i>\$5,388</i>	<i>\$5,112</i>	<i>\$10,500</i>	<i>30 yr Bond @ 5% =\$350/yr</i>	<i>Bonds</i>

2008	1A	Safe, Reliable High-Speed Passenger Train Bond Act	L	\$ 9,950	\$9,450	\$19,400	30 yr Bond @ Unknown Interest= \$647/yr	Bonds
	3	Children's Hospital Bond Act. Grant Program	I	\$980	\$920	\$1,900	30 yr Bond @ 5% = \$64/yr	Bonds
	12	Veterans' Bond Act of 2008	L	\$900	\$856	\$1,756	30 yr Bond @ 5% = \$59/yr	Bonds

*All interest is based off of the projected selling and repayment of bonds with their fixed amount of interest over 20-30 years depending on specific circumstances

**All monetary values are based in millions of dollars and have not been indexed for inflation

***Unable to be determined by Legislative analysts

****All values are estimates given by the Legislative Analyst's Office and may not reflect actual expenditures due to changes in interest rates

*****Does not include Bonds for 1988 since they have expired

Overview

Voter Initiatives (88-08)	Total Base Spending	Interest	Total Cost	Per Yr Cost***** *	% of Total Cost
7	\$16,324	\$15,448	\$31,772	\$1,074	11.6%

Legislative Measures (88-08)	Total Base Spending	Interest	Total Cost	Per Yr Cost***** *	% of Total Cost
45	\$126,724	\$114,999	\$241,723	\$7,390	88.4%

Total Ballot Measures (88-08)	Total Base Spending	Interest	Total Cost
52	\$143,048	\$130,447	\$273,495