

# November 2022 ballot measures described

## Overview

In this article the California Constitution Center presents a pro/con analysis of each measure on the November 2022 ballot in California. This does not encourage a vote for or against any pending measure; it is instead intended only to fairly present the facts and arguments on both sides of the issues and to assist voters by objectively evaluating these measures for legitimate public informational purposes.

## The measures

A complete list of the measures with links to the Ballotpedia descriptions:

Proposition 1	Abortion	Provides a state constitutional right to reproductive freedom, including a right to abortion.
Proposition 26	Gambling	Legalizes sports betting at Native American gaming casinos and licensed racetracks.
Proposition 27	Gambling	Legalizes mobile sports betting and dedicates revenue to the California Solutions to Homelessness and Mental Health Support Account and the Tribal Economic Development Account.
Proposition 28	Education	Requires funding for K-12 art and music education.
Proposition 29	Healthcare	Enacts staffing requirements, reporting requirements, ownership disclosure, and closing requirements for chronic dialysis clinics.

Proposition 30	Taxes and Transportation	Increases the tax on personal income above \$2 million by 1.75% and dedicates revenue to zero-emission vehicle projects and wildfire prevention programs.
Proposition 31	Tobacco	Upholds the ban on flavored tobacco sales.

## **A pro/con analysis of each measure**

### **Proposition 1 abortion**

Abortion is presently legal in California by statute and protected by California court decisions. Under existing statutory law (the 2002 Reproductive Privacy Act) women have a “fundamental right to choose to bear a child or to choose and to obtain an abortion,” the procedure is permitted up to fetal viability, and after viability if the procedure is necessary to protect the life or health of the mother. Proposition 1 would amend the California constitution to establish a state constitutional right to reproductive freedom, including a right to an abortion and a right to choose or refuse contraceptives: “The state shall not deny or interfere with an individual’s reproductive freedom in their most intimate decisions, which includes their fundamental right to choose to have an abortion and their fundamental right to choose or refuse contraceptives.”

<b>Pro</b>	<b>Con</b>
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After the U.S. Supreme Court abolished federal constitutional rights in *Dobbs*, California women have only state statutory protection for abortion and contraceptive access. There are California court decisions about a California constitutional right to abortion, but those decisions rely on the same privacy rights that *Dobbs* rejected, and they could be overturned just as *Roe* was. California women currently lack clear California constitutional protection for their fundamental liberty interest in ending an unwanted or life-threatening pregnancy. Proposition 1 will give that right express constitutional status and protection, and prevent a California version of *Dobbs*.

This measure either does nothing or too much. It may do nothing: at most it only codifies existing California court decisions, which are in no real or present danger of being overturned by the current California Supreme Court. Nor is there any obvious danger of the existing statutory scheme being invalidated, so this measure is unnecessary. And it may go too far: the measure's text says nothing about *when* its abortion rights apply, leaving courts to guess and raising two dangers. One is that courts could interpret the right narrowly and tie it to existing law — again, doing nothing new. Or courts could extend abortion rights and permit late-term abortions.

### **Propositions 26 and 27 gambling**

Propositions 26 and 27 are the latest in a series of recent so-called “vice-for-nice” ballot measures in California. Sometimes called “sin taxes,” such measures impose taxes on nonessential items or activities to fund some public benefit program; Proposition 64 in 2016, which legalized marijuana and directed tax revenue to fund youth programs, is another example. Propositions 26 and 27 offer competing models of legalized sports betting and increased gambling activities. At a high level, Proposition 26 would allow in-person sports betting at certain racetracks and tribal casinos and allow tribal casinos to offer dice games and roulette. Proposition 27 would permit tribal *and* non-tribal gaming companies to offer online sports betting and wagers on non-athletic events like award shows. Proposition 26 would distribute some of its tax revenue to fund mental health research and the general fund; Proposition 27 would distribute some of its tax revenue to fund mental health programs, homelessness programs, and tribal development.

Pro	Con
<p>More betting equals more tax revenue equals more public benefits. The trend is toward this legalize-it-and-tax-it model: since the U.S. Supreme Court’s landmark 2018 decision in <i>Murphy v. NCAA</i>, more than two dozen states have legalized sports betting. This measure is necessary because the California constitution prohibits sports betting and nearly all gambling within the state, except on federal tribal lands.<sup>[1]</sup> Adopting both propositions would generate tens of millions in new tax revenue annually and meaningfully address social issues in California. And both measures will cut into the existing gambling black market and provide Californians with a platform to legally bet on sports in a safer and more regulated way.<sup>[2]</sup> Proposition 26 is a limited expansion of sports betting to only existing facilities. Proposition 27 will greatly expand sports betting to existing and new venues.</p>	<p>Opponents of Proposition 26 argue that it will give tribes a monopoly over sports betting in California, increase administrative enforcement costs, and could put some operators of cardrooms out of business by expanding standing to bring Private Attorney General Act lawsuits against them. Opponents of Proposition 27 argue that online sports betting would expose children to gambling and primarily benefit out-of-state gaming companies while local businesses suffer. Opponents of both propositions argue that the state is not equipped to deal with increased gambling addiction, especially in light of a recent audit that found the Department of Public Health failed to show that it is effectively monitoring, prevention, and treatment programs. And opponents of both measures argue that the estimated tax revenue provided by sports betting is overstated, and that more gambling is an overall negative.</p>

### Proposition 28 education

Proposition 28 is not a new tax; instead, it is a small increase in the required amount of funding designated for education from existing state revenue, and the increase is for a targeted purpose. If approved the measure will designate an additional 1% of the already-required funding for public schools from the state general fund (required by California constitution article 16, section 8) for arts and music education. At least

80% of that funding must be used to employ certificated or classified employees to provide arts education instruction; the remainder may be used for training, supplies, and materials.

Pro	Con
Proposition 28 will reinvigorate California’s educational system by providing universal access to arts and music education when our children need it most: after being isolated for two years during a global pandemic. Arts and music education is important and chronically underfunded in California. This measure will ensure increased funding for these important programs going forward.	Proposition 28 is fiscally irresponsible because it earmarks money for additional school programming when student enrollment has reached its lowest levels in California. Schools have many chronically underfunded needs, and arts programs may not be the most important or beneficial among them. Forcing schools to devote badly needed funding to one program needlessly restricts budget decisions.

### **Proposition 29 healthcare**

Proposition 29 will impose staffing requirements, reporting requirements, ownership disclosure, and closing requirements for chronic dialysis clinics. And it will bar clinics from refusing to care for a patient based on the patient’s form of payment. This is the third time dialysis clinics have appeared on the ballot in the past five years. The voters rejected both previous measures by wide margins: Proposition 23 (2020) 63.4% against, and Proposition 8 (2018) 59.9% against.

Pro	Con
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This is an improved version of dialysis clinic requirements by healthcare union SEIU-UHW, revised after voters rejected SEIU-UHW's previous dialysis clinic proposals in the past two elections. This measure has some unique features that differentiate it from the previous failed measures: it requires dialysis clinics to report physician ownership interests of 5% or more in the clinic to patients, and reporting all ownership interests of 5% or more to the California Department of Public Health. It also modifies some requirements recycled from the version rejected by voters two years ago (Proposition 23 in 2020). Rather than requiring a minimum of one licensed physician (as proposed in 2020), this measure would instead permit a nurse practitioner or physician assistant to fulfill that requirement (although anyone fulfilling this new requirement would need at least six months of relevant experience). Proposition 29 accounts for telehealth as a means of meeting staffing requirements in a temporary shortage. And it also directs all reporting to CDPH and not to a national government entity, which keeps the focus on state regulators already working with dialysis clinics.

This is just a repackaged version of the same proposal that 63.4% of voters rejected in 2020. The minimum credentials on-site requirement will increase costs and could lead to patients being unable to receive care when such a person is not available. The telehealth exemption for a staffing shortage is not a true exemption — it only permits telehealth as an alternative after applying for government approval, which is a *downgrade* from 2020's Proposition 23. Requiring clinics to report dialysis-related infections to CDPH instead of the National Healthcare Safety Network may be an improvement, but it's not clear what the benefit is of requiring dialysis clinics to report a common, known risk of dialysis. Requiring clinics to obtain government consent before closing sounds like a good idea, but could the state even force a dialysis clinic to stay open and provide patient care? What is the value of a dialysis clinic to patients if the same law requiring the clinic not to close also prevents the clinic from conducting patient treatment? Although the new ownership reporting requirements seem minimally intrusive to dialysis clinic operations, the bottom line is that this measure just recycles provisions that the voters rejected twice.

## **Proposition 30 taxes and transportation**

Proposition 30 will increase the tax on personal income above \$2 million by 1.75%, pushing the top-earner rate in California to 15.05%. The revenues would be allocated to three sub-funds: Zero-Emission Vehicle Infrastructure Investment Plan Sub-Fund (35% of revenue), Zero-Emission Vehicle and Clean Mobility Sub-Fund (45% of revenue), and Wildfire Green House Gas Emissions Reduction Sub-Fund (20% of revenue). These sub-funds would fund zero-emission vehicles, charging stations, infrastructure, and additional hiring and training for firefighters. The additional tax would take effect in 2023 and end in either 2043 or after three consecutive calendar years after January 1, 2030 of statewide emissions reduced by 80% of 1990 levels (whichever comes earliest).

Pro	Con
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There are two primary arguments favoring Proposition 30. First, the money will target different aspects of electric vehicles and create a multifaceted approach to lowering carbon emissions. The revenues would be allocated in three pieces: 35% to zero-emission vehicle infrastructure investment, 45% to zero-emission vehicle and clean mobility, and 20% to wildfire greenhouse gas emissions reduction. The three different funds subsidize companies to create more zero-emissions vehicles, help more residents (especially those from low-income communities) buy an electric vehicle, and build up the infrastructure to maintain that vehicle. That's more money for every stage of an electric vehicle's life. The revenue also addresses wildfire prevention, the other key issue plaguing California carbon emissions. And second, Californians will see a tangible change in their daily living. California has the worst air pollution in the country, and 11 of the top 25 polluted cities in the country. Close to 98% of Californians live in a county impacted by poor air quality. By taking combustion cars off the roads, Californians will be able to breathe easier, live healthier, *and* help tackle climate change.

There are two main concerns here: revenue and feasibility. Revenue is unlikely to increase because Proposition 30 only applies to the highest income-earners. Because over 50% of the state's general fund revenue comes from personal income taxes, California is vulnerable to revenue volatility. Proposition 30 doubles down on this volatility by focusing only on personal income taxes, and only from the highest earners. Further volatility will come from California's population exodus and an impending recession. Feasibility is uncertain because of the long time horizon: officials project that California will need far more, greater, and faster changes than Proposition 30 could possibly achieve. And the other great contributor to emissions in California is wildfires. The 2020 California wildfires generated about 25% of the annual emissions from fossil fuels in the state. Getting wildfires under control should be the state's first priority, but Proposition 30 only dedicates 20% of its funds to wildfire prevention. Proposition 30 can cause disastrous revenue problems for the rest of the state *and* not achieve any of California's climate goals. And doesn't this mostly benefit Lyft?

### **Proposition 31 tobacco**



Referendum on Senate Bill 793, a 2020 law that banned the sale of most flavored tobacco products. A “Yes” vote on the referendum *is in favor of that ban* — it means SB 793 goes into effect and most flavored tobacco products will indeed be banned. A “No” vote *is against that ban* — it means that the law does *not* go into effect and the flavored tobacco products can continue to be sold.

Pro	Con
<p>Proposition 31 is a critical public health measure that will save lives, particularly by limiting kids’ exposure to and use of tobacco products. Flavored tobacco products are particularly bad for and are expressly targeted at younger consumers: youth nicotine use is skewed toward flavored e-cigarette products.</p> <p>This law will also protect Black communities by prohibiting the sale of menthol products that have been targeted at African Americans for decades. Not only will Proposition 31 save lives, it will save California millions of dollars annually in decreased health care costs. Fewer inducements to ingest nicotine, an addictive and known carcinogen, means fewer people will die from tobacco products.</p>	<p>Proposition 31 is heavy-handed, unnecessary, and paternalistic. The law already prohibits the sale of tobacco products to anyone under the age of 21. Adult consumers rely on flavored tobacco products like e-cigarettes as a means of smoking cessation. Outlawing these products will lead to increased cigarette use and push flavored products into the underground market. Not only that, California will lose hundreds of millions of dollars annually in tax revenue from the banned products. Rather than implement adult prohibition, the state should continue to spend resources on public health education and direct intervention to help people quit tobacco and keep kids from starting.</p>

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1. Cal. Const., art. IV, § 19. Betting on horse racing in California is legal under the Interstate Horse Racing Act of 1978 and card clubs offer a venue for poker and other games, but players do not bet against the house. ↑

2. Kailey J. Walsh, Going “All in” After Murphy v. NCAA: An Approach for California to Legalize Sports Gambling (2020) 42 Hastings Comm. & Ent L.J. 117, 135 ↑