

# Reasoned Voting Recommendations for California Propositions on the Ballot for the November 2020 General Election

This is from my friend Eric V. Kirk, a lawyer & UU from Eureka, CA. He has a radio show & Public Access TV show. -Katie Rall, UUFLG Member

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## Prop. 14 - Bond Funding of Stem Cell Research - YES

In 2004, in response to then President Bush's imposition of irrational restrictions of funding for research involving fetal stem cells, we passed Proposition 71 in response to limitations imposed on federally funded stem cell research. It established the California Institute for Regenerative Medicine which has funded over a thousand projects with about 70 institutions public and private leading to over 2500 peer-reviewed studies and thousands of clinical human trials. How productive has it been in bringing us closer to the promised miracle cures? I have read some criticisms which suggest that the successes have been overhyped and the advocates become very vague as to when, if ever, such treatments will become approved by all the appropriate agencies and start saving and improving lives by curing or mitigating such horrific diseases as Alzheimer's, Parkinson's, spinal injuries, etc. Is it a boondoggle preying on false hope? I think that's a bit melodramatic. I wouldn't oppose more oversight even if it is purely informational. I'm not a fan of the requirement of a 70 percent legislative supermajority to make changes in the law (though it is rare that a ballot proposition offers any such opportunity).

Proposition 14 would authorize the state to sell 5.5 billion in bonds and the payoff will be about 7.8 billion with interest. The funding is limited to about half-billion per year so it will stretch it out and maybe it will pay for itself again in all the above ways.

It will also specify that 1.5 billion to fund research and therapy for Alzheimer's, Parkinson's, stroke, epilepsy, and other brain and central nervous system diseases and conditions.

Yes, there have been a number of ethics-challenged quacks pushing stem-cell snake oil, but that's not the Institute's fault. And the proposal doesn't prevent the state from cracking down on fraud, or educating the public as to the state of the science.

Opponents point to Obama's removal of Bush's research restrictions for federal funding and note that federal funding has resulted in about three times as many clinical studies as the California money. So far Trump has not restored the Bush restrictions, but it was reported in July that the President is stacking the federal ethics panel with anti-abortionists, and a vaccine in its third phase of clinical testing may be jeopardized not because its production involves fetal stem-cells, but because some of its research and development did and they oppose anything which is even merely the fruit of what they consider to be unethical research. Should Trump win a second term, that federal funding will probably be stopped.

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The Prop 71 money is drying up although it generated 3 billion in matching funds (when Obama was in office) and created tens of thousands of jobs with benefits in terms of revenue and commerce (nearly 11 billion in stimulated economic activity). I'm all for funding science, and if there are regulations or policies which can ensure the most productive results, then let's hear those proposals. Science is often and agonizingly slow process, but it is worth supporting regardless of how quickly utilitarian benefits arrive. We can do much worse with the money.

### Prop. 15 - Prop 13 Reform - YES

This is probably one of the most important ballot measures we have had in a long time which represents a potential earthshaking break from the long impact of the tax revolt of 1978. We needed the reform as property values were taking huge leaps in certain parts of the state and counties wasted no time reassessing properties to increase their tax base. Working class people were in danger of losing their homes because they simply couldn't afford the increases in property taxes. It passed by a huge margin. Many progressives, including my parents, voted for it.

But it was an extreme measure which cost the state and local governments huge amounts of revenue and we watched our education system drop from the top five states in the country to the bottom ten within a decade as class sizes increased and education began to narrow towards an obsession with college prep at the expense of just about everything else - even before the era of "teaching to the test." I was in the eighth grade when it passed, and three of my favorite teachers were laid off. A really good science teacher went into hot tub sales. Fewer electives were available. And first responder systems as well as other infrastructure suffered, leading to a long string of bond issue initiatives to build one of the most ridiculously large prison systems in the world.

But you couldn't touch it. Even the mildest of reforms would be slapped down by the tax posse who had an iron grip on voters for this reason.

Among other things, Proposition 13 limited the assessment of real property to its purchase price rather than current market value. This means that if you don't sell your property or remodel it in certain ways which increase its value, you will not be reassessed and the taxes cannot be imposed at more than 1 percent of that value. Proposition 15 would exempt most commercial and industrial properties so that they will be assessed at current market value. The 1 percent rule would remain in effect. The measure would have no effect on agricultural

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land. And the increased revenues (estimates of 7 to 12 billion per year) would not be placed into the general fund, but into a special fund earmarked for local governments, special districts, and education (K-12 and community college).

I object to the latter part. We already have too many strings to all sorts of revenues so that the legislators are pretty much deprived of discretion when needs change from year to year. I have complained about this in the past. If we do not trust our legislators to exercise sound judgment as to spending then they shouldn't be in office.

On the other hand, it was local government and education which took the hardest hits under Proposition 13 to there is a certain logic to the earmarking.

There is some mitigation provided to protect small businesses who rent in the larger qualifying properties. The reassessments for properties of more than 50 percent of the space rented by small business will be deferred for five years. It also eliminates personal property taxes for small business and exempts up to \$500,000 for larger businesses. Apparently, the hope is that this will offset increased rents.

If Proposition 13 had been introduced a decade later, there would have been competing measures less extreme as has taken place with other issues. Something like this measure might have been proposed to introduce a progressive tax element to the equation. It might have surpassed Howard Jarvis's draconian measure. Homeowners needed a break. Maybe large commercial property owners didn't. And it may be that some large commercial property owners who aren't dirt rich are going to have to make some tough choices. It may be that the measure discourages investment into a property which will significantly improve its value.

But it mitigates a serious revenue problem we have had for decades which has made our infrastructure and education system marginal.

There will be an intense opposition as the anti-tax folk will see any opening as a potential to lose it all. They want no precedent. Proposition 13 is practically a holy relic. But hopefully the worst aspects of it will become just that - a relic.

### **Prop. 16 - Restore Affirmative Action - YES (with reservation)**

In 1996 voters passed Proposition 209 which effectively ended all affirmative action race considerations with regard to public university entrance and public contracts. The result was a huge drop in the presence of African Americans and Latinos on college campuses.

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Moreover, businesses owned by people of color and women lost contractual opportunities which some estimate to amount to a billion dollars per year.

You can say that such results are just because the missing students and business opportunities are based upon merit, but there have extensive discussions as to whether qualifications are more arbitrary than representative of intrinsic merit, and that the qualifications tend to be rigged towards a particular result. And maybe public university entrance should be based less on merit and more on individual and public benefit of the policy. These discussions are decades old and I'm not going to rehash them here.

But the results of Prop 209 are clear, whether or not they are just. As of 2018, African Americans made up approximately 6% of the state population, but only 4% of undergraduate students in the UC system. Latinx students were 24.4% of UC students, but 39% of the state population. Of the UC students, 21% were white compared to 37% in California, and Asians were 33% of the UC undergraduate population compared to 15% in the state.

And this brings to the forefront a subject which has been the material for lawsuits - Asians benefit the most from the lack of affirmative action and would be the most negatively impacted group by its return. Those of us who were raised in and around San Francisco are well aware of the controversies around the elite high school Lowell where Asians have been required under the quota rules to score higher on tests than other groups, including whites. For whatever reasons (which have been the subject of many research studies and analysis) Asian students tend to fare well with the entrance criteria. But if you arbitrarily exclude them, somehow, you risk very meritorious lawsuits from rejected white students who will argue that they are being hit from both sides of the equation.

I do support the goals of affirmative action and I hope that new policies can be developed which are effective and yet address the complexities.

I will close with an anecdote which almost turned me against affirmative action. I was a substitute teacher in San Francisco while I was in law school and I came to a very difficult placement. Some money had been allocated to hire a new English teacher to draw some students out of three very overcrowded English classes. In what I consider to have been a very bad administrative judgment each of three teachers was asked to name the students who should leave their classes and join the new classes. Naturally, at least two of the teachers sent all of their most challenging students. What they ended up with was four classes which were nearly unteachable. The teacher who had been hired quit within the first couple of

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weeks so the administration put out word for other English teachers to apply. The catch, under the policy the teacher had to be of color. I was told that there was a grand total of five or six non-white English teachers who were offered the job, but word got out from the substitute teachers and none of them wanted the job. There were white English instructors desperate enough for the job, but they couldn't be hired.

By the time I was assigned to the classes they were on their third sub and fourth teacher. Because I did not have an English certificate, I could only teach the class for 15 consecutive days then I could not be there for another few weeks. I was called back several times throughout the year and the classes were basically lost. Finally, they either broke or found a waiver to the rule and they hired a white teacher, who unfortunately had health problems and so was out of the classroom often. Whenever she was out, she had me called - I took that as a great honor. And in fact, when I declined the placement one morning because I had law school exams to study for, I received a personal call from her literally begging me in tears to come in because "if it's anyone else I really can't come back." The last sub had the classroom telephone stolen - it was later found above one of the removable tiles in the ceiling. Naturally I went in, but it was apparent to me that had there been continuity from the beginning of the year then maybe the year wouldn't have been lost for those kids. I don't know whether it was the policy itself or an administrative misconception which was responsible, but it failed those kids.

Assuming Proposition 16 passes I hope that the policy makers and administrators learn from the lessons which led to Proposition 209 and draw up some sound policies which benefit even white disadvantaged, because if it generates another backlash, we certainly won't get a third chance.

### **Prop. 17 - Allow parolees to vote - YES**

California does not have a felony exclusion rule for voting. And right now, anyone convicted can vote if they are on probation. However, someone on parole is still barred.

This is an easy one for me. I don't believe that the right to vote should be deprived for any reason other than a conviction for voter fraud. Prisoners should be allowed to vote.

Look. There is a slew of factors which are usually involved in the commission of a felony, depending on the nature of the crime. They include lack of empathy, lack of respect for rules, economic desperation, lack of self-restraint, momentary to long term lack of judgment, economic or other type of desperation, anger, sense of entitlement, self-centeredness, and

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many others - sometimes in a complex combination to upset balances in the mess of human nature.

But one thing most felons have in common regardless of the motivation or impulse - they experience life in alienation with society as a whole. In my experience very few who are prone to felonies bother to vote. Why? Because they don't see past themselves. Maybe they see as far as their immediate family, friends, and associates. Maybe.

A vote is a social act. An expression of connection to something larger than one's self. Larger than what one can see in their immediate social vicinity. To bother to vote you have to see what is not in your view. You have to feel connected. It makes no sense to deprive a felon of the right to vote. They probably don't even care.

If we are trying to rehabilitate, we want people to feel a stake in the society against which they have transgressed and be encouraged to engage with it. In fact, I might even support a measure which makes in-prison voting mandatory. What is the point of a punishment which reinforces the disconnect?

What is the down side to allowing them to vote? Do we have so many felons in prison and/or on parole that we are concerned about them coming together as a bloc to somehow vote in laws of criminality? Are we living in pre-Batman Gotham City? Seriously, I really don't see a downside. Even if they vote Republican, which is a possibility.

A law-and-order leftist friend of mine once told me that he viewed the act of crime as the ultimate right-wing act which in effect says, "I want what I want and f--- anyone who gets in my way." I don't think it's that simple, I see no logic in the deprivation of the vote. It's like punishing a child who snuck too many cookies by depriving them of the right to eat broccoli. I'm not saying that voting is a cure for criminality. I'm just saying that there is no logic to the deprivation.

So, the question of expanding the vote to parolees is a no-brainer. Yes. Of course.

### **Prop. 18 - Expansion of Vote to Some 17-year-olds in Primaries - YES**

Proposition 18 would allow a 17-year-old to vote in a primary if they will be 18 and eligible to vote in the general election which follows that primary. This is actually already in place in 18 other states and it makes sense. If you are going to vote in the general then you have a stake in who will be on the ballot in the general. And if they are engaged in the primary process, they are more likely to be informed come November. Makes sense to me. Youth engagement

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in politics is a perpetual challenge and, in my opinion, though we do need to draw some lines, if they're old enough to want to vote they're probably mature enough.

### Prop. 19 - Senior Tax Break for Real Estate Speculation - NO

This proposal is not what it seems. It's actually kind of a jumbled mess. And it would be fiscally detrimental as well as potentially economically if it induces more real estate speculation.

Right now, some counties have a program which allows seniors over 55 (That makes me a "senior." Weird.) to upgrade to a new home while holding on to the property tax amount of their prior home when purchasing another home within the same county or another participating county with reciprocity.

But why? Most people, of modest means, actually downsize when they get older and no longer have children and prefer to use the net equity to finance retirement or pass wealth on to heirs. If you are inclined to and can afford to buy a more expensive home, why shouldn't you pay the appropriate taxes for it? Because you're older? Proposition 13 was intended as a stop-gap measure to ensure that working class families would not lose their homes due to increasing tax burdens. Most voters who passed it did not envision it as a golden goose egg for which you could reap financial benefit in old age.

A very similar proposal was made a couple of years ago and I opposed it, as did about 60 percent of the voters. I'll just cut and paste what I wrote at the time.

"It makes sense to make it easier to move, but this was written by Realtors with profit motive and isn't thought through in terms of fiscal impact or whether we really want to increase speculation and moving into larger homes at retirement. And it contains no caps on applicable home values. Elderly shouldn't be trapped in a home which may be far away from family, adequate medical care, etc., but the answer is to press for policies generating affordable housing for everyone. This is basically regressive and it's kind of a new Prop 13 focusing most of its benefit towards rich baby-boomers."

Like the failed 2018 proposal, Proposition 19 once again puts no cap on increased home values, inviting speculation.

But the current measure even throws more weirdness into the mix.

It sets up a fund for the state to reimburse the counties for the loss of revenue of higher valued homes. Where does this money come from? Well, the proposal contains references to

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children of "celebrities" and evil "east coast investors" (I guess we don't have unethical investors here on the west coast). Basically it repeals aspects of Proposition 13 and 58 by cracking down on what is considered to be abuse of transfers from parents to adult children in which the children maintain the same assessed-value tax rates of the parents but rent the property out or hold onto it as a vacation home by requiring that the children live in the home to benefit from the tax rate (so I guess if you have multiple children all of them and their families or significant others should move into the house). Proposition 19 would limit the tax break to children who actually live in the home by requiring reassessment at market value rather than the parents' purchase value. And even if you move into the home, you're limited in the tax break to the first million dollars. I mean, as I've said I support serious reform proposals regarding Proposition 13 and even 58. But this is convoluted and will throw estate-planning for a few unnecessary loops.

Oh, and by the way it adds wildfires to the list of natural disasters for which a victim suffering a home loss could receive a tax break. And speaking of fires, 75 percent of the money will come out of the general fund to benefit firefighting - this was thrown in at the last minute. 15 percent will go to reimburse counties for the loss of revenue for the senior tax break. I guess the other 10 percent stays in the general fund. Again, I'm against the earmarking which deprives the legislature of its responsibility to allocate resources according to the particular needs of the particular year. But more than that, in an age of intense fire seasons, this is manipulation.

This proposition should have been disallowed in its form as it seems to violate the single-issue rule. On top of it, the measure would amount to a very convoluted Constitutional amendment and the California Constitution is already a mess because it is too easy to pass amendments.

Just, no.

### **Prop. 20 - Convoluted, Complicated, One-sided Crime Bill Reform - NO**

Over the past decade California voters have passed reforms intended to lower the prison population by reducing the number and length of prison sentences for other-than-violent crimes. In 2011 The US Supreme Court ordered California to release some of its prisoners who were suffering severe overcrowded conditions. The legislature responded by forcing counties to hold some of the state prisoners, which added strain to local systems and taxed their resources. In 2014 we passed Proposition 47 which reduced some low-level thefts and



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drug crimes from felonies to misdemeanors. Then we passed Proposition 57 which created sentencing and early release incentives to participate in rehabilitation programs for nonviolent crimes. Police unions were kicking and screaming the whole time arguing that it was going to result in massive chaotic dystopia across the state, during a several decades long phase in history in which crime rates have actually been declining. However, it appears that for certain types of theft in particular, such as car theft, there have actually been increases in some years, although the impact of Proposition 47 on that is a matter of strong dispute. UC Irvine conducted a study which suggests that there is no connection while the Public Policy Institute conducted a study which suggests that there is - although again, the overall crime rate in California has been on a steady decline since 1990. The drafters disagree and have cited studies which suggest increased violent crime rates in some cities. And even the Public Policy Institute has concluded that there is no relationship between Proposition 47 and the spurts of violent crimes which seem to have gone up and down over the past decade - mostly down.

Proposition 20 is heavily backed by police and prison guard unions.

The proposal is extremely convoluted and actually has some good ideas mixed with the bad. The weakness of Proposition 57 is that it really failed to define<sup>[O1]</sup> "violent crime" and the Courts have pretty much run with the statutory divisions which do not include domestic violence and sex crimes which don't involve physical force. Proposition 20 adds to the list of "violent crimes" over 50 crimes which ought to be on it to disqualify those convicted of the parole provisions made available by the ballot reforms. If this was all the measure did, I would have no objection. I'm not against making serial theft a "wobbler" (can be charged as a misdemeanor or felony) in some cases, but I really do not think it's necessary to make a felony out of theft of something at \$250.00 in value, at least not for the first offence. The measure would make such a theft a "wobbler" if more than one person committed an "organized retail crime."

And then the measure gets into a very detailed and extensive set of standards and practices for parole consideration, which may not be bad in and of themselves, but come strictly from a law enforcement perspective. It is the type of law which should be vetted in a legislative process, with experts and stakeholders from numerous facets of society to have input in the appropriate committees which would generate a legislative history which can provide guidance on the interpretation of the finalized law. This is not something which belongs on a ballot measure. I could list the provisions but your eyes would glaze over them. Few voters

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will read the proposal in its entirety, nor understand why some of the provisions are even in there.

The measure also seeks to expand DNA collection for database anyone convicted of everyone convicted of even minor theft and drug convictions on the theory that those convicted are going to move on to more serious crimes and so we should have their DNA in our system catch them. There is no accounting in the proposal for the civil libertarian notion that it is creepy for the government to be maintaining your DNA over a stupid mistake you might make in your youth. Yes, obviously "you have nothing to worry about if you don't break the law again," but that's just not the point, nor is it the case

Basically, the measure would reduce the opportunities for parole and probation - that's the whole point. It would result in an increase in incarceration and potentially jeopardize the state's compliance with the Supreme Court order (although who knows if the order will survive the new SCOTUS makeup?). There is an extensive prison industry in California and it needs feeding, and that is what's fueling this measure. Wrong direction.

### Prop. 21 - Local Say in Rent Control Redux - YES

This is a watered-down version of 2018's Proposition 10 which I think lost because many people thought it was imposing a statewide rent control. It wasn't. But let me just repeat what I said two years ago.

I've just about had it with biased documents/wording coming out of government, but the official Election Guide describes the proposition as "expands local government's enact rent control..." Technically speaking this is true, but anyone who doesn't know the history or read the analysis carefully will fail to understand that what this does is to dial back overreach from Sacramento in the horrific Costa-Hawkins law passed by developer and Realtor lobby-pressured pols to impose statewide restrictions on rent control. Costa-Hawkins prohibits rent control for single-family homes. It prohibits vacancy rent control. And most egregiously it prohibits rent control of anything built from 1995 on - which was purely a gift to developers.

This is exactly the kind of legislation conservatives claim to hate - that which saps local control. It puts a premium on tearing down older homes. For the lack of vacancy rent control it assures gentrification and the destruction of working-class communities.

So, it went down in flames. Basically, the Costa-Hawkins act prohibits rent control on single-family housing, condos, townhouses and anything first occupied after 1995 (so basically nothing built within the past quarter-century and growing. Proposition 21 would basically

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allow property to be occupied for 15 years before it could be rent-controlled. And it would allow local governments to impose vacancy rent control. Allows rent increases on rent-controlled properties of up to 15 percent over three years from previous tenant's rent above any increase allowed by local ordinance. It exempts rent control for anyone who owns no more than two home rentals.

I supported Proposition 10. Obviously, I support the more limited version as better than nothing.

### **Prop. 22 - Exempts Uber from Labor Regulations - NO**

The rise of the "gig economy" has accompanied the decline of union jobs in which a worker's hours are regulated, unemployment and workers compensation insurance must be provided, and benefits pretty much non-existent as collective bargaining is not only impossible but completely contrary to the model.

Earlier in the year a California court ruled that gig workers must be treated as employees rather than independent contractors. The court granted a stay in the ruling pending appeal. Gig economy businesses have threatened to shut down their businesses saying that they can't afford to pay their contractors as employees. That threat just reveals the math.

Proposition 22 would exempt ride sharing and food delivery services from employment laws. Uber and Lyft have built their business models around the independent contractor status, reserving full-time employee status for corporate roles to keep costs low. Uber, Lyft, Doordash, Postmates, and Instacart have poured six figures of millions of dollars into the measure (some of that money no doubt the product of savings from exemption from having to pay a decent wage).

I'm not a fan of the Uber model anyway. The data is in and they tend to focus their activity in public transit friendly areas which means lots more driving and traffic.

The business model is favored by many young drivers who like the flexibility, and there is mixed evidence as to whether Uber drivers make more money than taxi drivers due to optimized location and timing made inevitable by the app system. But if you're raising a family and you need to bring home a certain amount of money the "flexibility" is largely an illusion and your flexibility is limited by family and other needs. Sure, you can do something else, but the more the business model is allowed to flourish the bigger the negative impact on the non-hip portions of the working class who really do have to earn a living and bring home some healthcare and benefits. So, Uber closes up in California. Then maybe taxi

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companies who are subject to unions and overtime regulations will make comeback, perhaps even reproducing some of the app approaches which have made Uber the consumer choice. Of course, those rides aren't as inexpensive, so maybe we will have to renew our quest for affordable and effective public transportation. I'm sorry if the hipsters will be inconvenienced and have to go back to using public transit.

And by the way, there is nothing in the labor laws which deprives the companies of giving their workers time flexibility.

Yes, for a more worker-friendly economy.

### **Prop. 23 - Dialysis Clinic Regulations - YES**

Two years ago, Proposition 8 was introduced to place some regulations and profit caps on dialysis clinics of which private for-profit companies have a death grip and are being accused of having different tiers of levels of care depending on the source of your coverage - specifically suggesting that Medi-Cal and Medicaid patients don't get the same quality of treatment.

Proposition 23 would require that a physician be present for all treatment except in circumstances of shortage of availability. It would require reporting to the state of all infections resulting from treatment with strong fines for non-compliance. It would require state approval before closing clinics or reducing services. And it would prohibit discrimination in treatment based upon your coverage; maintaining the same standards no matter what neighborhood you're in.

The clinic private industry spent over 100 million dollars to defeat Proposition 8 and it looks to be spending a similar amount against Proposition 23. Proposition went down in flames, partly because the American Nurses Association opposed it, though the more progressive California Nurses Association was curiously silent in 2018 and is not taking a position this time.

I do have some reservations about a ballot measure like this one. The initiative process is probably not the best vehicle to set medical treatment policy. I mean, do dialysis patients really need a medical doctor present, or are skilled nurses more than adequate? I don't know the answer to that question, and maybe that's the reason the CNA is staying out of this fight. This is the type of question which should be addressed by taking input in legislative committee with experts making their pitches one way and the other. But I have absolutely no

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doubt that in the affluent area clinics there is at least one physician present always, if only to give the affluent peace of mind.

And what I do know is that a for-profit model of health care is problematic when it is allowed to close clinics in poor areas and cut corners in treatment for patients whose coverage pays less after having displaced public and/or non-profit clinics. We hear the private insurers and health industry touting the benefits of free enterprise in generating the best care for everyone, but when expected to make good on those promises they say, "Hey, we're trying to run a business here!" And in fact, they are cynically arguing that the SEIU wants to drive costs of operation up so that private businesses will close because unionization of dialysis workers has been difficult, which is patently ridiculous on several different levels.

And if having to report infections is really a cost-prohibitive burden, then maybe you're infecting too many people!

Note to the industry - show us that your vaunted for-profit business model works and support these very basic regulations. That you are spending tens of millions to oppose this is really telling.

### **Prop. 24 - Convoluted Consumer Privacy Protection Measure - NO**

In 2018 the Legislature passed the California Consumer Protection Act, which is said to provide the strongest protection of digital consumer privacy of any state in the country, requiring permission from consumers before certain private information could be shared. Almost immediately tech companies and other businesses pushed to weaken it. And in fact, several bills to overhaul the law were stopped by State Senator Hannah-Beth Jackson who used her power as chair of the Judicial Committee to block them. She will be termed out next year, and the feeling of consumer privacy activists is that if the protections are not locked in by a ballot proposition which can only be amended by a subsequent ballot proposition the reforms will be lost or significantly watered down. The man who is spending a great deal of money to pass the measure is Alistair McCallister who says, "There is basically unlimited resources on one side of the fight. If you don't do anything, they will win eventually."

Andrew Yang is also supporting it.

I'm not even going to try to list the provisions of the 2018 law. It's huge. Here is the text if you want to read or skim it: <https://theccpa.org/>

## Reasoned Voting Recommendations for California Propositions on the Ballot for the November 2020 General Election

This is from my friend Eric V. Kirk, a lawyer & UU from Eureka, CA. He has a radio show & Public Access TV show. -Katie Rall, UUFLG Member

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What Proposition 24 adds is the creation of an enforcement agency; the removal of the opportunity to correct a violation to avoid penalty; to honor all consumer requests against the sharing of the designated information; allowing consumers an opt out for use of their sensitive personal information for advertising or marketing purposes; requiring affirmative permission for the use of information for anyone younger than 16; requiring parental permission for anyone under 13; and requiring that a business correct false consumer information upon request.

The measure attempts to eliminate some loopholes which have undermined the CCPA. For one thing, as noted earlier, it requires permission for a consumer's information to be sold. But most of the data isn't sold at all. Websites willingly give their data to platforms like Facebook or Google in order to make it easier for them to sell their own subscriptions and advertising. The law also exempted companies designated "service providers" using the data for microtargeting advertising. Well, that's pretty much most of what Facebook and Google does for its advertising clients. Apparently Proposition 24 attempts to shut that down.

It all sounds good. So why are the ACLU, Dolores Huerta, the California Nurses Association, the Council on Islamic American Relations, the Media Alliance, and half a dozen consumer organizations opposed to it? The Devil is in the 52 pages of details. From the San Francisco Chronicle: "Overall, it's a step backward," said Jake Snow, an attorney for the American Civil Liberties Union of Northern California. "It doesn't take into the account the burdens on poor communities and communities of color to pay for their privacy and to do the work to protect themselves."

Opponents say that the law would create a loophole which would allow the sale of small businesses many of whom do not have the time and money to go to the intricate lengths needed to attain the privacy and would aggravate what is being referred to as "digital redlining" or "the digital divide" in which poor people, disproportionately of color, are left behind. Proposition 24 allows companies to institute "pay for privacy" by charging more to those who opt out of sharing their information. CCPA already allows it to some degree, but this measure would entrench it, again, requiring a further ballot measure to change. If you are lower income you are going to opt for the lower rate and therefor it only benefits those for whom the difference in rates is no serious concern.

But the biggest issue is that the 52 pages of legalese is so dense that legal experts are disagreeing on the impact. I can't make sense out of much of it and I'm an attorney. One example is over whether companies can by-pass the CCPA requirement of an opt-out app

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which basically notifies any business of the opt-out choice rather than having to manually opt out of each site, one by one. And we're talking about 300 data brokers based in California. Proposition 24 seems to provide an out for the requirement to honor your app-conveyed wishes by offering an opt-out button somewhere on the website. But legal advocates for the measure argue that a few paragraphs later it says that businesses must honor global opt-outs and that the choice the businesses have are an opt-out button and forgoing the ability to charge more to opt-out customers. I can't be certain. It would have to be fought out in court, and unfortunately, a ballot proposition does not have any legislative history to guide interpretation.

Meanwhile, the California Democratic Party is "neutral" on the measure as is the Electronic Frontier Foundation which described the measure as "a mixed bag of partial steps backwards and forwards."

And there are advocates who acknowledge the measure's shortcomings, but fear that the gains of 2018 could be lost before a better measure is submitted and passed. Apparently, the pressure on the legislators is intense.

Another example - the whole point is that Proposition 24 is supposed to prevent future legislation from weakening CCPA while allowing legislation to strengthen it. The measure specifies that any legislative amendments must be "consistent with and further the purpose and intent of this Act," in order "to further protect consumers' rights, including the constitutional right of privacy." But then the measure lists 23 specific principles to be considered in the implementation of the policy as well as subsequent legislation - including, for example avoiding anything which will stifle the development of new technology or "place the consumer in a position to knowingly and freely negotiate with a business over the business' use of the consumer's personal information." This raises the fear that the initiative could, perversely, block the legislature from expanding privacy protections. What if there is legislation which places additional restrictions which will allow a company to argue in court that this deprives users of the right to negotiate?

I could list further objections and ambiguities, but the problem is that for all its good intentions this is too complicated a measure to be decided by ballot. I sure hope we don't lose existing privacy protections, but if we do then maybe we can revisit them in a future ballot proposition. Democracy often does give the economically powerful an advantage in the process, but that is not an excuse to bypass democracy. And if lawyers can't even agree on the actual effect of the law, what chance does everyone else have to sort it out?

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Sorry, no. I hate to vote against something like this because the media and political consensus might conclude that people really don't care about consumer privacy rights. But there is simply no way I can vote for a measure which gives me, an attorney, a splitting headache.

### Prop. 25 - Confirms Electorate Support of Bail Ban - YES

Careful with this measure. It was placed onto the ballot by people who oppose the legislature's 2018 ban of the bail system under a specific provision of the law which requires voter confirmation of certain types of laws passed before such law takes effect. Therefore a "yes" vote is to uphold the bail ban law and a "no" vote essentially repeals it.

Bail is a traditional method of exerting some control over criminal suspects/defendants who are allowed to forgo imprisonment pending trial on the theory that it will encourage the defendant to show up for the hearings and trial and will discourage further criminal activity for the duration of the case. Basically, the judge requires that a certain amount of money be posted in a bond to be returned if the accused complies. As most accused do not have the kind of money to meet the bail requirements, they hire a bail-bonds person to post the bail usually with a preliminary payment of ten percent of the amount posted. For many, even trying to raise \$10,000.00 to cover a \$100,000.00 bond is a hardship. You either have to be personally well-off, or guilty of a crime which paid dividends. The bail process has long been criticized for its class inequity as well as a usurious bail-bond industry.

SB10, which is the law which will be confirmed, replaces bail with an elaborate system to determine whether a defendant is at a "high risk" of danger to society if released or of a no-show for trial. Among the considerations are the nature of the alleged crimes themselves, and a defendant cannot be held for many misdemeanor crimes not involving violence. A person could also be held if they have a criminal history; a history of no-shows; a history of violating a restraining order; has tampered with witnesses; a history of driving under toxic influences; and other factors. It requires the formation of "Pretrial Assessment Services" which are supposed to generate criteria which is science based and incorporated community interest input and a list of items of information must be presented to the service provider including details of the crime; the defendant's personal history on the items listed in the statute; statements from victims; etc. And the information is to be used for no other purpose than risk assessment.



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The ACLU opposed SB10 over concerns that the criteria is not specific enough and gives judges too much discretion for which implicit bias will generate inequitable results. But they are silent at this point, probably because they do not want to be associated with the bail-bonds industry.

The United States and the Philippines are the only two nations in the world which allow for a profit-based bail industry. It is powerful and it is pouring a lot of money into the opposition.

I'm sympathetic to the concerns from the ACLU, but there is room in the law to take those concerns into account in formulating the process, locally and statewide. The Judicial Council has some power to right any problems. And the whole process is up for review in 2023. We already have inequities. Maybe these processes can generate discussions and policies which mitigate them.

If passed it will definitely open up some office spaces around the courthouse.

### End ###