

Proposition Preview 2020



Prepared by CBHA's Race and Social Equity Taskforce (RSET)

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Table of Contents

A Message from CBHA’s CEO	3
Non-Profits Engaging in Advocacy.....	4
Propositions of Interest.....	7
CA Prop. 15	7
CA Prop. 16	9
CA Prop. 17	11
CA Prop. 20	12
CA Prop. 21	14
CA Prop. 25	15
Sources.....	19



A Message from CBHA's CEO: Why Civic Engagement Matters

Dear Colleagues,

The California Council of Community Behavioral Health Agencies (CBHA) represents non-profit community based organizations that provide behavioral health services. Collectively, CBHA members serve over 500 thousand Californians. We recognize that in the midst of this double pandemic, it is important to do everything within our power to promote racial and social equity. To this end, CBHA has created a Race and Social Equity Taskforce (RSET) that is working in myriad ways to address inequalities including impacting policy, educating the public and promoting best practices. We believe that civic engagement is an important aspect of pursuing equity and offer this *Proposition Preview* as an educational resource to the community.

Included in this document is a section that explains the ability of non-profits to engage in advocacy and lobbying. This document also highlights several propositions that will be on the November 2020 Ballot. We have chosen to highlight these specific propositions as we believe they are relevant to the business of behavioral healthcare and also have an impact and race and social equity.

We thank the members of the RSET for dedicating their volunteer time to assist with the creation of this document.

We encourage all of our members and colleagues in the behavioral health arena to **VOTE**. Voting is a right that *many* fought for, and a critical part of civic engagement.

On behalf of CBHA, its Board of Directors and the RSET,

A handwritten signature in black ink, appearing to read 'Le Ondra Clark Harvey'.

Le Ondra Clark Harvey, Ph.D.
Chief Executive Officer





To What Extent Can Non-Profits Engage in Advocacy and Lobbying?

Education, Advocacy and Lobbying as a 501(c)(3) Organization

Many organizations are being asked to consider taking formal positions on several key ballot initiatives ahead of the November 3, 2020 election. We recognize that some non-profit organizations and their boards may be reluctant to take a formal position on a ballot initiative for a number of reasons, one of them being a fear of running afoul of IRS regulations pertaining to their tax-exempt status. The following is hoped to clarify how a 501(c)(3) organization can legally participate in advocacy and education and take a position on an initiative or bill and share that position with others.

First, a 501 (c)(3) can engage in all the education it desires, even if that education is focused on elected or appointed officials. Just because you, a board member, or a member of your staff meets with, speaks to, or corresponds with those who influence policy does not mean your organization is engaging in lobbying. For example, organizations may conduct educational meetings, prepare and distribute educational materials, or otherwise consider public policy issues in an educational manner without jeopardizing their tax-exempt status. For many non-profit organizations, educating others about what they do, the needs of those they serve, and how they might improve conditions on their behalf is a fundamental part of its mission!

While it is true that a public charity operating under Internal Revenue Code Section 501(c)(3) is not allowed to take part in a political campaign on behalf of any candidate for public office, there are no such restrictions on cause-related advocacy. In fact, even lobbying can be undertaken by a public charity without any risk to its tax-exemption so long as these efforts are not a substantial part of its activities.

Lobbying is defined as the attempt to influence legislation. Legislation includes actions by Congress, any state legislature, any local council, or similar governing body, with respect to acts, bills, resolutions, or similar items (such as legislative confirmation of appointive office), or by the public in a referendum, ballot initiative, constitutional amendment, or similar procedure. It does not include actions by executive, judicial, or administrative bodies.

Organizations are regarded to have attempted to influence legislation if they contact or urge the public to contact members or employees of a legislative body for the purpose of proposing, supporting, or opposing legislation, or if the organization advocates the adoption or rejection of legislation.

To be clear, your organization taking a formal position on a California initiative does count as lobbying. The important question is whether or not the time and effort expended by your organization on lobbying activities, including taking a position on some or all of the initiatives, constitutes a substantial part of the organization's activities.

"Great!" you say, "but how would I (and the IRS) go about determining if our lobbying activities might cross into the substantiality zone?" The IRS considers a variety of factors, including the time devoted (by both compensated and volunteer workers) and the expenditures devoted by



the organization to the activity, when determining whether the lobbying activity is substantial. Many can do a simple calculation in your head of how much your lobbying efforts represent of your organization's overall budget and quickly conclude that it would not meet any rational definition of the word "substantial."

In recognition that this may not satisfy you or concerned members of your board, we would love to provide you with the IRS's specific definition of what constitutes substantiality. Unfortunately, such a definition does not exist. As a result, the amount of lobbying activity permitted to be undertaken by a given organization may ultimately depend on the extent and nature of its other activities.

It has been suggested that less than five percent of an organization's time and effort involved in legislative activities is not "substantial." However, this may be misleading in that several cases have established that the political activities of an organization must be assessed in the context of its objectives and circumstances to determine whether a substantial part of its activities was to influence or attempt to influence legislation.

To be certain, it is important to remember that your education efforts, voter registration efforts, and much of your advocacy efforts would not be considered in determining whether your lobbying efforts are substantial because they are not lobbying.

Now, we can imagine a board member asking what would happen if the IRS determined an organization had conducted too much lobbying. The short answer is that the organization risks the loss of its tax-exempt status – the longer answer is below¹.

Some may be wondering if their organization, who may have been and is involved in a voter registration effort, is barred from taking a position on ballot initiatives or bills. First, thank you to your organization and your staff for helping those they serve to participate in the election. Active participation in the community is a key element of recovery, and voting is key to participation. Hopefully you have been instructing staff involved in these efforts to not attempt to influence those they are assisting in terms of who and what to vote for. The fact that the organization has taken a position on an initiative or bill should not change what staff is doing in terms of their registration efforts. In short, you are not responsible for what people might think, only what you (or your staff) do.

¹ Under the substantial part test, an organization that conducts excessive lobbying in any taxable year may lose its tax-exempt status, resulting in all of its income being subject to tax. In addition, section 501(c)(3) organizations that lose their tax-exempt status due to excessive lobbying, other than churches and private foundations, are subject to an excise tax equal to five percent of their lobbying expenditures for the year in which they cease to qualify for exemption.

Further, a tax equal to five percent of the lobbying expenditures for the year may be imposed against organization managers, jointly and severally, who agree to the making of such expenditures knowing that the expenditures would likely result in the loss of tax-exempt status.



Some might wonder if there are other avenues for 501(c)(3) organizations to take that would allow them to undertake lobbying efforts and not jeopardize their tax-exempt status. The organization could make an “H Election” by filing Federal Form 5768 “Election/Revocation of Election by an Eligible Section 501(c)(3) Organization to Make Expenditures to Influence Legislation” and tracking their lobbying activities. The organization could also choose to establish a 501(c)(4) organization, which would allow the newly formed organization to develop a significant political agenda. We suggest consulting with an attorney should either of these options appeal to you.



Propositions of Interest for Non-Profit Organizations

CA Prop. 15 - Tax on Commercial and Industrial Properties for Education and Local Government Funding Initiative

A "yes" vote supports this constitutional amendment to require commercial and industrial properties, except those zoned as commercial agriculture, to be taxed based on their market value rather than their purchase price.

A "no" vote opposes this constitutional amendment, thus continuing to tax commercial and industrial properties based on a property's purchase price, with annual increases equal to the rate of inflation or 2 percent, whichever is lower.

Background

Prop. 13 has constricted funding for local governments in California, and for education in particular. When it passed in 1978, local government revenues dropped by roughly 60 percent. Total local government revenue in California has recovered since then due to new fees, utility taxes and sales taxes, which are more regressive than property taxes. Despite this, local government revenue *per person* remains lower than it was before Prop. 13 because the population has grown.

School funding was particularly hit by the passage of Prop. 13, with per student spending falling by 10%. While funding for schools has risen since Prop. 13 passed, funding for schools in California is now very volatile because it relies on income tax. California schools are better funded during boom years, but during recessions they suffer more severely than schools in comparably sized states. Studies have shown that the level of school funding is below what is required to provide a high-quality education for California's diverse student body in a state with such a high cost of living.

What Does This Mean for Race and Social Equity?

Reforming Prop. 13 has the potential to create billions of dollars in state funding for local governments and for schools. Currently, California ranks somewhere between 22nd and 46th in per pupil spending in the United States, depending on what calculation is used. Roughly 50 percent of all California public school students are Hispanic, and almost 60 percent are eligible for free and reduced-price lunch. California ranks first in the nation for the percentage of English language learners, with roughly 21 percent of students in that group. Although California's pupil-to-teacher ratio is one of the highest in the country, it ranks in the bottom fifth for educational performance. Additional funding from Prop. 15 would help support the large percentage of California students who are people of color, from low-income households or English language learners. Moreover, the funding would be allocated according to the Local



Funding Control Formula, which prioritizes funding for school districts with higher percentages of low-income students and English language learners.

Pros

- Exempts from taxation changes: residential properties; agricultural land; and owners of commercial and industrial properties with combined value of \$3 million or less.
- Closes loopholes that allow corporations to circumvent the tax system.
- Applies to commercial and industrial properties worth more than \$3 million combined per owner.
- Increases funding (\$6.5 billion to \$11.5 billion) for K-12 public schools, community colleges, and local governments by requiring that commercial and industrial real property be taxed based on current market value, instead of purchase price.
- Any additional educational funding will supplement existing school funding,
- Exempts small businesses from personal property tax; for other businesses, provides \$500,000 exemption.
- Reassessing commercial property will have a net positive benefit on jobs and the California economy.

Cons

- \$12.5 billion property tax increase that raises the cost of living and makes everything we buy – food, gas, utilities, day care and health care – more expensive. Prop. 15 repeals taxpayer protections in Prop. 13.
- Locally-owned businesses will have a more difficult time absorbing the tax.
- Older commercial properties not getting reassessed over the years will be reassessed to their current market value. When properties are reassessed, renters of these properties will have an increase.
- Increases property taxes on commercial properties worth more than \$3 million.
- If reformed California's under-assessment problem on business properties, California would still rank among the lowest states for business property taxes in the nation because of the California Constitution's provisions related to the 1% limitation on property tax rates.

CA Prop. 16 - Repeal Prop. 209 Affirmative Action Amendment

Prop. 16 would repeal Prop. 209, which prohibits state and local entities from considering race, gender, ethnicity, or national origin in decision-making around employment, education and contracting. Prop. 16 effectively reinstates affirmative action for California, which was eliminated in 1996 with the passage of Prop. 209.

Background

Affirmative action policies first emerged in the United States in the 1960s and prohibited federal government agencies from discriminating in the hiring and treatment of employees based on race; they were later expanded to include gender. From the 1960s to the mid 1990s, California created a number of programs intended to increase opportunity for those who had suffered unequal treatment. Some public universities considered race and ethnicity when deciding admissions or offered programs to support certain students' academic achievement, and the state created programs to increase the participation of women- or minority-owned businesses in public contracting. The United States Supreme Court has upheld the constitutionality of affirmative action policies in several cases but has restricted their extent, for example, by prohibiting the use of racial-based quotas or race-based point systems.

In 1996, California voters approved the California Civil Rights Initiative (Prop. 209), which amended the constitution to prohibit state governmental institutions from considering race, sex, or ethnicity when making decisions about hiring, contracting, and education. For the purposes of Prop. 209, "state governmental institutions" include any city, county, public university system, community college district, school district, special district, or other local government. Today, California is one of eight states that do not have affirmative action-related laws on the books.

Enrollment rates for students of color decreased by roughly 10 percent across the University of California system in the year immediately following Prop. 209's passage, and at higher rates at UC Berkeley and UCLA. A 2013 study showed the resultant long-term negative impacts on metrics like employment outcomes for these groups. A more recent study tracked every student who applied to the UC system from 1994 through 2002, including their major and degrees, graduation rates and income. The results not only confirmed the decreases in enrollment rates and decreased earnings, but laid out a series of other cascading impacts on a generation of students of color.

Aside from education, a 2015 study found that the elimination of race-conscious contracting



programs has resulted in the loss of roughly \$1 billion per year in contracts for minority- and women-owned businesses in California.

What Does This Mean for Race and Social Equity?

By allowing the return of affirmative action policies, Prop. 16 could have a significant impact on the public education and employment opportunities for Black, Native American, Latino and other people of color, as well as for women.

Affirmative action and its impact on equality and social justice have been the subject of intense debate in the United States. Proponents argue that considering race as one of a set of metrics in decision-making can account for systemic discrimination and lack of opportunity for women and people of color, particularly Black and Latino people. Opponents argue that affirmative action is its own kind of injustice, creating preferential treatment for some regardless of merit and at the expense of other groups.

In some cases, affirmative action policies have been shown to be effective, particularly regarding higher education. One study of 700 Black students who were preferentially admitted to colleges in part due to their race found that 32 percent attained doctorate degrees or professional degrees, a similar rate to that of their white counterparts. Data from states like Michigan, which removed affirmative action policies in public colleges and universities in 2006, have shown a decrease in enrollment of students of color.

On the other hand, critics point out that increasing educational opportunities has not eliminated the pay gaps between Black and white workers and certainly not the disparity in intergenerational wealth. They advocate for interventions much earlier in a child's education and in other areas with lifelong impact, including housing and healthcare.

Pros

- In opening up opportunities in higher education for marginalized students, Prop. 16 would help to spread the benefits of higher education that accrue over lifetimes and generations, including higher wages and wealth.
- Prop. 209 eliminated publicly funded professional development and educational programs designed to help women and people of color succeed. Beyond creating opportunities, this measure would allow more supportive programs to be created.
- Prop. 16 could increase the diversity of public employees, which could lead to more representative and higher quality government service.
- In the absence of affirmative action policies, many public institutions have used less effective proxy metrics (like targeting low-income students) to advance their diversity goals. Prop. 16 would help institutions to more effectively increase diversity among their students, workforce and contractors.



- Prop. 16 could set an example for affirmative action policies in other areas that have seen decades of racial discrimination, like publicly financed housing.

Cons

- This measure allows race and other identities to be considered but does not require it. Prop. 16 alone cannot ensure improved outcomes for students, public employees or contractors of color.

CA Prop. 17 - Voting Rights Restoration for Persons on Parole Amendment

A "**yes**" vote supports this constitutional amendment to allow people on parole for felony convictions to vote.

A "**no**" vote opposes this constitutional amendment, thereby continuing to prohibit people who are on parole for felony convictions from voting.

Background

Over the past half-century, California has slowly reinstated the right to vote for formerly incarcerated people. In 1974, California passed Prop. 10, which restored voting rights to people once they had completed their prison term and parole. Prior to this amendment, the California Constitution denied voting rights indefinitely for some people convicted of high crimes and infamous crimes. The passage of the Criminal Justice Realignment Act in California in 2011, as well as subsequent legislation and court cases, solidified the right to vote for people who are in county jail, on probation or on post-release community supervision — however, disenfranchisement for people on parole remained intact. In California, a person finishes their prison sentence the day they are released from prison; parole is not an extension of a prison sentence, and in concept, it is not intended to be punitive.

Prop. 17 was approved by two-thirds of the membership of each house in the state legislature and must be placed on the ballot because it amends the state constitution. As a constitutional amendment, it requires a simple majority (50 percent plus one vote) to pass.

Comparison

California is one of three states that require persons convicted of felonies to complete their prison and parole sentences before regaining the right to vote. As of 2020, 19 states allowed people convicted of felonies, but who were on parole, to vote. Seventeen of these states did not allow people to vote while imprisoned. Two—Maine and Vermont—allow people who are imprisoned to vote.



What Does This Mean for Race and Social Equity?

Voter disenfranchisement is a form of systematic oppression that has existed in the United States since its founding. Denying voting rights to people on parole is one such manifestation, disproportionately blocking people of color from participating in our democracy and thereby limiting their political power. In 2016, Black people made up 26 percent of parolees in California but only constituted six percent of California’s adult population. For Latinos, the impact of incarceration and disenfranchisement has also been disproportionate.

In the United States, one out of 13 Black men of voting age is denied the right to vote due to a felony conviction. Restoring the right to vote to people on parole would be a step toward equity by re-enfranchising approximately 50,000 Californians, about 75% of whom are people of color.

Pros

- Granting people on parole the right to vote would make our democracy fairer and more inclusive, helping to ensure that our leaders represent a wider share of the state’s people.
- Studies have shown that voting is linked to lower rates of recidivism: When people are treated as valued members of a community and allowed to be civically engaged, they are less likely to re-engage in criminal activity.
- People on parole work and live in California’s communities and are in the process of full reintegration into society. They should have the right to vote on the issues that impact them.

Cons

- A con argument is a compilation of key points, sometimes gathered impartially by the state agency publishing the voter guide, but more often submitted by support and opposition for direct publication. Some states will publish multiple submissions from various citizens, while others will only publish one from each side.

CA Prop. 20 - Criminal Sentencing, Parole, and DNA Collection Initiative

A "yes" vote supports this initiative to add crimes to the list of violent felonies for which early parole is restricted; recategorize certain types of theft and fraud crimes as wobblers (chargeable as misdemeanors or felonies); and require DNA collection for certain misdemeanors.



A "no" vote opposes this initiative to add crimes to the list of violent felonies for which early parole is restricted; recategorize certain types of theft and fraud crimes as wobblers (chargeable as misdemeanors or felonies); and require DNA collection for certain misdemeanors.

Background

In the 1990s and early to mid-2000s, California's prison population increased significantly as a result of tougher-on-crime laws like Three Strikes (1994), mandatory minimum sentences and juveniles prosecuted as adults. These harsh sentencing laws disproportionately impacted people of color, particularly Black Californians. In 2010, Black people made up 6 percent of California's population but 27 percent of the state's jails and prisons. AB 109 was passed to reduce state prison populations by moving non-violent offenders to county jails. Over the next several years, California voters passed Prop. 47 and Prop. 57 to further reduce prison populations and address racial disparities in the criminal justice system. These reforms have worked: in 2011, there were 431 inmates per 100,000 residents, and by 2019 the number was down to 317. Meanwhile, overall crime rates are at or near historic lows. California's rates of property crime and violent crime have dropped significantly over the past several decades. As an initiative statute, it requires a simple majority (50% plus one vote) to pass.

What Does This Mean for Race and Social Equity?

Prop. 20 would roll back significant reforms to the California criminal justice system and would lead to increased rates of incarceration. This measure would be particularly harmful to Black, Indigenous and Latino Californians who experience profound bias throughout the criminal justice system, from neighborhood over-policing to discriminatory sentencing. People of color remain disproportionately overrepresented in California's jails and prisons, though Prop. 47 has, in fact, reduced racial disparities across key criminal justice outcomes, such as arrest and booking rates. Research also shows that incarceration exacerbates economic hardship and racial disparities.

Pros

- A pro argument is a compilation of key points, sometimes gathered impartially by the state agency publishing the voter guide, but more often submitted by support and opposition for direct publication. Some states will publish multiple submissions from various citizens, while others will only publish one from each side.

Cons

- State prisons remain overcrowded, in part because many prior laws were not applied retroactively. Prop. 20 would likely lead to an increase in incarceration and a return to overcrowded and inhumane conditions for inmates.

- By restricting parole for non-violent offenders, this measure will further punish people who may deserve a shot at **rehabilitation and reintegration into society**. This measure will also increase costs at a time of extreme budgetary crisis.
- Prop. 20 would increase punishments for a variety of crimes, leading to more incarceration. Prison sentences have severe economic consequences for individuals and families.
- **This measure also directly opposes efforts to realign resources to rehabilitative and social services outside the criminal justice system, such as housing and mental health services.**

CA Prop. 21 - Local Rent Control Initiative

A **"yes"** vote supports this ballot initiative to allow local governments to enact rent control on housing that was first occupied over 15 years ago, with an exception for landlords who own no more than two homes with distinct titles or subdivided interests.

A **"no"** vote opposes this ballot initiative, thereby continuing to prohibit rent control on housing that was first occupied after February 1, 1995, and housing units with distinct titles, such as single-family homes.

Background

There have been prior efforts to pass a statewide ballot that expands local governments' authority to pass rent control ordinances. Some cities like the City of Los Angeles have successfully passed local rent control ordinances. However, the Costa-Hawkins Rental Housing Act, state law, limits the local rent control ordinances. The courts have also weighed in to determine that landlords must still receive a "fair rate of return." Prop. 21 proposes to change Costa-Hawkins Rental Housing Act so that cities and counties can apply rent control to most housing that is more than 15 years old. Moreover, landlords are limited as to how much they can charge when new renters move in; but landlords have authority to increase rent by up to 15 percent across first three years after a vacancy. Lastly, Prop. 21 codifies in state law that landlords are entitled to "fair rate of return". A "Yes" vote on Prop. 21 means you support these modifications to the Costa-Hawkins Rental Housing Act. According to the Legislative Analyst's Office, passage of Prop. 21 could potentially lead to tens of millions of dollars in lower revenues for local governments depending on how cities respond after Prop. 21 is passed.

What Does This Mean for Race and Social Equity?

Many non-profits have witnessed the impact of the scarcity of affordable housing options and the high cost of housing on consumers. According to the National Low-Income Housing Coalition 2020 report, one California worker making minimum wage would need to work 90 hours per week to afford a one-bedroom rental unit (at fair market value). While some consumers are

fortunate to receive public housing subsidies, there is still not adequate supply of affordable housing units in different areas, thereby making it very difficult for clients to identify and retain affordable housing. For consumers, having stable and affordable housing is important for their mental health and general well-being. Since COVID-19 and the economic recession, there is growing concern that many individuals have been unable to pay rent, therefore facing evictions and possible risk for becoming homeless.

Pros

- The effects of rent control(s) at the local level are complex when considering demographics of renter households and allocation of rent controlled units. Rent control is beneficial for those who reside in rent-controlled units. However, rent control may have long term consequences on the production of more affordable housing, and conversion of existing rental units (rent controlled units being converted to condos or development properties).

Cons

- Rent control may have long term consequences on the production of more affordable housing, and conversion of existing rental units (rent controlled units being converted to condos or development properties).
- The “natural person” owner requirement means that single-family homes and condominiums owned by family trusts would not be exempt from local rent control laws.

CA Prop. 25 - Replace Cash Bail with Risk Assessment Referendum

A “yes” vote is to uphold the contested legislation, Senate Bill 10 (SB 10), which would replace cash bail with risk assessments for detained suspects awaits trails.

A “no” vote is to repeal the contested legislation, Senate Bill 10 (SB 10), thus keeping in place the use of cash bail for detained suspects awaiting trails.

Background

Under the current cash bail system, a judge determines an amount that a defendant must pay the court in order to be released from jail before their trial, and the money is returned after the trial is completed, no matter the trial outcome. Bail amounts are standardized countywide, and judges have some discretion to raise or lower the amount. If a person cannot afford bail, they can either turn to a bail bond provider, which will pay their bail at a fee (typically 10 percent to 15 percent of the bail amount), or they must await their trial in jail.



Under SB 10, money would no longer be a barrier to pretrial release. Instead, risk assessment tools would categorize defendants as low, medium or high in their risk for failure to appear in court and their risk to public safety. Judges would make a determination to release or hold a defendant based upon this assessment. Risk assessment tools arrive at a score by taking in a variety of data points, such as the defendant's criminal history, job status and zip code. SB 10 does not specify which data points would be used in California's risk assessments and assigns the state's Judicial Council the responsibility to determine what factors will produce accurate and reliable results.

In addition to replacing money bail with a risk assessment system, SB 10 would significantly alter how the pretrial system operates. SB 10 requires the superior courts and the county's chief probation officer to establish a program to manage the new pretrial system, including administering risk assessments, making recommendations for a defendant's conditions of release, and providing pretrial services and supervision, such as case management, drug testing and transportation to and from court. Some counties, such as San Francisco and Santa Clara, currently provide pretrial services through independent, nonprofit agencies. SB 10 provides an exception for Santa Clara County to continue operating pretrial services under an independent agency but does not provide exceptions for any other county. Under SB 10, the scope of law enforcement in the pretrial phase would be much greater than it is under the current system.

The net fiscal impacts of SB 10 are largely unknown. The costs associated with establishing new processes for pretrial services, including the administration of risk assessments, are estimated to be in the mid-hundreds of millions of dollars annually between costs to the state and to local jurisdictions. The potential long-term cost savings associated with decreases in county jail populations and other local and state tax revenue implications are being evaluated.

Ending the use of cash bail in the pretrial system has been a priority for criminal justice reform advocates in the United States for decades. Advocates argue that by setting a price for release, the cash bail system criminalizes those who cannot afford bail and forces others into extreme financial hardship, while letting wealthier defendants avoid those hardships. It also puts a costly and undue strain on jails: Over 60 percent of the California county jail population consists of pretrial detainees, many of whom are only in jail because they could not afford their bail. The cash bail system and the bail bond industry are largely unique to the United States; few other countries rely as heavily, or at all, on cash bail, and a nearly unregulated bail bond industry is only legal in the United States and the Philippines.

Backlash against SB 10 also stems from concerns regarding the use of risk assessment tools in pretrial evaluation. Research on these tools has shown that they *should* produce accurate determinations of risk. Studies on the tools in practice, however, have shown the assessments to be racially biased and inaccurate: In one examination of risk assessment scores administered to approximately 7,000 defendants in Broward County, Florida, the algorithm was twice as likely to falsely flag Black defendants as future criminals as compared to white defendants. This



same study illustrated that risk assessments can produce largely inaccurate predictions: Only 20 percent of the people predicted to commit violent crimes actually went on to do so. The troubling results of this study and of many others are in part due to the nature of risk assessment tools and in part due to other factors such as the way they are designed, implemented and used by judges.

Since SB 10 does not specify what factors California’s risk assessment system would use, some argue that it can be designed to reduce or eliminate the racial biases and inaccuracies that have been reflected in tools used elsewhere. Others believe that the nature of an algorithmic system is inherently flawed and should not be the primary component of pretrial evaluation, as it is under SB 10. Ultimately, the impact that SB 10 will have on key outcomes in California such as pretrial detention rates, crime and racial disparities is unknown.

In the background of this debate is a California Supreme Court case, *In re Kenneth Humphrey (Humphrey)*, that questions the constitutionality of the cash bail system. If Prop. 25 passes, then the use of cash bail will end in the state regardless of the decision on *Humphrey*. But if Prop. 25 fails, it is still possible that the California Supreme Court will rule that cash bail is unconstitutional, ending money bail in California. It is likely that the court will not make a determination on the case until after the election.

Prop. 25 is a referendum placed on the ballot through voter signatures and funded primarily by the bail bond industry. As a referendum, it must be on the ballot and requires a simple majority (50 percent plus one vote) to pass.

What Does This Mean for Race and Social Equity?

The equity impacts of this measure are widely disputed due to the inequitable nature and results of both the cash bail system and algorithmic risk assessments.

The cash bail system forces many people to await their trial in jail solely because they cannot afford bail. Being held in jail pretrial can result in the loss of child custody, a job or a home. Additionally, studies have shown that individuals who remain in jail pretrial are convicted at higher rates, receive longer sentences and are more likely to be arrested than comparable defendants who were released on bail.

The devastating impacts of this system are disproportionately experienced by people of color. In California, our criminal justice system detains and arrests Black and Latino Californians at disproportionate rates. Consequently, Black and Latino Californians are more likely to be faced with the burden of posting bail, paying a nonrefundable fee to a bail bond provider or awaiting their trial in jail. Nationally, Black and Latino defendants are also more likely to have bail set at higher amounts than white defendants.

Unfortunately, alternatives to cash bail may not do much to address these inequities. Algorithmic risk assessment systems have been shown to produce racially biased

determinations of risk and to result in more people of color being held pretrial as compared to white defendants. The nature of these tools is arguably flawed because the data that feeds into them, such as criminal history and job status, is inseparable from the biases of the criminal justice system and our society at large. The algorithmic assessments provide an appearance of objectivity that may not be deserved. Other case studies have shown that risk assessments produce racially biased outcomes not because of the tools themselves, but as a result of differences in how they are administered and interpreted. When risk assessment tools were used in Kentucky in 2011, judges in predominantly white counties released more people pretrial than judges from more racially mixed areas.

Pros

- Upholding SB 10 would put an end to the use of cash bail in California, which criminalizes poor defendants. Detaining people pretrial because they cannot afford bail is unjust and a significant waste of taxpayer money.
- Upholding SB 10 would eliminate the bail bond industry, which profits substantially off low- and middle-income families caught in an unjust system.
- Upholding SB 10 would open the door to amending the law in the legislature, which may be a more pragmatic approach: If voters reject SB 10, it is possible that the legislature would not act on the issue of cash bail in the future.

Cons

- SB 10 gives judges significant discretion to detain defendants. This could result in higher pretrial incarceration rates, particularly in more conservative-leaning counties, compared to the rates under the cash bail system.
- Studies suggest that algorithmic risk assessment tools produce racially biased results and can produce largely inaccurate assessments.
- By assigning probation agencies with pretrial responsibilities, including the management of risk assessments, SB 10 increases the funding and scope of law enforcement at a time when there is a significant movement to realign resources away from law enforcement. This new structure would upend decades of successful pretrial reform efforts in San Francisco, where pretrial services are administered through a neutral, independent agency.
- It is possible that repealing SB 10 could create new legislative opportunities to rethink pretrial reform and create a more just system.

Sources

Prop. 15:

- <https://www.spur.org/voter-guide/san-francisco-2020-11/prop-15-commercial-property-tax-changes>
- [https://ballotpedia.org/California_Proposition_15,_Tax_on_Commercial_and_Industrial_Properties_for_Education_and_Local_Government_Funding_Initiative_\(2020\)](https://ballotpedia.org/California_Proposition_15,_Tax_on_Commercial_and_Industrial_Properties_for_Education_and_Local_Government_Funding_Initiative_(2020))

Prop. 16:

- <https://www.spur.org/voter-guide/san-francisco-2020-11/prop-16-affirmative-action>

Prop. 17:

- [https://ballotpedia.org/California_Proposition_17,_Voting_Rights_Restoration_for_Persons_on_Parole_Amendment_\(2020\)](https://ballotpedia.org/California_Proposition_17,_Voting_Rights_Restoration_for_Persons_on_Parole_Amendment_(2020))
- <https://www.spur.org/voter-guide/san-francisco-2020-11/prop-17-voting-rights-people-parole>

Prop. 20:

- <https://www.spur.org/voter-guide/san-francisco-2020-11/prop-20-rollback-crime-leniency-laws>
- [https://ballotpedia.org/California_Proposition_20,_Criminal_Sentencing,_Parole,_and_DNA_Collection_Initiative_\(2020\)](https://ballotpedia.org/California_Proposition_20,_Criminal_Sentencing,_Parole,_and_DNA_Collection_Initiative_(2020))

Prop. 21:

- <https://lao.ca.gov/ballot/2020/Prop21-110320.pdf>
- <https://calmatters.org/election-2020-guide/proposition-21-rent-control/>
- <https://noonprop21.org/facts/>
- https://12a82d75-5432-57c9-fd00-8a7ce445e299.filesusr.com/ugd/87bdf3_545ced5d20e04541bc6587e8fe03c8a6.pdf
- <https://www.policylink.org/2020-CA-ballot-guide>
- <https://www.spur.org/voter-guide/san-francisco-2020-11/prop-21-rent-control>

Prop. 25:

- [https://ballotpedia.org/California_Proposition_25,_Replace_Cash_Bail_with_Risk_Assessments_Referendum_\(2020\)](https://ballotpedia.org/California_Proposition_25,_Replace_Cash_Bail_with_Risk_Assessments_Referendum_(2020))
- <https://www.spur.org/voter-guide/san-francisco-2020-11/prop-25-end-cash-bail>