

FLOOR ALERT – ACA 13 (Ward) – OPPOSE



September 12, 2023

Members, California State Senate

Subject: OPPOSE ACA 13: Voting Thresholds – as amended September 11, 2023

The California Business Roundtable and the organizations listed oppose **ACA 13 (Ward)**, which seeks to amend the constitution by limiting the initiative process, shifting the power to raise the voter threshold for new and higher taxes to the Legislature. ACA 13 will fundamentally change the initiative process by increasing the voter threshold to pass future limits on taxes and fees *only for measures put on the ballot by signature gathering*, not those put on by the Legislature. ACA 13 seeks to create various inequities between the voters, the Legislature, and local governments, and it represents yet another attempt to diminish the voice of voters as the right and necessary check-and-balance in our system of government.

UNDERMINING CHECKS AND BALANCES

In the past decade, the Legislature has attempted to significantly limit voters' access to the ballot initiative process. Previous legislation moved all voter-backed measures to the November ballot, creating a more crowded and expensive process for initiative backers. Additional legislation increased by 1000% the cost to submit a draft ballot measure for title and summary to the Attorney General. And this year, the same special interests backing ACA 13 attempted to severely limit the power of the referendum process, changing the rules midway through the election cycle to catch supporters off-guard and tip the scales in favor of opponents.

The initiative process is a vital tool for Californians to voice their concerns, propose changes, and stand up for their values. It allows citizens to bypass the usual legislative channels and bring about changes that matter deeply to them. However, ACA 13 risks diminishing these voices, shifting power away from the people and towards the Legislature in a drastic and unprecedented way. Under ACA 13, the power to increase voter thresholds for new and higher taxes would vest solely with the Legislature, taking away a fundamental and often-used tool for voters looking to better control their cost of living and higher taxes. However, the power to *reduce* voter thresholds would remain with both citizens and the Legislature, creating significant power imbalance and an unlevel playing field.

Unfortunately, California is not the only Legislature seeking to upend the state constitution to further a political agenda. A similar measure in Ohio, State Issue 1, sought to create voter limitations on the ballot as well, increasing the threshold for voters to amend the constitution. Elected officials across the nation, including Governor Gavin Newsom, rightly opposed State Issue 1 and its abuse of the initiative process. California should not follow Ohio's example by attempting to place similar voter limitations on the ballot.

ACA 13 is a clear attempt to undermine and ultimately undo several voter-approved taxpayer protections, including Prop. 13, Prop. 218, and Prop. 26. These measures, while passed by voters, have been whittled away by both legislative and legal actions. Under ACA 13, these important voter-approved measures would be even more vulnerable to attack. While the 2/3 threshold for new and higher taxes has not stopped local governments from being able to raise revenue via special taxes, enacting a similar threshold at the statewide level will again create a significant power imbalance whereby larger cities and urban areas will have significantly more say in how the entire state is taxed.

The ballot measure process has posed a significant check-and-balance for both the Legislature and the courts. In fact, in many cases, it is the *only* recourse taxpayers have when the courts overstep their authority and rule against voters' will.

CREATING INEQUITY AND IMBALANCE

Unlike general law cities, charter cities are not bound by state statutes that conflict with their charter. ACA 13 specifically focuses on initiatives that amend the constitution and does not apply to those that enact or amend initiative statutes. In accordance with Article XI of the state constitution, ACA 13 applies exclusively to charter cities and creates a two-tier system, where charter cities would be effectively immunized from any new restrictions on their tax-raising authority, while all other local governments could face stricter voter-approved revenue-raising thresholds.

We have received clarification from Legislative Counsel, confirming that should ACA 13 pass, subsequent initiative statutes aiming to raise the voter threshold for general law cities may still be enacted through a simple majority vote. The higher voter approval requirement proposed by ACA 13 exclusively pertains to "an initiative measure that includes one or more provisions that amend the constitution to increase the voter approval requirement to adopt any state or local measure." Consequently, any initiative statute aiming to modify the voter approval threshold for general law city initiatives or other measures would not be impacted by ACA 13.

For instance, in 1986, voters passed Prop. 62, an initiative statute imposing higher approval thresholds on local taxes. Because Prop. 62 was a statute, the courts and the Legislative Analyst's Office raised doubts regarding its application to charter cities.¹ As a result, Prop. 218, an initiative *constitutional amendment* adopted in 1996 was necessary to ensure that the 2/3 voter approval requirements for local special taxes applied uniformly, including to charter cities.

Because ACA 13 focuses only on initiative constitutional amendments, as did Prop. 218, a higher voter approval threshold may still be imposed on local measures in California's 58 counties, 1,018 school districts, 3,300 special districts, and 361 general law cities through a statewide initiative statute approved by a simple majority of the vote of the statewide electorate. However, under ACA 13, the same could only be accomplished for the state's 121 charter cities through an initiative constitutional amendment approved by 2/3 of voters in a statewide election.

We are concerned that the glaring inequities built into ACA 13 could trigger an equal protection claim based upon different funding levels for the same services, depending on whether someone lives inside or outside a charter city. The courts have held in *Serrano v. Priest* that, when such inequities exist, the state's General Fund may be forced to provide additional revenue to general law cities. This potentially places the state's General Fund at risk, as the state would be on the hook for addressing the substantial disparities created by this measure.

¹ [1] Nov. 1996 Voter Information Guide, Legislative Analyst's Analysis of Prop. 218, p. 74 (explaining that there were ongoing lawsuits over whether Prop 62 could be applied to charter cities); *McBrearty v. City of Brawley* (1997) 59 Cal.App.4th 144, 1449 n. 5 ("despite the statutory provisions of Proposition 62...a constitutional amendment was necessary to ensure that voter approval requirements would apply to charter cities".)

The proponents of ACA 13 have expedited this flawed constitutional amendment, knowingly introducing inequities not only between governments and voters but also among local governments themselves. ACA 13 deliberately weakens the ability of voters to implement safeguards against new and higher taxes for charter cities, without extending these same standards to other forms of local government. This imbalance of power serves to disproportionately benefit the largest and wealthiest charter cities, enabling them to amass more wealth and influence compared to other local governments, and imposing varying rules on voters across different regions of the state.

By opposing this bill, the undersigned organizations aim to protect the integrity of California's direct democracy system, uphold the rights of voters, and advocate for transparent and accountable governance.

Sincerely,



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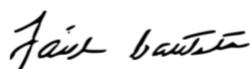
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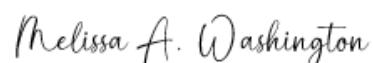
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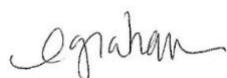
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California Taxpayer Protection Committee
California Retailers Association
Central Coast Taxpayers Association
Central Valley Taxpayers Association
Contra Costa Taxpayers Association
Danville Area Chamber of Commerce
Family Business Association of California
Garden Grove Chamber of Commerce
Greater San Fernando Valley Chamber of Commerce
Los Angeles County Taxpayers Association
Norwalk Chamber
Oceanside Chamber of Commerce
Placer County Taxpayers Association
Redondo Beach Chamber of Commerce
San Diego Tax Fighters
Santa Ana Chamber of Commerce
Silicon Valley Taxpayers Association
Solano County Taxpayers Association
South Bay Association of Chambers of Commerce
Sutter-Yuba Taxpayers Association
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