

How to Defeat Proposition 39 Bonds

HOWARD JARVIS TAXPAYERS ASSOCIATION

BACKGROUND

For 121 years, the California Constitution required a two-thirds vote for local bonds that are repaid exclusively by property owners. By placing the two-thirds vote requirement in the California Constitution of 1879, the framers acknowledged that not everyone who voted was obligated to repay the bonds. Proposition 46, a 1986 constitutional amendment, also required two-thirds voter approval to increase the property tax rate above 1% of a property's assessed value in order to repay local bonds.

Unlike state bonds which generally do not have a corresponding tax increase to repay the debt, *local* bonds *are* accompanied by a *tax increase* to repay the debt. Thus, when a local education bond is approved by voters, it is accompanied by a *separate property tax increase* to repay the debt.

The property tax rate is increased *above the 1% tax rate limit of Proposition 13 (1978)* in order to repay the debt. The amount of additional property tax paid by a particular parcel is determined by multi-

plying the applicable property tax rate increase by the *assessed* value of the parcel. Property tax rates to repay local bonds are often expressed in dollars per \$100,000 assessed valuation (e.g., a tax rate of \$100 per \$100,000 assessed valuation).

In November 2000, a small group of Silicon Valley dot.com multi-millionaires and billionaires spent more than \$32,000,000 and succeeded in passing Proposition 39, lowering the vote requirement for local school and community college bonds, and the corresponding property tax increase to repay the bonds, to 55%. This new lower vote threshold means that virtually every local school and community college bond will pass, regardless of merit, unless local citizens campaign actively in opposition.

THE PROBLEM

When a two-thirds vote was required, the burden was on the *proponents* to convince voters that a bond, and its accompanying property tax increase, were really needed. In the five year period prior to the passage of Proposition 39, voters were quite generous, approving more than 60% of local education bonds with a *two-thirds* vote, for a sum total of more than \$15 Billion!

With the new 55% requirement, nearly all bonds will pass easily. In the first three years since the passage of Proposition 39, about 90% of local school and community college bonds passed under the reduced 55% passing standard. Seeing this, school officials can be expected to confront taxpayers with even more bonds for higher amounts, saddling homeowners with billions of dollars of additional debt. In just the first three years since the passage of Proposition 39, more than \$20 Billion in local school and community college bonds passed under the reduced 55% passing standard.

THE CHALLENGE

While the Howard Jarvis Taxpayers Association is committed to reversing the damage done to property taxpayers from Proposition 39

by restoring the two-thirds vote, this could take several years. In the meantime, the only way taxpayers will be able to defend themselves is to take a *more active role* in opposing these bonds in their local communities.

While the focus of this document is on defeating local Proposition 39 bonds that are subject to 55% voter approval, most of the information contained in this document is just as applicable to defeating *two-thirds* vote bonds placed on the ballot by local school and community college districts. Since the passage of Proposition 39, a small percentage of local education bond measures have been subject to a two-thirds vote. These measures generally involve bonds where the estimated property tax rate to repay the debt *exceeds* the allowable Proposition 39 “tax cap” for the district.

Opposing and defeating a Proposition 39 bond will not be easy. First of all, the bond proponents will be well organized and will usually have extensive financial and manpower resources at their disposal. School and community college districts frequently hire expensive consultants to tell them the best way to pass bonds.

Consultants often tell local education officials not to publicize the bond election to the entire community, but to target only their supporters. This means running a stealth election, communicating only with administrators, the local teachers union, the PTA, and parents who have children in school.

Since it is illegal for education officials to use public resources (including public funds) to urge a vote for or against a political issue, consultants frequently counsel bond backers on the best way to wage “information” campaigns. This means putting up signs or sending out material stating all the good things a bond measure will do, but stopping just short of telling people how to vote. For example, in an effort to help pass a \$1.25 billion local Proposition 39 bond measure, the Los Angeles Community College District spent \$750,000 of public funds on a media campaign talking about the importance of community colleges.

When addressing the public, bond backers are frequently encouraged to put the cost in simple, friendly sounding terms that usually begin with “it’s only.” “It’s only a few cents a day,” or “it’s only a few dollars per month.” (The Los Angeles Community College District Chancellor compared the cost of its bond to the cost of a “latte a month.”) Officials try to make it sound like the coming property tax increase is trivial and that anyone who is opposed must be a cheap-skate who doesn’t care about children.

Nothing could be further from the truth. The vast majority of taxpayers are not anti-education or against students having decent facilities in which to learn. Taxpayers have shown repeatedly that they are willing to approve local education bonds for a good cause. Even the dysfunctional Los Angeles Unified School District was able in 1997 to pass a record setting bond under the two-thirds vote rule.

However, many districts are taking advantage of the fact that local education bonds are now so much easier to pass. For example, the Los Angeles Community College District asked property owners to pay higher taxes for projects like sports stadiums, swimming pools, and a simulated driving range where students can work on their golf swing. These projects would not have been included in the bond unless district officials were confident that the lower 55% voter approval requirement virtually guaranteed passage.

Newspapers can be another problem for taxpayers. While editors at some papers may be sympathetic to the taxpayers’ cause, education writers are almost universally hostile. Why? Because they constantly talk to teachers and administrators. In a short time, these reporters tend to adopt the values and perspective of those they cover. Their stories will tend to present a bond in a more favorable light.

TAKE ACTION!

Now that Proposition 39 has stacked the deck against taxpayers, should taxpayers give up? *Absolutely not!* These bonds *can* be defeated *if* opponents are willing to work, but it will take hard work.

MONITOR LOCAL BONDS

The first step is to monitor local school and community college district news. Try to find out in advance if your school or community college district is considering placing a bond on the ballot. The local newspaper is one source of information. Another is calling your school or community college district administrative offices. They should be able to tell you the agenda for upcoming board meetings. Upcoming board agendas may also be posted on the district website (if it has one), so you may also want to visit the district website.

If you learn that a bond will be discussed, alert friends and neighbors to the fact that property taxes may be going up and encourage them to join you in attending the local board meetings at which the bond is discussed. Take advantage of the public comment portion of the meeting to express your concerns and objections.

One of the few advantages taxpayers have with Proposition 39 bonds is that the law requires these bonds to be put on the ballot during either a regularly scheduled local election or during a statewide election. This simplifies monitoring for these bonds and prevents backers from attempting to sneak bonds through during special elections at which there is usually a low voter turnout, although some Proposition 39 bonds have been approved with voter turnouts of less than 20%.

Note that under California law it takes a *two-thirds* vote of the governing body to place a Proposition 39 bond measure on the ballot. With a typical five member governing body, this means that four affirmative votes are needed to place a Proposition 39 bond measure on the ballot instead of the usual three votes.

If the local board approves a Proposition 39 bond for the ballot - a bond requiring only a 55% vote - please inform the Howard Jarvis Taxpayers Association. There are over 1,000 school and community college districts in California, and although HJTA will usually learn of bonds in the larger school districts, members can help by making certain HJTA is informed of bond measures in smaller districts.

SUBMIT A BALLOT ARGUMENT

If your school or community college district decides to place a Proposition 39 bond on the ballot, you should write and submit an argument against the measure for publication in the voter information pamphlet that will be sent to all voters in the district. The ballot opposition argument is often the *only* opportunity bond opponents will have to reach *all* voters in the district to make their case against the bond.

Start by contacting the clerk of the school board. The clerk should be able to help you obtain the written rules covering all local requirements for submitting ballot arguments. You should also contact your county registrar of voters for requirements applicable to submitting ballot arguments. Under California law, *county* election officials (generally the county registrar of voters) conduct nearly all school and community college district elections.

Independent verification of the applicable legal requirements, such as using a law library to review California Election Code sections 9500-9509, is always advisable. California Election Code sections can also be viewed online at the website of the California Legislature at: <http://www.legislature.ca.gov>. It is important to follow *all* requirements applicable to the drafting and submission of ballot arguments since the failure to do so can result in election officials *not* accepting an argument for publication.

Under California law, arguments submitted by public officials are generally given first priority, followed by citizen groups, and then followed by individual voters. However, it is rare to see public officials submitting arguments against new spending.

Be sure to find out when the arguments are due. Contact your local elections official for the ballot argument deadline. The deadline is set by local election officials and will vary from county to county.

It is very important to note that the initial ballot arguments are generally due shortly (usually 7 to 10 days) after the deadline for placing a measure on the ballot, which is generally some *three*

months prior to the election. Hence, you must move *quickly* after a bond measure is placed on the ballot in order to write and submit a ballot argument in a timely manner.

Bond supporters will be given an opportunity to rebut an opposition argument, but bond opponents will also be given the opportunity to rebut the ballot argument of the bond supporters. The rebuttal arguments are generally due 10 days after the deadline for filing the initial arguments.

Arguments can be signed by up to five persons. If possible, recruit others to sign. Officers or members of local homeowner, neighborhood, or taxpayers associations are good candidates. If none of these are available, don't hesitate to have signers use the title "homeowner" or "taxpayer."

Arguments should focus on the cost of the bond, including interest, and the fact that bonds place a *lien against property* until the principal and interest are paid off. This can take as long as 40 years but will vary with the individual bond issue. Property owners should be warned that their *property taxes will go up* and renters should be reminded that they risk higher rents if the bond passes.

In ballot arguments it is *not* a good idea to attack the schools or local officials without pointing to *specific* acts of mismanagement that demonstrate that local board members are unqualified to handle the bond money and/or the various construction projects involved.

Be sure you are able to document any and all accusations of this kind. If an argument is challenged in court, bond opponents do not want to risk having a judge rule that the argument is "false and misleading" and have it removed from the ballot or otherwise modified. If this occurs, those submitting a "false and misleading" argument may be liable for court costs and even the attorney fees for the other side that challenged the argument. If there is any doubt about the content, keep arguments focused on the damage that the additional bonds and debt can do to homeowners.

Proposition 39 requires that the bond measure list the specific projects that are to be funded. Review the list. If any projects are superfluous to educating students, they should be condemned and brought to the attention of the public in the ballot argument and during the campaign.

If the district has passed other bonds recently, including any two-thirds vote bonds prior to the passage of Proposition 39, mention this as evidence that a new bond may be unnecessary. Note that it is not uncommon for a district placing a Proposition 39 bond measure on the ballot to have previously passed a bond, and in some cases to have even passed *several* bond measures in recent years.

Arguments are usually limited to about 300 words and rebuttals to 250 words. Arguments should always be clear, simple, and direct. They do not have to be the maximum length allowed.

There is generally no charge to file an opposition argument or a rebuttal argument. Costs of printing the ballot arguments are generally paid by the local district as an election cost.

GET THE WORD OUT

Every political movement begins with only a few people. Your friends, neighbors, relatives, co-workers, fellow club members, and members of homeowner associations are always an excellent source of support for taxpayer issues. Share the information you gather with them. Many people don't keep up with what is happening in politics, especially local politics, but it is a rare person who doesn't want to know if their taxes are about to go up. Once people are informed, the word will spread.

ASK FOR VOLUNTEERS

Some people will be willing to volunteer their time to help fight the bond. Make up a fact sheet that describes the issues and ask them to distribute copies in their neighborhoods. When making up a fact

sheet, just like the ballot argument, make it clear, simple, and direct. Try and limit the length to one page, and use a type size that is large enough for voters to read, especially for those voters who are senior citizens.

For those who are less ambitious, set a realistic goal. Ask them to talk to at least five other voters in the district before election day. Keep the discussion short and simple, with an emphasis on the fact that property taxes will go up if the bond passes.

LETTERS TO THE EDITOR

Another cost-effective way to get out the word and help protect taxpayers is through letters to the editor in your local newspaper. Reader surveys show that the letters to the editor section is one of the most read sections of the newspaper. It is an excellent forum for taxpayers because it allows you to bypass reporters and editors and to express your message directly.

The following are some suggestions for writing and submitting letters to the editor :

- Keep your letter short and to the point – 250 words maximum.
- Stick to making one major point in your letter. For example, “Passage of the school bond will result in much higher taxes for homeowners.”
- Tying the letter to a recent story in the newspaper will increase the chances it will be published. If the newspaper editorializes on the bond, either for or against, consider this too an opportunity to send in a letter to the editor.

FORM AN OPPOSITION CAMPAIGN

Consider forming an opposition campaign (or joining the campaign if one has already been formed), especially if it appears that there

is widespread community opposition to a bond measure. A formal opposition campaign can enhance the credibility of the opposition which can lead to such things as greater newspaper coverage and participation in campaign forums. A formal campaign can also help to focus and coordinate the activities of those who are against the bond, including the receipt of campaign contributions.

Note that under the California Political Reform Act, campaign filing obligations will generally be incurred if \$1,000 or more is received or spent in a calendar year in connection with opposing a local ballot measure. For additional information and/or forms in connection with campaign filing obligations, you can contact your local county elections official. You can also contact the California Fair Political Practices Commission. The FPPC website is at: <http://www.fppc.ca.gov>.

CAMPAIGN FORUMS

Campaign forums are sometimes held in connection with a local bond measure. At such forums, the proponents and the opponents have an opportunity to present their case to the public and debate the merits of the bond measure. Such forums are often covered by local newspapers and are sometimes televised on local cable television.

Consider participating in a campaign forum if one has been scheduled. It is a cost-effective way to make your case to the electorate. It is important to make certain that you are adequately prepared on the issues. Strong preparation will enhance the chances of success.

Note, however, that the proponents of bond measures in many districts do not want to schedule campaign forums for the very reason that it might give “undue” public attention to the measure, or give bond opponents a forum to make their case. If there is a formal campaign opposition group, the opponents should not hesitate to push for a campaign forum if one has not been scheduled, or if the bond proponents refuse to debate the merits of a bond measure. If a bond measure truly is meritorious, bond proponents should not hesitate about debating its merits.

RADIO TALK SHOWS

Radio talk shows are another excellent way to get the message out. By calling programs devoted to current affairs and politics, your views will be heard by thousands of potential voters. This approach can be particularly effective in some of the larger districts that propose bond measures, especially in community college districts.

EDITORIAL REBUTTALS

Radio stations that air editorial comment usually offer free time to members of the public with differing viewpoints. Those selected by the stations are usually those who call first and can demonstrate knowledge of the issue. As a taxpayer, you are as qualified to talk about tax issues as any other citizen.

WHAT ELSE CAN TAXPAYERS DO?

SUPPORT GOOD LOCAL CANDIDATES

An excellent way to help taxpayers is to become involved in local school board elections. Find out where the candidates stand and support only those who pledge to support the two-thirds vote for local education bonds. Proposition 39 does *not* require all local education bonds be subject to 55% voter approval. Local districts still have the discretion to place *two-thirds* vote bonds on the ballot if they so desire.

START A LOCAL TAXPAYER ORGANIZATION

As you work, you are likely to find that others are as fed up as you are with out-of-control spending and the little respect most local officials and bureaucrats show for the taxpayer. Consider forming your own local taxpayer group to coordinate efforts in dealing with city councils or county boards of supervisors, as well as school boards. If

you start with only a few members, don't worry. As local tax issues become more prominent, membership will expand.

JOIN HJTA

Join the Howard Jarvis Taxpayers Association. HJTA is the State's foremost taxpayer advocacy organization. HJTA is dedicated to the protection of Proposition 13 and the advancement of taxpayers' rights. Your membership will assure that you are kept informed of developing issues that concern taxpayers throughout the state. In addition, HJTA can assist local individuals and groups with political advice and legal opinions that can be invaluable in local battles against unreasonable taxation. You can visit the HJTA website at: <http://www.hjta.org>.

* * *