

Taxpayer Protection and Government Accountability Act (TPA)

Report on Invalidated Proposition

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I. EXECUTIVE SUMMARY

The Taxpayer Protection and Government Accountability Act (TPA) was expected to appear on the 2024 general election ballot until the California Supreme Court removed it. This measure would have amended Sections 3 and 14 of Article XIII of the California Constitution. This act would have expanded the Constitution’s definition of tax to include any levy, charge or exaction of any kind imposed by state law that is not an exempt charge.¹ It would have heightened the state’s burden of proof from a preponderance of the evidence to clear and convincing evidence when showing that something is not a tax but an exempt charge and that the amount charged is no more than what is required to cover the costs, among other things.²

The California Supreme Court removed this initiative from the ballot because it would have amounted to a constitutional revision, and not merely a constitutional amendment, as its proponent argued.³ The Court supported this conclusion by finding that the initiative’s approval would have “substantially altered the basic plan of the government.”⁴ Simply stated, “the initiative power... may not be used to revise the Constitution” and instead proponents “must follow the procedure of a constitutional convention and popular ratification or by submission to the voters from a supermajority of the legislature.”⁵ The Court concluded by granting petitioners a peremptory writ of mandate that ordered the Secretary of State to remove the measure from the 2024 ballot.⁶

II. THE LAW

A. Existing Law

Currently, Section 3 of Article XIII of the California Constitution defines a “tax” as any levy, charge, or exaction of any kind imposed by the state excluding a list of charges and penalties.⁷ The Constitution also requires that any tax increases be approved by two-thirds of all members in the legislature, without the need for a popular vote.⁸

For state taxes that result in a net tax revenue increase, a two-thirds vote of the Legislature is required.⁹ If not, then a simple majority vote is satisfactory.¹⁰ If the legislature provides the two-thirds vote, the governor must sign the tax increase into law. State law requires increases in local

¹ https://digitaldemocracy.calmatters.org/bills/ca_202320240aca23.

² *Id.*

³ *Legislature of State of California v. Weber*, 16 Cal.5th 237, 277 (2024).

⁴ *Id.* at 260.

⁵ *Id.* at 253, 260.

⁶ *Id.* at 278.

⁷ Cal. Const. art. XIII, § 3.

⁸ [https://ballotpedia.org/California_Two-Thirds_Legislative_Vote_and_Voter_Approval_for_New_or_Increased_Taxes_Initiative_\(2024\)](https://ballotpedia.org/California_Two-Thirds_Legislative_Vote_and_Voter_Approval_for_New_or_Increased_Taxes_Initiative_(2024)).

⁹ <https://lao.ca.gov/BallotAnalysis/Initiative/2021-026>.

¹⁰ *Id.*

taxes to receive approval of the local governing body as well as approval of voters in that local jurisdiction.¹¹

This initiative would have changed the constitutional definition of “tax,” while also heightening the requirements for increases in existing taxes as well as new taxes.¹² It would have also invalidated previous taxes enacted beginning January 1, 2022, if they were not enacted in compliance with the TPA or reenacted to comply with it.¹³

B. Path to the Ballot

The author of this ballot measure was Bill Essayli, a Republican Assemblyman representing District 63, which also leans Republican.¹⁴ The proponent of the measure was Thomas W. Hiltachk. It was submitted to the Attorney General’s Office on November 5, 2021, and subsequently qualified for the ballot on February 1, 2023.¹⁵

The petition summary provided that if approved, it would require legislative and popular approval for new and increased state taxes.¹⁶ This summary also provided that the TPA would broaden the definition of taxes.¹⁷

C. Proposed Law

The TPA would have changed the California Constitution in that it would have broadened the definition of tax and altered the procedure by which a tax bill is passed. It would have made it more difficult to pass tax bills while also potentially nullifying previous tax bills that did not fall in accordance with the TPA provisions.¹⁸ From the proponent’s perspective, the TPA’s provisions would only amount to a constitutional amendment.¹⁹ From the opponent’s perspective, TPA’s provisions would result in a revision to the California Constitution.²⁰

¹¹ Cal. Legis. Analyst’s Off., <https://lao.ca.gov/BallotAnalysis/Initiative/2021-026> (last visited Oct. 16, 2024).

¹² Dan Walters, *California Democrats score big win as Supreme Court blocks anti-tax ballot measure*, <https://calmatters.org/commentary/2024/06/ballot-measure-tax-supreme-court/> (last visited Oct. 16, 2024).

¹³ Digital Democracy, *ACA 23*, https://digitaldemocracy.calmatters.org/bills/ca_202320240aca23 (last visited Oct. 16, 2024).

¹⁴ Digital Democracy, *Bill Essayli*, <https://digitaldemocracy.calmatters.org/legislators/bill-essayli-165444> (last visited Oct. 16, 2024).

¹⁵ *California Two-Thirds Legislative Voter Approval for New or Increased Taxes Initiative (2024)*, BALLOTPEDIA, [https://ballotpedia.org/California_Two-Thirds_Legislative_Vote_and_Voter_Approval_for_New_or_Increased_Taxes_Initiative_\(2024\)](https://ballotpedia.org/California_Two-Thirds_Legislative_Vote_and_Voter_Approval_for_New_or_Increased_Taxes_Initiative_(2024)), [“BALLOTPEDIA Tax Initiative”] (last visited Oct. 16, 2024).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Adam Beam, *California voters lose a shot at checking state and local tax hikes at the polls*, KCRA 3 NEWS, <https://www.kcra.com/article/california-court-removes-taxpayer-protection-act-ballot/61192888> (last visited Oct. 16, 2024).

¹⁹ BALLOTPEDIA Tax Initiative, *supra* note 15.

²⁰ *Id.*

The TPA would have required the Legislature to first approve any act that would result in a new or higher tax, by the legislature’s two-thirds vote.²¹ After legislative approval, the measure would be submitted to Californians, requiring a majority vote.²² The TPA would have required the submitted act to provide the duration of the tax, the expected revenue generated, and a limitation on how the revenue may be used.²³ This measure would have required local special tax increases by citizen initiative to be approved by two-thirds of voters.²⁴

For local governments, the TPA would have changed the burden of proof from preponderance of the evidence to clear and convincing evidence when showing that an exaction is not a tax.²⁵ It would have also required local taxes to be approved by the legislature and then approved by a majority vote.²⁶

This measure would void any tax or exempt charge, whether state or local, that was adopted after January 1, 2022, but prior to the effective date of the measure, that was not adopted in compliance with the TPA’s measures unless reenacted in compliance with the TPA.²⁷

This measure would define the term “tax” for purposes of the power of referendum to mean every levy, charge, or exaction of any kind that is not an exempt charge.²⁸

The TPA would also have prohibited a tax, assessment, fee, charge, or surcharge from being assessed upon any parcel of property or upon any person as incident of property ownership.²⁹

The TPA would have required all proceeds from the taxation of property to be apportioned according to law to the districts within the counties and would additionally have required that all property taxed by the state be assessed in the county, city, and district in which it is situated.³⁰

D. Court Decision

Governor Newsom and the California Legislature argued that this measure did not amend the California Constitution but rather that it constituted a constitutional revision.³¹ The TPA’s opponents argued that qualifying this measure as an amendment and not a revision was inappropriate, and that the initiative procedure was the improper manner of revising the Constitution.³²

²¹ *Id.*

²² *Id.*

²³ BALLOTPEDIA Tax Initiative, *supra*, note 15.

²⁴ *Id.*

²⁵ Digital Democracy, *supra* note 13.

²⁶ BALLOTPEDIA Tax Initiative, *supra* note 15.

²⁷ *Legislature of State of California v. Weber*, 16 Cal.5th 237, 251 (2024).

²⁸ Digital Democracy, *supra* note 13.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

Petitioners also stated that the TPA was invalid in that it would have seriously impaired essential government functions.³³ The proponents for this measure argued that this was in fact merely an amendment to the Constitution and that qualifying the measure as an amendment to the constitution was adequate in achieving this objective.

The Supreme Court decided to hear this controversy in *Legislature v. Weber* through expedited briefing to “resolve this matter before the date that the Secretary [of State] must formally qualify the initiative for the ballot and prepare related materials for the voter information guide.”³⁴ The Court examined the TPA “as it would be presented to voters – as a whole.”³⁵ The petitioners argued that the TPA would effect a revision of the basic plan of government.³⁶ The TPA would “transfer the Legislature’s power to levy taxes, the balance of power among the Legislature, state executive agencies, and the electorate over the setting of fees and the authority of local government agencies to set fees without legislative approval or the possibility of referendum.”³⁷

The Court agreed with the petitioner’s first argument concerning revision. The Court stated that the “TPA would substantially transform the process of enacting new statewide tax legislation that has existed since the state’s founding and that this transformation weighs significantly in favor of finding that the TPA would effect a constitutional revision.”³⁸

The Court agreed with the petitioner’s second point, that the TPA would shift power between the legislative branch and the executive branch. This shift in power would significantly change how the state government collects and raises revenue.³⁹

To the petitioner’s last argument, the court agreed that the TPA would “also eliminate much of local executive agencies to take actions that result in higher taxes or fees requiring local legislative bodies and voters to assume much of the work that executive agencies now do.”⁴⁰ This meant that the TPA would work a qualitative revision according to the court.⁴¹

The Court concluded by saying that these three points show how the TPA would create an impact to an extent that left no aspect of government untouched.⁴² The TPA amounted to a revision of the constitution, in that it would change the nature of the basic government.⁴³ Consequently, the

³³ *Legislature of State of California v. Weber*, 16 Cal.5th 237, 246 (2024).

³⁴ *Id.*

³⁵ *Legislature of State of California v. Weber*, 16 Cal.5th 237, 261 (2024).

³⁶ *Id.*

³⁷ *Id.* at 261.

³⁸ *Id.* at 266.

³⁹ *Id.* at 272.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.* at 276.

⁴³ *Id.*

Court held that “the measure exceeds the scope of the power to amend the Constitution via citizen initiative.”⁴⁴

The Office of the Secretary of State maintained neutrality in the controversy and informed the Court of the urgency of an expedited decision for reasons relating to the voter information guide.

E. Campaign Finance

According to Ballotpedia, the TPA’s top three supporters were Californians for Taxpayer and Government Accountability (\$17.8 million), California Business Roundtable Issues PAC (\$8.3 million) and AMR HoldCo (\$3.1 million)⁴⁵. It is unclear whether this money was spent and the manner it was spent.

III. CONSTITUTIONAL AND DRAFTING ISSUES

Opponents could have argued that the Single Subject Rule found in the California Constitution should have defeated the measure. The rule states that no initiative shall embrace more than a single subject.⁴⁶ However, the court’s interpretation of this rule has been broad, merely requiring the topics to be reasonably germane to each other.

The opponents could have focused on the fact that the TPA attempts to both change the definition of tax and change the procedure of passing tax bills in the state. While these two subjects are similar, they can clearly be differentiated; the latter focuses on a change in procedure and the former focuses on altering definitions provided by the Constitution. The TPA’s proponents would have successfully argued that while these two subjects are not identical, they are reasonably germane to one another in that they both deal with how the state generates tax.

The court would likely agree with the TPA’s proponents in that the Single Subject Rule has been applied liberally, generally allowing for slightly distinct topics to survive this bar.

IV. PUBLIC POLICY ISSUES

A. Proponent’s Argument

The proponent argued that Californians pay too much in taxes and that the TPA will alleviate this issue.⁴⁷ They argued that raising the bar the government must meet for approval of

⁴⁴ *Id.* at 277.

⁴⁵ BALLOTPEdia Tax Initiative, *supra* note 15.

⁴⁶ Chris Micheli, *California Legislation and the Single Subject Rule*, CAPITOL WEEKLY, <https://capitolweekly.net/california-legislation-and-the-single-subject-rule/> (last visited Oct. 16, 2024).

⁴⁷ Initiative 21-0026A1, Office of the Attorney General, <https://oag.ca.gov/system/files/initiatives/pdfs/21-0026A1%20%28%26quot%3BThe%20Taxpayer%20Protection%20and%20Government%20Accountability%20Act%26quot%3B%29.pdf> (last visited Oct. 16, 2024).

new and existing taxes would have resulted in less taxes collected from the electorate.⁴⁸ The proponent also argued that this was not a constitutional revision but instead a constitutional amendment.

Proponent argued that the TPA was necessary in that Californians already paid a large amount of taxes relative to the rest of the country.⁴⁹ In their opinion, the TPA would rein in the government's taxing and spending which would result in taxpayers enjoying more of their income.⁵⁰

The TPA's backers also argued that Californians paid too much in "fees and other revenue-raising mechanisms."⁵¹ According to the proponents, Californians have voted for more transparency and predictability for future taxes, which the government has not respected, and instead has responded with new loopholes.⁵²

B. Opponent's Argument

The opponent argued that this was not a constitutional amendment but rather a constitutional revision; the measure having been qualified as an amendment was therefore inappropriate. Opponents also argued that this would change the basic structure of government which further highlights the inappropriateness of an initiative constitutional amendment.

The opponents argued that allowing the TPA to go before voters could result in serious negative effects on government activities.⁵³ They argued that the TPA would amount to a large-scale change in the government that would hurt California by making it more difficult to raise state taxes.⁵⁴ Opponents argued that the TPA would negatively affect local governments by making it much more difficult to raise local taxes.⁵⁵

The opponents asserted that the TPA's retroactive provision could result in many tax laws being repealed if not passed in accordance with the initiative.⁵⁶ This could have resulted in a situation in which voters were inundated with elections, as the government attempted to ensure previously approved taxes were not overturned. Approval of the measure could have also resulted in a situation where many programs lost their public funding for failing to be re-enacted in compliance with the TPA's provisions.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ BALLOTPEDIA Tax Initiative, *supra* note 15.

⁵⁴ Walters, *supra* note 12.

⁵⁵ *Id.*

⁵⁶ *Legislature of State of California v. Weber*, 16 Cal.5th 237, 251 (2024).

While there is no clear connection with the TPA, AB 440, was enacted in July 2024.⁵⁷ Among other things, this bill made it so that Assembly Constitutional Amendment 13 could be presented to voters during the November 2026 general election.⁵⁸ ACA 13 provides that any initiative that would amend the Constitution to increase the voter approval requirement to adopt any measure must be approved by at least the highest voter approval requirement that the initiative would impose.⁵⁹ A TPA-clone would likely have to face higher voting requirements if it ever got past its current constitutional barrier.

V. FISCAL CONSIDERATIONS

Had this proposition passed, it would have made it much more difficult for governments to generate revenue through taxes. While this would mean more money in taxpayer pockets, it would also stunt the ability of the government to tax.

Additionally, it could have possibly had a retroactive effect in that it would have nullified certain previous tax bills that did not conform to the TPA's provisions. This retroactive effect could result in state and local governments scrambling to revise tax bills so that they stay in effect. Lacking to do so could have resulted in numerous tax-funded projects losing funding.

VI. CONCLUSION

The Taxpayer Protection and Government Accountability Act would have changed Sections 3 and 14 of Article XIII of the California Constitution by broadening the definition of tax and changing the procedure for a tax bill to be passed. The TPA would have also raised the burden of proof for the state to show that something is not a tax, from preponderance of the evidence to clear and convincing evidence. The procedure for raising taxes or adopting a new tax would have changed as well, requiring a two-thirds vote in the legislature followed by a simple majority of the electorate. Additionally, the government would have had to attach to tax bills: (1) durations of the tax, (2) expected revenue generated, and (3) a limitation on how the revenue may be used. The TPA's effects could have been retroactive as well in that previous tax bills that had passed would have had to either passed in accordance with TPA's provisions or be amended to follow said provisions. The California Supreme Court removed this proposition from the 2024 ballot, but it is possible that a similar measure may be presented to the voters via initiative. The proponents would need either to follow the procedures for revising the California Constitution or bring the initiative in accordance with the definition of an amendment under California law.

⁵⁷ AB 440, BILL TRACK 50, <https://www.billtrack50.com/billdetail/1561373> (last visited Oct. 16, 2024)..

⁵⁸ *Id.*

⁵⁹ Digital Democracy, *supra* note 13.