YES on 53
Stop Blank Checks

## MYTH VS FACT

1 **MYTH:** California voters won't approve bond projects located in distant parts of the state or that only benefit a particular segment of California.

**FACT:** History proves that statewide voters will vote for bond projects located in faraway parts of the state or that will only benefit other Californians if the projects are worthwhile.

Even if a bond project only benefits a particular area, a particular group of people, or a particular facility, statewide voters have a history of approving such projects if they are meritorious. For example since 1900:

- The Legislature has placed bond measures providing financing for veterans to purchase homes and farms on the ballot 27 times. Statewide voters approved every one of them despite the fact that only veterans are eligible to benefit from the program.
- The Legislature has placed bond measures providing financing for the improvement of San Francisco Harbor on the ballot 3 separate times. Statewide voters approved all 3 of them despite the fact that the bonds were dedicated to a specific project located in the San Francisco Bay Area.
- The Legislature has placed bond measures providing housing relief to battered women and the elderly, handicapped, homeless, and mentally ill on the ballot 8 separate times. Statewide voters approved 6 of them (75%) despite the fact that very few voters would actually qualify for the projects being funded.
- The Legislature has placed bond measures on the ballot at least 4 other times which only benefitted a specific project in one part of the state, such as buildings on the UC Berkeley campus, buildings on the UCLA campus, buildings on the Sacramento State campus, buildings on the San Francisco State campus, and preservation of lands around Lake Tahoe. Statewide voters approved all 4 measures despite the fact that the bonds only went to particular projects in specified areas of the state.

2 **MYTH:** Proposition 53 applies to the University of California.

**FACT:** The University of California is not covered by Proposition 53.

Proposition 53 declares that the "State" must obtain voter approval prior to issuing or selling more than $2 billion in revenue bonds for any single project financed, owned, operated, or managed by the "State". "State" is defined as "the State of California, any agency or department thereof, and any joint powers agency or similar body created by the State or in which the State is a member".

Under California Constitution, Article IX, section 9, subdivision (a), the University of California (UC) constitutes "a public trust, to be administered by the existing corporation known as 'The Regents of the University of California,' with full powers of organization and government…" *(Underscoring added.)*

The Regents and the University of California are not the "State of California or any agency or department thereof." This principle is demonstrated in the recent case *People v. Lofchie* (2014) 229 Cal.App.4th 240. In

*Lofchie*, a criminal action was brought under Gov. Code § 1090 against a UC faculty employee. (Id. at 245.) Section 1090 prohibits officers and employees of the "state" from being financially interested in a contract. The Court of Appeal agreed with the defense that UC was not the "state" as that term is contemplated in section 1090, citing previous cases in which Article IX § 9 of the California Constitution was construed as according UC "virtual autonomy in self-governance." (Id. at 249.) The Court of Appeal further explained that "the University of California is not a political subdivision of the state invested with a portion of the state's governmental power—it is a public trust." (Id. at 254, underscoring added.)

Because the UC is a public trust governed by a corporation rather than an agency or department of the State of California, it is not covered by Proposition 53.

## 3

**MYTH:** Proposition 53 applies to the school districts and community college districts.

**FACT:** School districts and community college districts are not covered by Proposition 53.

Proposition 53 declares that the "State" must obtain voter approval prior to issuing or selling more than $2 billion in revenue bonds for any single project financed, owned, operated, or managed by the "State". "State" is defined as excluding "a city, county, city and county, school district, community college district, or special district." *(Underscoring added.)* The initiative only applies to the "State." Local governments, including cities, counties, and special districts, are explicitly excluded from the definition of "State." The initiative does not apply to cities, counties, or special districts.

## 4

**MYTH:** Proposition 53 applies to local governments like cities, counties, and special districts.

**FACT:** Local governments like cities, counties, and special districts are not covered by the Stop Blank Checks initiative.

Proposition 53 declares that the "State" must obtain voter approval prior to issuing or selling more than $2 billion in revenue bonds for any single project financed, owned, operated, or managed by the "State". "State" is defined as excluding "a city, county, city and county, school district, community college district, or special district." *(Underscoring added.)* Proposition 53 only applies to the "State." Local governments, including cities, counties, and special districts, are explicitly excluded from the definition of "State." Proposition 53 does not apply to cities, counties, or special districts.

## 5

**MYTH:** Revenue bonds are only repaid with funds generated by the projects they finance.

**FACT:** Billions in revenue bonds are repaid from the state general fund; and all revenue bond projects are paid off by California voters.

Opponents claim that revenue bonds are only repaid with funds generated by the projects they finance. That is completely false. Tens of billions in lease revenue bonds are repaid out of the State General Fund. In fact, according to the State Treasurer's Office, as of February 1, 2015, the State General Fund is liable for the repayment of $17,611,931,565.54 worth of lease revenue bond debt.1 The General Fund is made up of tax dollars paid by ALL Californians.

Moreover, ALL revenue bond projects are ultimately paid off by California voters, either through taxes paid to the State General Fund or through higher water rates, electricity rates, toll rates, admission fees, or other charges imposed by the project. However, California voters currently have NO right to vote on whether these higher charges should be imposed upon them.

1. http://www.treasurer.ca.gov/bonds/debt/201502/summary.pdf. (Accessed July 14, 2015.)

6 **MYTH:** Revenue bond projects only affect those that use the project.

**FACT:** Major Revenue bond projects have statewide impacts.

Because it only applies to revenue bond projects over $2 billion, Proposition 53 will not apply to each and every regional revenue bond project the State is involved in. To the contrary, it will only apply to the handful of major infrastructure projects that have statewide significance. Typically, state participation in projects of this magnitude requires ongoing participation and monitoring by state employees and the projects are at least partially owned and/or operated by the state or a state agency.

In these circumstances, voter approval is appropriate because if the State is going to pay, the State's voters should have a say.

7 **MYTH:** Requiring a Vote will add an unnecessary level of bureaucracy and delay to projects.

**FACT:** Voter approval will increase accountability by reducing costs overruns, delays, and construction defects.

Large-scale infrastructure projects have an extremely poor record of going substantially over-budget. Independent studies have proven that such projects go over-budget by an average of 28%, with the worst offenders being rail projects (average cost overrun is 45%) and bridges and tunnels (average cost overrun is 34%). The good news is that the same studies found that more public awareness and participation is the best way to improve cost estimates and project outcomes.[2]

Proposition 53 will increase public participation and help avoid these well-documented pitfalls by requiring voter approval for large-scale infrastructure projects.

2. New York Times, "Study Finds Steady Overruns in Public Projects," Jul. 11, 2002; B. Flyvbjerg et al., "Cost Underestimation in Public Works Projects: Error or Lie?" Journal of American Planning Assn., vol. 68, no. 3, Summer 2002, pp. 279-295.

8 **MYTH:** Statewide public elections happen only every two years.

**FACT:** The Legislature can call a statewide election at any time.

The Legislature has the authority to adopt a bill calling a special election at any time. This happened most recently in 2009, when the Legislature passed a bill calling for a special election in May of 2009 to consider six initiatives that were related to that year's state budget.3 California Constitution, Article IV, Section 8(c)(3) states that "Statutes calling elections…shall go into effect immediately upon their enactment." *(Underscoring added.)* So the Legislature can hold an election for a large revenue bond project whenever it wants to; not just every two years.

3. Stats. 2009, ch. 7 (3d Ex. Sess.) was authored by Senator D. Ducheny as Senate Bill 19 and signed by the Governor on Feb. 20, 2009.

9 **MYTH:** Getting voter approval on any statewide measure is costly and difficult.

**FACT:** Requiring voter approval forces the Legislature to put forward high quality bond proposals, which the voters approve the vast majority of the time.

Getting voter approval for bad ideas and bad projects is costly and difficult because California voters are not easily fooled. This has forced the Legislature to typically put forward high quality general obligation bond proposals, which already must be approved by the voters. And the voters have responded by approving **81%**

of the bond measures placed on the ballot by the Legislature since 1900 (132 of 162).

If the Legislature only submits meritorious revenue bond proposals, there is no reason to believe that voters will not approve them at the same rate. An **81%** approval rate is not "costly" or "difficult".

## 10

**MYTH:** Proposition 53 will cripple infrastructure spending.

**FACT:** Proposition 53 will lead to smarter, better planned infrastructure spending.

There is no data supporting the notion that requiring voter approval will cripple infrastructure funding. Since 1900, the Legislature has placed 100 general obligation bonds on the ballot dedicated to funding infrastructure projects (construction, maintenance, and repair of schools, colleges, highways, harbors, state office buildings, jails, prisons, railways, public transit, libraries, bridges, water resources development, water pollution control, safe drinking water facilities, crime labs, levees, etc.) The voters approved **78%** of those measures (78 of 100).

Requiring voter approval for large infrastructure projects will not "cripple" infrastructure funding when voters have approved **78%** of such measures since 1900. Instead, it will make sure the Legislature only puts forward smart, well-planned projects and will act as a check against the minority of problematic infrastructure proposals—just as it has done for general obligation bond projects for well over a century.

## 11

**MYTH:** Proposition 53 will result in litigation.

**FACT:** Voter approval for revenue bonds will not create any more litigation than voter approval for general obligation bonds—which has created very little.

Since 1849, the California Constitution has required general obligation bonds to be approved by the voters for a "single object or work". (1849 Cal. Const., art. VIII.4) Over the past 166 years, very little litigation has been created by this requirement, and in the very few cases that have arisen the courts have had no problem articulating what constitutes a "single object or work." (See, e.g., *Metropolitan Water Dist. v. Marquardt* (1963) 59 Cal.2d 159; Pooled Money Inv. Bd. v. Unruh (1984) 153 Cal.App.3d 155, 165 n. 8.) There is no reason to believe the courts will have any more trouble explaining what a "project" is under Proposition 53.

4. http://www.sos.ca.gov/archives/collections/constitutions/1849/full-text/. (Accessed Jul. 16, 2015.)

## 12

**MYTH:** Proposition 53 will hinder transportation funding.

**FACT:** Transportation funding comes mostly from gas taxes and auto fees. When the state does use bonds to finance transportation, it almost always uses general obligation bonds, which already require voter approval.

Most transportation infrastructure funding comes from taxes paid on gasoline and fees paid on motor vehicles. To the extent the State does fund transportation projects with bonds, it almost always uses general obligation bonds, not revenue bonds. Revenue bonds have only been used for a very small handful of toll roads and bridges—almost all of which cost less than $2 billion so they would be below the threshold requiring voter approval anyway. General obligation bonds already require voter approval under California Constitution, Article XVI, Section 1.

Local governments are not covered by Proposition 53, so local transportation projects funded with revenue bonds would not be affected.

## 13 **MYTH:** Proposition 53 will hinder state funding for school construction.

**FACT:** Revenue bonds are not used for state school construction funding. The state provides funding for school construction with general obligation bonds, which already require voter approval.

Schools do not produce any "revenue" so the revenue bond model does not work well for school construction. School construction bond funding provided by the State comes almost exclusively from general obligation bonds, which already require voter approval. This is proven by the fact that, since 1900, the Legislature has placed 28 school construction general obligation bond proposals on the ballot. The voters approved **86%** of them (24 of 28).

## 14 **MYTH:** Proposition 53 interferes with disaster response.

**FACT:** Revenue bonds are not used to fund disaster responses, which are typically financed with federal disaster relief funds.

According to the Federal Emergency Management Agency's (FEMA) own website, FEMA's Public Assistance Grant Program provides supplemental federal assistance for "debris removal, emergency protective measures, and the repair, replacement, or restoration of disaster-damaged, publicly-owned facilities and the facilities of certain private non-profit organizations."[5] Further, FEMA's Public Assistance Program "even encourages protection of these damaged facilities from future events by providing assistance for hazard mitigation measures during the recovery process."[6]

Most importantly, the federal share of assistance "**is not less than 75% of the eligible cost for emergency measures and permanent restoration.**"[7]

With respect to highways damaged in natural disasters, the Federal Highway Administration (FHA) provides 100% of the funding within the first 180 days to restore essential travel, minimize damage, and protect remaining facilities.[8] Beyond that, the FHA provides 90% of the funds to repair damaged Interstate highways and 80% of the funding to repair all other highways.[9]

<u>The bottom line is that nearly all disaster recovery aid is provided by the Federal government.</u>

5. https://www.fema.gov/public-assistance-local-state-tribal-and-non-profit. (Accessed Jul. 15, 2015.)
6. Ibid.
7. Ibid. Emphasis added.
8. http://www.fhwa.dot.gov/programadmin/erelief.cfm. (Accessed Jul. 15, 2015.)
9. Ibid.