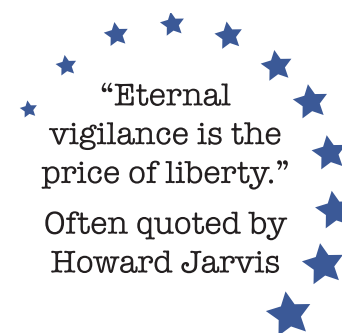


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Taxing Times



The Official Newsletter of the Howard Jarvis Taxpayers Association ★ Howard Jarvis, Founder ★ Vol. 47, Issue 1 ★ Winter 2020–2021

THREATS LIE AHEAD FOR TAXPAYERS

Now that the November election is over, another fight begins.

Although ballots are still being counted as this issue of *Taxing Times* goes to press, it's clear that an unfavorable landscape will continue for taxpayers, with supermajority control of the Legislature in the hands of lawmakers who generally favor tax increases.

In January, the Legislature will begin its new session. Several bills that failed to make it across the finish line in the 2020 session could return for another try in 2021.

One such bill is Assembly Bill 2088, introduced by Rob Bonta, D-Oakland. It would have

established a first-in-the-nation tax on wealth, taking 0.4% annually of the total assets of high-net-worth California residents. A summary of the bill claimed that this would raise approximately \$7.5 billion annually. An estimated 30,400 Californians would be affected; that is, if they chose to remain California residents.

The departure of wealthy Californians would have a negative impact on the state's general fund. In 2016, California's top 1% of income earners paid 46% of the state's personal income tax revenue. That's the effect of California's highly progressive income tax rates.

Another bill introduced in the last session attempted to raise the top tax rate, already the highest in the nation at 13.3%, to an eye-popping 16.8%.

Assembly Bill 1253, by Miguel Santiago, D-Los Angeles, would have added another 1% to the tax rate on income over \$1.1 million, another 3% on income over \$2.3 million and 3.5% on income over \$5.9 million.

California charges the same tax rate on ordinary income and on capital gains, so the wealthiest Californians have a significant financial incentive to move to one of the 49 other states, where they would pay less, even zero,



in income taxes. Adding to the incentive: Under federal law, only the first \$10,000 of state taxes is
Continued on page 10

COURT LIMITS GOVERNOR'S POWER

Gov. Gavin Newsom lost the first round in a battle over the extent of his powers during a state of emergency.

Superior Court Judge Sarah Heckman ruled in November that the governor does not have the authority under the California Emergency Services Act to make new laws or amend existing laws.

"The California Constitution

does not grant the governor the power to exercise those functions that have been given to the Legislature," Heckman wrote.

The ruling followed a trial in a lawsuit brought by Assembly Members Kevin Kiley, R-Rocklin, and James Gallagher, R-Yuba City, who sought the court's intervention to stop what they said was the governor's overreach of

power. In the months following the declaration of emergency due to the COVID-19 pandemic, Newsom issued more than 50 executive orders that changed California law, including an order requiring counties to mail ballots to all voters and meet other requirements for the November election.

During an emergency, the governor is permitted to suspend

specific laws, but not to amend laws or create new laws, the court said.

Kiley and Gallagher said they were pleased with the court's ruling.

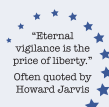
"It shows that our system of government is still intact; that an emergency didn't get rid of our republic; that even in an emergency, the right of the people to be

Continued on page 10

Taxing Times

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HJTA and KABC Launch Podcast

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Legislative Report Card

See page 5

Major Victory for CA Taxpayers

See page 8



PRESIDENT'S MESSAGE

CALIFORNIA SUPREME COURT PUTS TAXPAYERS AT BIG RISK *By Jon Coupal*

In September, the California Supreme Court declined to hear a case involving the validity of a local special tax initiative that failed to secure two-thirds voter approval.

That requirement is found in Proposition 13 (1978) as well as Proposition 218 (1996), also known as the Right to Vote on Taxes Act, both of which were sponsored by the Howard Jarvis Taxpayers Association.

Taxpayers had petitioned the Supreme Court to review a lower court of appeal's ruling refusing to apply well-settled law.

The significance of the Supreme Court's failure to provide clarity on this important issue cannot be overstated.

Unless it resolves this question in other cases now working their way up through the court system, a gaping new loophole will have been created in the constitutional protections for taxpayers that voters have repeatedly ratified over the decades. Moreover, the failure to act is a green light to tax-and-spend interests to extract even more dollars from the most heavily taxed citizens in the

United States.

By way of background, Proposition C was a voter initiative that proposed a new tax in San Francisco for the special purpose of expanding services for the city's homeless. It was approved by a majority of the local electorate in November 2018, but not by a two-thirds margin.

Proposition 13, approved by California voters in 1978, requires a two-thirds vote of the electorate to pass a tax increase for any special purpose. This has been the law for 40 years. It has also been the consistent understanding of interests often hostile to taxpayer rights.

The Legislative Analyst's Office, California League of Cities and numerous other local governments have agreed that all local special taxes require two-thirds voter consent.

Despite this consensus, and two older published cases that invalidated special tax initiatives for not receiving two-thirds approval, the San Francisco Court of Appeal ruled that Proposition C passed with only a simple majority. This creates a huge loophole in

Propositions 13 and 218 because local officials can simply structure their special tax proposals as initiatives to avoid the two-thirds voter approval requirement.

The basis for the court's strange ruling was a 2017 California Supreme Court case, *California Cannabis Coalition v. City of Upland*, which had nothing to do with vote thresholds.

Rather, it was limited to a narrow technical question: When a local initiative seeks to impose a new tax, does the measure need to be put to the voters at the next general election, or can the proponents, relying on other laws, require a special election that happens sooner?

The lower court had ruled that taxes increased by initiative are exempt from Proposition 218 provisions regarding the timing of an election. But *Upland* never ruled that the two-thirds vote requirement would be inapplicable to a tax increase proposed by initiative.

The Supreme Court in *Upland* reasoned that local voters were different from the governing body when it comes to enacting

legislation.

But for decades, courts have said that when voters use the initiative power, they are simply "stepping into the shoes" of the governing body and have the same powers and same limitations.

For example, a local city council cannot seize someone's real property without paying "just compensation."

But the rationale of the court suggests that if local housing advocates passed an initiative to seize someone's property, there's no requirement to pay for it. That is surely an absurd result.

Until the Supreme Court clarifies this issue, the ruling of the court of appeal in the Proposition C case will create a bizarre system whereby different vote thresholds — including no vote at all — will govern election outcomes depending on whether a tax was proposed by the local governing body or by the initiative process. The potential for abuse is unlimited.

Can politicians themselves, acting in their capacity as private voters, use the citizens' initiative

Continued on page 7

Happy Holidays from your BOARD OF DIRECTORS

Gloria Phillips
Bill Kelso

Craig Mordoh
Gary Holme

Trevor Grimm,
In Memoriam – 1938–2019

PRESERVE THE BENEFITS OF PROPOSITION 13

At the Howard Jarvis Taxpayers Association, we have received a number of inquiries from those wishing to help us preserve the benefits of Proposition 13 for their children, grandchildren and heirs. If you would like more information about making an endowment to the Howard Jarvis Taxpayers Association or the Howard Jarvis Taxpayers Foundation, visit www.hjta.org and click on "Take Action," then click on "Heritage Society," write to us at 621 S. Westmoreland Ave., Suite 200, Los Angeles, CA 90005, e-mail us at info@hjta.org, or call us at 213-384-9656.

 Howard Jarvis
Taxpayers Association

Heritage Society

We thank and appreciate the following for their generous donations:

The Selck Family,

in the name of Lester John Selck and Jane Selck

The Gardner Grout Foundation

The Benson Foundation

The Allan W. and Elizabeth A. Meredith Trust

Baker Family Donor Advised Fund
at the Rancho Santa Fe Foundation

The Stanley E. Corbin Trust

The V. Lorel Bergeron Trust

A big "Thank You" to the Members of the *Heritage Society* who help make our work on behalf of taxpayers possible!

YOUR? answered

HOW DOES MY SUPPORT OF HJTA HELP CALIFORNIA TAXPAYERS, AND WHY ARE THERE SO MANY DIFFERENT HJTA ENTITIES?

The Howard Jarvis Taxpayers Association is the most influential taxpayer advocacy group in California. HJTA fights for the interests of taxpayers in the courts, in the Legislature, in the media and in elections.

Because of federal and state law, HJTA has a number of different legal entities under its umbrella. Each one has its own designated area of operation, its own legal requirements and its own fundraising account. Here's the rundown:

The Howard Jarvis Taxpayers Association is a nonprofit organization, a 501(c)(4) under the IRS code. HJTA can engage in lobbying and communications on behalf of taxpayers. We have a full-time lobbyist in Sacramento who watches every

bill that's introduced and works hard to stop legislation that would raise taxes. Our communications staff keeps our Members informed and makes sure our message about the importance of lower taxes and more efficient government is heard in the press and on social media.

The Howard Jarvis Taxpayers Foundation is a 501(c)(3) under the IRS code, and contributions to the Foundation are tax-deductible (consult your tax preparer). The Foundation funds our educational and legal work. Donations help to pay for courtroom battles against illegal taxes, fees and government actions. The Foundation is also funding our new Public Integrity Project, an important effort to hold local governments accountable

when they illegally spend tax dollars on campaigns for more tax increases. (See the Foundation Report on page 8 for details.)

Under California law, neither the Association nor the Foundation may spend money on election campaigns. So HJTA has several entities, called "committees," for election-related spending.

The Howard Jarvis State Political Action Committee (PAC) raises and spends money to help elect or reelect candidates who support Proposition 13 and are committed to protecting taxpayers.

The Protect Proposition 13 committee raises and spends money to fight any ballot measure that seeks to attack or weaken Proposition 13, the most important taxpayer

protection in California. Donations to the Protect Proposition 13 committee go toward campaign expenses such as radio advertising, yard signs, online ads and other forms of communication to voters.

The No New Taxes committee raises and spends money to fight tax increases, especially local tax increases, which frequently are added to the ballot in primary, special and general elections.

We often send letters with updates and information about how HJTA Members can help these efforts with petitions and donations. Thank you for your generous support, which makes it possible for your HJTA to protect taxpayers in every arena and in every battle.

HJTA AND KABC LAUNCH...



PODCAST

The Howard Jarvis Podcast

Cumulus Media Los Angeles

The Howard Jarvis Taxpayers Association and KABC AM790 have teamed up to produce a weekly podcast featuring great conversation and insights on the latest issues that are affecting California taxpayers.

"The Howard Jarvis Podcast" features HJTA President Jon Coupal and Vice President of Communications Susan Shelley.

Topics have included the attack on Proposition 13, threats to election integrity, and last-minute efforts by the Legislature to raid the wallets of California residents.

The weekly shows can be played or downloaded on HJTA's website, www.hjta.org, and on KABC's website at www.kabc.com/the-howard-jarvis-podcast.

"The Howard Jarvis Podcast" can also be found on Spotify and wherever podcasts are available.

Have questions you'd like Jon and Susan to answer? E-mail them to info@hjta.org and put "Podcast" in the subject line.

Be sure to subscribe to "The Howard Jarvis Podcast" so you never miss out!

KABC Podcasts

California: Global Leader in Boor



00:00

790 KABC

31:07



THE LEGAL FRONT

DID PROPOSITION 26 AUTHORIZE *UNLIMITED* FEES TO USE BRIDGES AND PARKS? GOVERNMENT SAYS YES. HJTA SAYS NO.

By Laura Dougherty, Senior Staff Attorney

Sometimes government turns voter intent on its head. HJTA is fighting for the true intent of Proposition 26 against a very damaging government argument: that fees for use of public property are now *unlimited*. Such fees have never been unlimited, even before Proposition 26, and Proposition 26's voters certainly did not intend

The fees were not based on any documented costs incurred by the city or services provided to the haulers.

to *relax* the rules for fees and taxes. But in one provision known as the "use of public property" provision, government argues that is exactly what voters did.

The Supreme Court granted review this summer in a case alleging that Oakland's trash franchise fees violate Proposition 26. This case is called *Zolly v. City of Oakland*, S262634. HJTA has been tracking this case for years, and now it is clear it will greatly impact Proposition 26 and future taxpayer initiatives.

Oakland had selected two private trash haulers with a condition that the haulers pay \$28 million per year in "franchise fees" to the city. These fees resulted in customer bills rising 80–155 percent. A grand jury disapproved and found "political considerations" were involved. Customers challenged the fees as disguised taxes because no value analysis was performed. The fees were not based on any documented costs incurred by the city or services provided to the haulers. The city argued that franchise fees are categorically exempt from Proposition 26 and may be for any "negotiated" amount regardless of value. Per the city's argument, franchise fees need not be related to the city's costs or the payer's benefit, but can be charged purely to produce general fund revenue.

The First District Court of Appeal, Division One, found correctly that Oakland's fees violate Proposition 26 because the excessive portion is a tax that needed, but did not receive, voter approval. On grant of review, the Supreme Court phrased the issue as a question to which the answer *should* be an obvious yes: "Must city franchise fees that are subject to California Constitution, article XIII C [Proposition 26], be reasonably related to the value of the franchise?"

In a 2017 case to which

Proposition 26 was not yet applicable, the Supreme Court found that a franchise fee had to represent a "reasonable estimate of the value of the franchise" under Proposition 218 (*Jacks v. City of Santa Barbara* (2017) 3 Cal.5th 248, 267). How to estimate that value remained an open question. Is it whatever private companies are willing to pay for a monopoly? Government prefers to think so. Now that Proposition 26 has passed and is beginning to apply to more and more fees, HJTA argues that such fees must be "valued" based on costs

Oakland's fees violate Proposition 26 because the excessive portion is a tax that needed, but did not receive, voter approval.

incurred by the government or services provided to the payer. Government argues that such fees need not be reasonable at all but can be "negotiated" between the government and the company — even though it is the customer, not the company, who ultimately pays these fees.

Proposition 26 classifies all government charges as taxes (needing voter approval) unless they meet certain exceptions. One of those exceptions is for "use of or entrance to" government property. This would include physical uses such as crossing a bridge or entering a state park. Government lawyers argue that it also includes *abstract* concepts of property, like a legal right or privilege, such as a permit or franchise.

However that question may be answered, Proposition 26 does not allow *unlimited* charges. To



prevent the government from abusing an exception to the definition of a tax, Proposition 26's final paragraph instructs that it is the government's burden to prove the fee is not a tax, that the charge is reasonably related to the government's expenses and that the charge is reasonably related to the payer's benefit received from or burden upon the government. Applying that final paragraph to the trash franchise fees at issue in *Zolly*, the court of appeal made the correct decision, and it makes one wonder why the Supreme Court granted review.

The Supreme Court *denied* review this summer in a related case titled *In re County Inmate Telephone Service Cases*, S262577. As in *Zolly*, local governments argued here that the proper fee for an exclusive government contract is whatever is "negotiated." In this case, they call the fees "commissions" paid to counties by private companies that provide telephone service to inmates. Like the overtaxed trash customers in Oakland, the inmates and their families in nine counties are paying extremely high rates for telephone calls: roughly \$5 for 15 minutes. All research shows that communication with family reduces recidivism rates, so high charges are counterproductive. The lack of documented county costs suggests that the "commissions" are simply general revenue-generating machines for

Continued on page 9



2020 HJTA LEGISLATIVE REPORT CARD

Our report card is designed to help Californians gauge how their state representatives are actually performing on taxpayer-related issues, including, but not limited to, tax increases and direct attacks on Proposition 13.

As with last year, we only considered floor votes. This allows all legislators to vote on a bill at the same time and removes the potential risk of grade inflation. We also gave bills that have made it through both chambers greater consideration in our scoring. It is those bills, like ACA 11, now Proposition 19, a massive tax increase on inherited properties, that were most likely to hurt taxpayers, or in the case of good bills, to help taxpayers.

Abstention votes on legislation count as half credit.

Senators **Patricia Bates**, **Melissa Melendez** and **Mike Morrell** received

a perfect 100 percent. Ten other legislators received A's, including fellow Senators **Shannon Grove** and **John Moorlach** as well as Assembly Members **Bill Brough**, **Phillip Chen**, **Steven Choi**, **Vince Fong**, **Kevin Kiley**, **Marie Waldron**, **Jim Patterson** and **Melissa Melendez**. You may have noticed we mentioned Melendez twice. She received an A in the Assembly before winning a special election to represent the 28th State Senate District.

Seventeen other legislators were awarded B's, including Democrat Sharon Quirk-Silva, and three legislators were awarded C's.

Eighty-four lawmakers flunked.

The 2020 scores stem from 16 bills. For more information about our methodology and scoring system, go to www.hjta.org, or e-mail Legislative Director Scott Kaufman at scott@hjta.org.

SENATOR SUMMARY			
SENATOR	PARTY	GRADE	%
Allen	D	F	37.50
Archuleta	D	F	31.25
Atkins	D	F	34.38
Bates	R	A	100.00
Beall	D	F	31.25
Borgeas	R	B	87.50
Bradford	D	F	31.25
Caballero	D	F	34.38
Chang	R	B	87.50
Dahle	R	B	87.50
Dodd	D	F	31.25
Durazo	D	F	31.25
Galgiani	D	F	31.25
Glazer	D	F	34.38
Gonzalez	D	F	31.25
Grove	R	A	90.63
Hertzberg	D	F	34.38
Hill	D	F	37.50
Hueso	D	F	31.25
Hurtado	D	F	43.75
Jackson	D	F	34.38
Jones	R	B	84.38
Leyva	D	F	31.25
McGuire	D	F	31.25
Melendez	R	A	100.00
Mitchell	D	F	31.25
Monning	D	F	31.25
Moorlach	R	A	94.38
Morrell	R	A	100.00
Nielsen	R	B	84.38
Pan	D	F	37.50
Portantino	D	F	31.25
Roth	D	F	37.50
Rubio	D	F	31.25
Skinner	D	F	31.25
Stern	D	F	31.25
Umberg	D	F	37.50
Wieckowski	D	F	23.08
Wiener	D	F	31.25
Wilk	R	B	81.25

SENATOR SUMMARY:

A = 5 (90–100%)
B = 6 (80–89%)
C = 0 (70–79%)
D = 0 (51–69%)
F = 29 (0–50%)

ASSEMBLY MEMBER SUMMARY:

A = 8 (90–100%)
B = 11 (80–89%)
C = 3 (70–79%)
D = 4 (51–69%)
F = 55 (0–50%)

ASSEMBLY MEMBER SUMMARY							
ASSEMBLY MEMBER	PARTY	GRADE	%	ASSEMBLY MEMBER	PARTY	GRADE	%
Aguiar-Curry	D	F	28.13	Jones-Sawyer	D	F	31.25
Arambula	D	F	31.25	Kalra	D	F	31.25
Bauer-Kahan	D	F	43.75	Kamlager	D	F	34.38
Berman	D	F	31.25	Kiley	R	A	96.88
Bigelow	R	B	87.50	Lackey	R	B	81.25
Bloom	D	F	34.38	Levine	D	F	43.75
Boerner Horvath	D	D	59.38	Limon	D	F	34.38
Bonta	D	F	31.25	Low	D	F	31.25
Brough	R	A	96.88	Maienschein	R	F	43.75
Burke	D	F	31.25	Mathis	R	B	87.50
Calderon	D	F	34.38	Mayes	I	D	68.75
Carrillo	D	F	31.25	McCarty	D	F	28.13
Cervantes	D	C	71.88	Medina	D	F	31.25
Chau	D	F	31.25	Melendez	R	A	95.83
Chen	R	A	90.63	Mullin	D	F	31.25
Chiu	D	F	34.38	Muratsuchi	D	F	43.75
Choi	R	A	93.75	Nazarian	D	F	34.38
Chu	D	F	31.25	Oberholte	R	B	87.50
Cooley	D	F	50.00	O'Donnell	D	F	31.25
Cooper	D	F	40.63	Patterson	R	A	93.75
Cunningham	R	B	81.25	Petrie-Norris	D	D	65.63
Brian Dahle	R	B	85.71	Quirk	D	F	37.50
Megan Dahle	R	C	75.00	Quirk-Silva	D	B	81.88
Daly	D	F	40.63	Ramos	D	F	50.00
Diep	R	B	87.50	Rendon	D	F	31.25
Eggman	D	F	34.38	Reyes	D	F	31.25
Flora	R	B	81.25	Luz Rivas	D	F	31.25
Fong	R	A	93.75	Robert Rivas	D	F	31.25
Frazier	D	F	46.88	Rodriguez	D	F	34.38
Friedman	D	F	31.25	Rubio	D	F	37.50
Gabriel	D	F	34.38	Salas	D	D	59.38
Gallagher	R	B	84.38	Santiago	D	F	31.25
Cristina Garcia	D	F	46.88	Smith	D	F	43.75
Eduardo Garcia	D	F	31.25	Stone	D	F	31.25
Gipson	D	F	31.25	Ting	D	F	37.50
Gloria	D	F	31.25	Voepel	R	B	87.50
Gonzalez	D	F	37.50	Waldron	R	A	90.63
Gray	D	F	40.63	Weber	D	F	31.25
Grayson	D	F	37.50	Wicks	D	F	31.25
Holden	D	F	31.25	Wood	D	F	34.00
Irwin	D	C	73.13				

Brian Dahle: AD 1 until June 2019
 SD 1 after June 2019

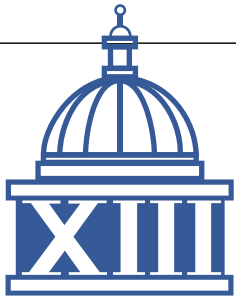
Megan Dahle: AD 1 after November 2019

Jeff Stone: SD 28, resigned October 2019

Melissa Melendez: AD 67 until May 2020
 SD 28 after May 2020

To find the names and contact information of your representatives, go online to findyourrep.legislature.ca.gov or check the government pages of your local phone directory.

UNDER THE DOME



A WILD FINISH TO A CRAZY YEAR

By Scott Kaufman, Legislative Director

It has been a strange year, full of change not only inside the Capitol, but outside of it too. It seems only natural, then, that this column changes with it. You may have noticed a different name on the byline than the one you've become accustomed to seeing. David Wolfe has left the organization to work on his own consulting business. I'm the new HJTA Legislative Director, Scott Kaufman.

Hello!

First, a little about myself. I am a California native, born and raised in Ventura County. I attended college at the University of California, San Diego. I got a degree from UCSD, but more important,

As the deadline to pass legislation rushed toward us, a Republican state Senator tested positive for COVID-19.

I also found a wife. We both liked San Diego so much that we decided to stay and bought our first home in Oceanside.

From there, I started my career in journalism and spent much of that time as an editorial writer at the *Orange County Register*. After a brief stint as the opinion editor at the *Register*, I took a position at the American Legislative Exchange Council working with state legislators on educational reform and school choice.

Now, I find myself in Sacramento with the Howard Jarvis Taxpayers Association, and it is a tremendous privilege to be your voice in the state Capitol.

I'm too young to know

California before Proposition 13, but my parents passed down the story of Howard Jarvis and the 1978 tax revolt like California lore. They remember what home ownership was like around here before Proposition 13. My mother recently told me on a visit that without Prop. 13, we would likely have had to move out of California.

In hindsight, with our out-of-control state government, maybe that would have been the smart thing to do. Plenty of our friends and family are fleeing or have already fled. But, I'm a fifth-generation Californian. This is my home. I want to raise a sixth-generation Californian, and I want them to raise a seventh-generation Californian. This fight is personal, and I hope you'll stick it out with me.

But enough about me. You came here to roll your eyes at all the high jinks coming out of the State Legislature, and we have plenty of stories to tell this year. COVID-19 rocked the Capitol for much of the year, so why would the end of the session be any different?

As the deadline to pass legislation rushed toward us, a Republican state Senator tested positive for COVID-19. Per Senate rules, he was banished from the Capitol for 14 days along with anyone else in the legislature he encountered — even if they subsequently tested negative. That happened to be most of the Republican Senate Caucus.

Senate Republicans were forced to spend the waning days of the session participating by video (even though the Office of Legislative Counsel said it was likely illegal), and technical difficulties ensued. Deciding that dealing

with Republican colleagues digitally was slowing the rush of bills, Senate leadership moved to limit debate. Senate Republicans rebelled, and Senator Melissa Melendez uttered the shot heard round the world, calling the move “bulls---” into a hot mic.

We feel you, Senator

The shortened schedule meant that lots of bad bills didn't make it over the finish line. That included attempts to raise the already highest-in-the-nation income tax even higher.

Melendez.

Order was eventually restored, and the session continued. But don't blame all the turmoil on COVID-19. It's a snapshot into how the sausage is made here in the state Capitol. Beyond the technical difficulties, the chaos in the last week of the session was largely par for the course.

The Democrats have a supermajority and control the process. Much of what happens is a foregone conclusion. Yet, the waning days of the session always feel like a mad dash. That's because the process rewards obfuscation. Why debate a bill on the merits in the sunshine of the legislative process when procedural tricks and pretenses can hide it from the public?

One way they do this is with the so-called gut-and-amend process, where they take a bill, strip out its existing language and amend it into a



Scott Kaufman has joined HJTA as Legislative Director.

completely different piece of legislation. Another trick is “trailer bills.” These are passed months earlier in the session as essentially blank bills with only a line of placeholder text. After closed-door negotiations between the governor and legislative leaders, these bills spring to life and new language replaces the placeholder text. Then they sail through the process without hearings, amendments or debate.

The good news is that in the last-minute rush, any small disagreement can derail the process and mean the difference between a tax hike being signed into law or not. That was especially true this year, where the shortened schedule meant that lots of

Senate Republicans were forced to spend the waning days of the session participating by video.

bad bills didn't make it over the finish line. That included attempts to raise the already highest-in-the-nation income tax even higher and, perhaps the zaniest idea yet, to

Continued on page 7

GRASSROOTS REPORT

HOLD SACRAMENTO ACCOUNTABLE FROM HOME

By Eric Eisenhammer, HJTA Director of Grassroots Operations

The recent campaign season was exciting, and thousands of taxpayers rolled up their sleeves to get involved to support issues and candidates that align with our principles.

Are you happy with the results in your own community? Perhaps you helped elect a politician you believe will be a friend of taxpayers. Or perhaps your chosen candidate lost and now you're concerned about what your representative might do as a lawmaker.

In part due to changes brought on by the pandemic, it is now easier than ever to advocate for your taxpayer rights and to hold those in power accountable.

For example, expanded access to legislative hearings has helped elevate regular citizens to have the same voice

as the special-interest lobbyists who have crowded the halls of the Capitol for years. A regular person at home in their bunny slippers can now be heard just as loudly as a lobbyist in a \$1,000 suit. It's about time!

There are many more easy ways you can get involved from home. Whether or not you support your representative, signing up for their e-mail newsletter is a great way to find out what they are doing in Sacramento. And don't assume that because they were pro-taxpayer in their campaign, they will stay that way. Many succumb to the "persuasion tactics" of the special interests. It's up to you to keep them honest.

Social media, furthermore, gives citizen taxpayers the ability to be heard and speak

truth to power. There's nothing a politician's press secretary hates more than a group of determined activists who know how to use Twitter.

Don't know who your representatives are? You can look them up at this site: findyourrep.legislature.ca.gov.

And be sure to follow updates from your Howard Jarvis Taxpayers Association. If you haven't already signed up for e-mail alerts, please do! When issues of major significance to taxpayers are under discussion, we will tell you about it. Our alerts give you the opportunity to exercise your constitutionally protected right to contact your representatives and be heard.

Visit www.hjta.org to subscribe to the e-mail alerts and to find lots of helpful information for California taxpayers.

PRESIDENT'S MESSAGE

Continued from page 2

process in order to circumvent the requirement of two-thirds voter consent? It would seem so.

Another abuse that will surely manifest itself is that public agencies will collude with outside interests to propose new taxes in the form of an initiative, then submit a tax under a lower vote threshold than that currently required. The worst-case scenario would be if a local government recruited an outside interest to qualify an initiative proposing a tax that the politicians desired, then adopt the proposed tax without any election at all.

If there is any good news in this, it is that HJTA has prevailed in this issue in a case arising out of Fresno County.

There, a tax that was sponsored by a local organization also failed to achieve a two-thirds vote, and the trial court concluded — correctly — that the tax should not go into effect. Moreover, a trial court in Alameda County invalidated an Oakland special tax that fell short of the two-thirds threshold.

Ultimately, the Supreme Court will have to resolve the issue, one way or another. And if it is against taxpayers, another statewide measure in the mold of Prop. 13 will surely be on the table. □

HJTA SUES SECRETARY OF STATE OVER ILLEGAL \$35 MILLION CONTRACT

By Jon Coupal

In October, the Howard Jarvis Taxpayers Association filed a lawsuit against Secretary of State Alex Padilla to halt further spending on an unauthorized \$35 million contract with a partisan political consulting firm, one which prominently stated on its website that it was on "Team Biden."

Indeed, a principal of the company, Washington, D.C.-based SKDKnickerbocker, was a spokesperson for the "Biden for President" campaign. In its written proposal, the firm identified the individuals who would do the work, all of whom prominently noted their personal connection to Democratic politics.

While the contract was ostensibly for "voter outreach"

and public education, giving a partisan firm the responsibility to increase voter turnout using taxpayer dollars created a clear conflict of interest. By focusing (i.e., targeting) the voter outreach, political consultants can and will necessarily affect voter turnout of certain types of voters more than others and in some parts of the state more than others.

This can and will affect the outcomes of elections; indeed, that is what targeted "get out the vote" is intended to achieve.

The contract was fraught with other problems as well.

Only a limited number of firms were approached to "bid" on the advertising contract and the "invitation" was directed only at

partisan political consulting firms rather than traditional nonpartisan advertising agencies. This process did not comply with the Public Contract Code, as the required public notice was not provided.

Completing the trifecta of government contracting malfeasance, the contract was unsupported by any line item in the state budget. In fact, the state controller's office rejected the contract, saying the secretary of state had not identified any budget authority to spend local assistance funds on its contract with consulting firm SKDKnickerbocker, as the office had claimed. The secretary of state was unresponsive to inquiries regarding his intentions

Continued on page 10

UNDER THE DOME

Continued from page 6

impose a 0.4 percent wealth tax on the richest Californians.

The bad news is, we will likely see them come back again next year. But I'll be waiting. The Howard Jarvis Taxpayers Association is the most influential taxpayer advocacy group in California, and your continued support keeps it strong. I'm honored to be fighting for you in Sacramento. □

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alerts at HJTA.org.

FOUNDATION REPORT

A MAJOR VICTORY FOR CALIFORNIA TAXPAYERS

By Jon Coupal, HJTA President

SPECIAL EDITION

In August, the Fair Political Practices Commission (FPPC) imposed one of the largest fines ever against Los Angeles County for using taxpayer funds for political ads touting Measure H, a sales tax increase on the ballot in 2017.

The action by the FPPC was precipitated by a complaint filed by the Howard Jarvis Taxpayers Association. The \$1.3 million fine imposed by the FPPC won't undo the 2017 election, but it may provide a much-needed deterrent against future illegal behavior. As we head into the November election, local governments up and down California are tempted to use taxpayer funds for political advocacy.

This fine by the FPPC will serve as a huge

voters with information about who is providing money for various political positions or for supporting or opposing candidates.

Second is the threshold issue of whether government entities should be engaging in electioneering at all. As noted by the California Supreme Court, "Such contributions are a form of speech, and compelled speech offends the First Amendment."

Many assume, wrongly, that the FPPC already has jurisdiction in this area. But current law does not permit the commission's enforcement division to investigate and bring legal action against public agencies and officials for spending taxpayer funds on campaigns. Currently, the commission is limited to requiring disclosure of campaign spending and the timely reporting of those expenditures.

Last year, HJTA sponsored Assembly Bill 1306, which would have expanded the FPPC's jurisdiction to enforce these "Stanson" claims. Proving that this is a nonpartisan issue, HJTA teamed up with progressive Assembly Member Cristina Garcia, D-Bell Gardens, to author the legislation. Regrettably, local government interests succeeded in killing the bill.

As long as the FPPC's jurisdiction is limited to campaign finance and disclosure issues, it is up to other interests to prosecute constitutional claims based on the First Amendment. In a perfect world, this would be done by California's attorney general and local district attorneys. But such cases are a low priority for these officials.

For that reason, the Howard Jarvis Taxpayers Association has created the new Public Integrity Project, which will be run by HJTA's affiliated 501(c)(3) organization, the Howard Jarvis Taxpayers Foundation. The project will be funded from HJTA's half of the fine imposed by the FPPC, to which HJTA is entitled for filing the original complaint against the county. The creation of HJTF's Public Integrity Project will provide an additional enforcement tool against illegal expenditures of public funds and other violations of law that hurt taxpayers and voters.

State and local government elected officials are now on notice that any use of taxpayer dollars for electioneering will bring substantial financial fines and even personal liability on the part of officials who authorize such illegal expenditures.

shot across the bow to government entities in California that they must obey all state laws and regulations relating to both reporting campaign expenditures as well as providing disclosures on campaign advertising.

When it comes to government entities using public money for campaigning, there are two distinct but related issues.

First, as noted above, the FPPC has jurisdiction over campaign financing reporting as well as disclosure requirements for political advertising. The latter is why we hear at the end of radio ads during election season disclosures such as "Ad paid for by Citizens to Protect Kittens with Major Funding from Joe Doe and Acme Corporation." Campaign finance laws are intended to provide

The Howard Jarvis Taxpayers Association has created the new Public Integrity Project, which will be run by HJTA's affiliated 501(c)(3) organization, the Howard Jarvis Taxpayers Foundation.

TAX BYTES

BEATS WORKING

Beverly Hills police arrested 44 people for unemployment fraud, confiscating 129 fraudulently obtained debit cards with up to \$2.5 million in benefits on them.

FISCAL HEALTH RISK

California State Auditor Elaine Howle invoked a law that gives her authority to closely watch the actions of 18 state agencies spending more than \$71 billion in federal coronavirus aid. Howle said the spending was at high risk of waste, fraud and abuse. The state Department of Finance said the oversight was unnecessary.

NOTHING TO SEE HERE

Secretary of State Alex Padilla gave a \$35 million contract for "voter outreach" advertising to a Washington, D.C.-based public relations firm run by one of former Vice President Joe Biden's advisors. Padilla's office said politics played no role in the decision. The state controller refused to pay for the contract after an investigation found that the state budget contained no authorization for the spending.

AWARD SEASON

The California Department of Technology and other state departments were named the winners of the Independent Institute's tenth California Golden Fleece® Award for failing to update antiquated technology and wasting billions of dollars on "doomed" projects.

HIGHER AND HIGHER EDUCATION

The University of California's Office of the President implemented the state auditor's recommendations to reduce salary costs and bring salaries into alignment with public sector positions, and then negated the cuts by giving everybody an 8 percent raise.

THE LEGAL FRONT

Continued from page 4

the counties. HJTA argued as a friend of the court in this case and in *Zolly* that Proposition 26's voters clearly did not intend that fees on users of government property would be unlimited.

HJTA has two in-house cases against the most recent \$3 bridge toll increase in the Bay Area where HJTA is again fighting directly for the voters' true intent of Proposition 26, but this time against the state. The state argued, and the court of appeal agreed, that bridge tolls are fees for use of government property, and that such fees need not be related to the state's costs in operating and maintaining the bridges. In fact,

All fees, including fees for use of government property, must be reasonably related to government costs and the benefits and burdens attributable to fee payers.

the court of appeal ruled, the expenditure of bridge toll revenue need not benefit the toll-paying motorists but can be used for other programs or to benefit other people. And although an election was held, the court found it an unnecessary exercise.

HJTA petitioned the Supreme Court for review of its in-house cases, *HJTA v. Bay Area Toll Authority* and *Whitney v. Metropolitan Transportation Commission* on August 10, S263835. As of the writing of this article, it is unknown whether review will be granted.

HJTA will keep fighting for the correct interpretation of Proposition 26. All fees, including fees for use of government property, must be reasonably related to government costs and the benefits and burdens attributable to fee payers. □

the MAIL Bag

"Jon and all...
Keep up the
good work,
GREAT JOB!"
—B.J.M., Irvine

"Thank
You!"

—L.B.,
San Diego

"Tell Newsom
to STOP
TAXING US
TO DEATH!"

—A.H.,
South Lake Tahoe

"Thank you for
all you do.
God Bless."

—J.G.,
Hesperia

"Keep on
fighting
for us."
—G.A.,
Livermore

"PROTECT
PROP. 13!!!"

—T.L., Fountain
valley

"Dear Howard Jarvis,
Thank God you
look out for us.
Thank you."

—N.A.,
Huntington Beach

"Thank you,
HJTA, we
love you."

—A.S., Sonoma

"Thank y'all
for all the work
you do."

—M.H.,
El Centro

This column appeared in a number of California newspapers.

PENSION OBLIGATION BONDS ARE A RISKY BET

By Jon Coupal

California Commentary from the Howard Jarvis Taxpayers Association — week of June 14, 2020

Earlier this year, this column raised the alarm over the resurgence in the use of “pension obligation bonds” (POBs), a risky financing method that fell out of favor during the 2008 recession but is now making a comeback.

Fortunately, there is more scrutiny on this form of debt financing than in years past, and taxpayers are starting to take a keen interest in whether POBs are in the best interests of their local governments.

Citizen awareness and improved oversight will be crucial.

To refresh citizens’ understanding of what this is all about, POBs are bonds issued to fund, in whole or in part, the unfunded portion of public pension liabilities by the creation of new debt. It is like paying your Visa bill with your Mastercard.

Advocates of this strategy rely on an assumption that the borrowed money from the sale of bonds, when invested with pension assets in higher-yielding assets, will achieve a rate of return that is greater than the interest rate owed on the borrowed money, which is paid back over the term of the bonds.

A policy reflected in the California Constitution since the 1800s is that government debt should be approved by the voters. The reason for this is simple: Today’s politicians should not be allowed to burden tomorrow’s

taxpayers without the consent of those financially obligated for the repayment. Back in 2003, the Howard Jarvis Taxpayers Association sued the state of California for its attempt to issue a statewide POB without voter approval. HJTA prevailed, and the POB bond proposal was invalidated.

Despite that victory, taxpayers still find themselves having to go to court to enforce voter approval requirements for pension obligation bonds. Last December, the Simi Valley City Council adopted a resolution authorizing a \$150 million pension obligation bond to securitize its unfunded accrued actuarial liability (UAAL). This would have constituted new debt, but the city council did not seek voter approval. Instead, it filed a validation lawsuit asking the Ventura County court to approve the bond resolution. HJTA, on behalf of itself as well as the Ventura County Taxpayers Association, joined the litigation to assert the rights of voters to approve or disapprove the bond under the constitutional provision requiring two-thirds approval of new debt. Rather than litigate the voter approval issue, the city agreed to rescind its resolution in a settlement and dismiss its lawsuit.

Other cities are considering or have actually pursued POBs

without voter approval, including Riverside and Montebello.

The Government Finance Officers Association, an association of officials employed by government entities, recommends against issuing any POBs because “the invested POB proceeds might fail to earn more than the interest rate owed over the term of the bonds, leading to increased overall liabilities for the government,” and “issuing taxable debt to fund the pension liability increases the jurisdiction’s bonded debt burden and potentially uses up debt capacity that could be used for other purposes.”

In other words, the government could lose money on the deal and become overextended on its credit, which would, in turn, “crowd out” the ability to fund essential services.

When this column warned back in January about the risks associated with POBs, the concern was about a potential recession and the economic uncertainties brought on by fires, floods, droughts and earthquakes.

Little did we know that a global pandemic would make the economic uncertainties of the past seem trivial by comparison. Because of these uncertainties, as well as the potential for litigation, governments should avoid any POBs like a virus. □

THREATS LIE AHEAD FOR TAXPAYERS *Continued from page 1*

deductible on federal income tax returns.

Other tax measures likely to return from the legislative grave are the constitutional amendments that were introduced in the last session as ACA 1 and SCA 5. ACA 1 would have lowered the vote needed to pass local tax increases for “infrastructure” from the current two-thirds vote to just 55 percent, making it considerably easier to pass tax increases put on the ballot by local governments. SCA 5 would

have lowered the vote needed to pass school parcel taxes from two-thirds to 55 percent.

Homeowners should also be watchful for the return of a proposal that would have ended single-family zoning in California. Senate Bill 1120, passed in the Assembly too late for a vote in the Senate, would have created a right to subdivide any single-family lot in the state into two lots, each with a house and entitled to at least one accessory dwelling unit. Cities would have no power to impose

any approval process, zoning regulation or even a requirement for adequate parking.

In addition to the impact of extra density, homeowners could face new pressures for local tax increases and fees to provide the needed public services and utilities for the increased population.

Taxpayers can expect all of these measures to be proposed again in the coming session. That makes the work of the Howard Jarvis Taxpayers Association more important than ever. □

HJTA SUES SECRETARY OF STATE OVER \$35 MILLION CONTRACT

Continued from page 7

about further spending on the invalid contract.

For that reason, the Howard Jarvis Taxpayers Association filed a lawsuit against him, seeking an injunction against any further spending not approved by the state controller.

Under normal circumstances, when the government enters into contracts for goods and services with the private sector, taxpayers are protected against waste and fraud by a stringent oversight process mandated by state law. This includes a transparent bidding process to prevent cronyism.

There are exceptions to normal bidding procedures in the event of an emergency, but exceptions for emergencies should not become an open invitation to waste taxpayer dollars.

In a high-visibility debacle at the beginning of the pandemic, Gov. Gavin Newsom attempted to execute a \$450 million contract for personal protective equipment (PPE) with a company that had only been in existence for a few hours.

Fortunately, that deal collapsed when the company’s own bank raised concerns about the financing and its ability to actually deliver the equipment.

Even more fortunately, taxpayers don’t have to rely on luck. The Howard Jarvis Taxpayers Association is vigilant, fighting to stop illegal and wasteful spending of taxpayer dollars. □

COURT LIMITS GOVERNOR’S POWER

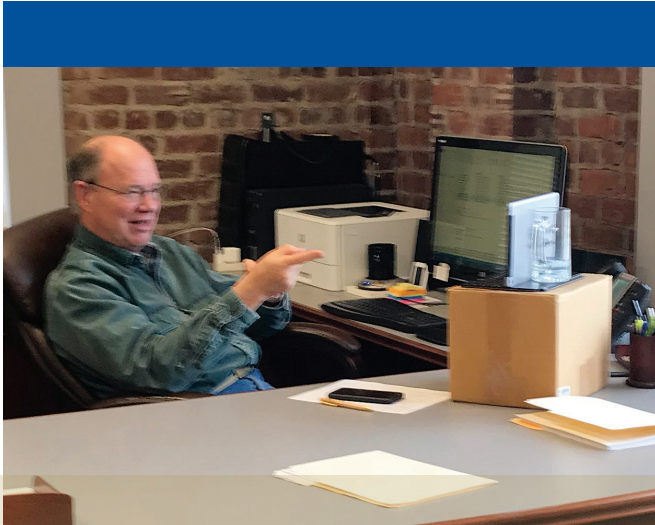
Continued from page 1

represented by their elected representatives, and their elected representatives to make law, and not revert to a dictatorship where one person makes those decisions for everyone,” Gallagher said.

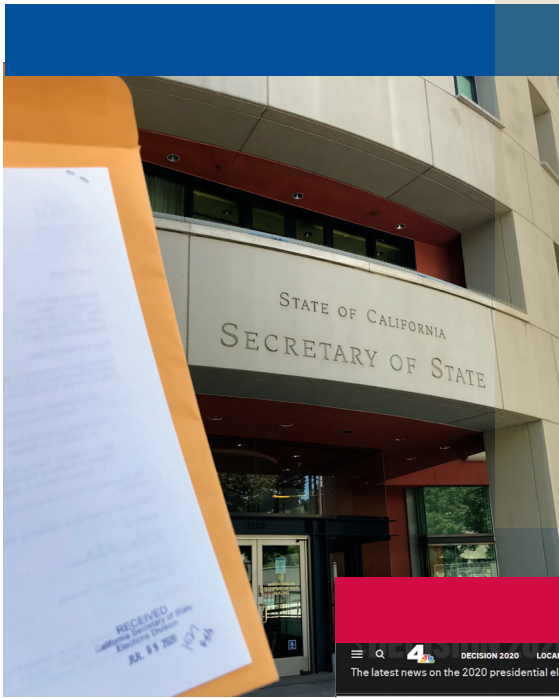
The court issued an injunction prohibiting the governor from “exercising any power under the California Emergency Services Act which amends, alters or changes existing statutory law or makes new statutory law or legislative policy.”

The governor is expected to appeal the ruling. □

HJTA WORKS REMOTELY



HJTA President Jon Coupal's latest office accessory is a cardboard box to get the webcam at the right height.



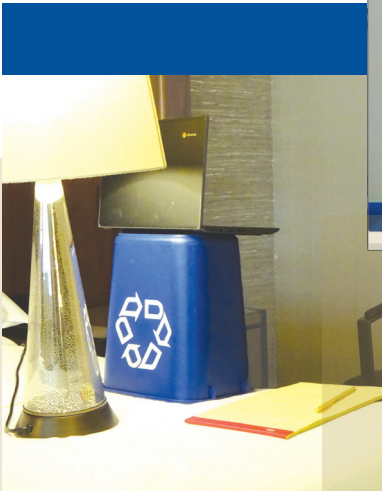
COVID didn't stop HJTA's great team from getting ballot arguments filed with the secretary of state, even if we weren't allowed to enter the offices.



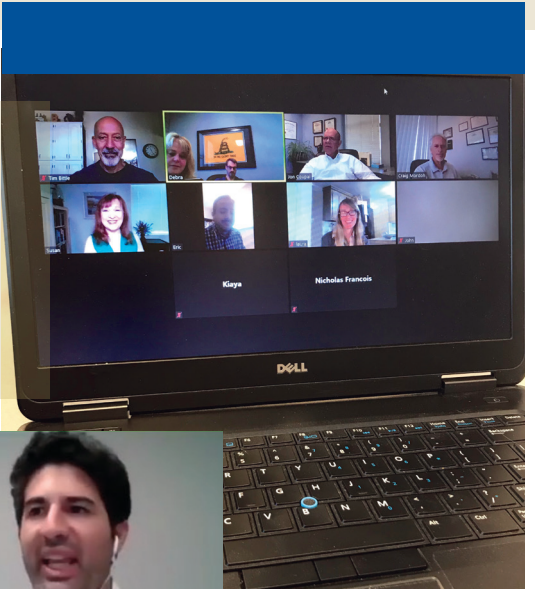
On the road to give a speech, Susan improvised a Zoom studio in a hotel room to give a TV news interview to a reporter who had questions about a ballot measure.



HJTA Director of Legal Affairs Tim Bittle argued remotely before the state Supreme Court.



The weekly staff meeting moved from the conference room to a Zoom room.



HJTA President Jon Coupal and VP of Communications Susan Shelley were guests on the CalMatters "Props to You" debate to make the case against Propositions 15 and 19.



Thank You FOR RECRUITING NEW PROP. 13 SUPPORTERS!

HJTA's hat is off to all of you who have recruited new Members to the taxpayers' cause. Please keep up the good work!

The tax revolt that passed Proposition 13 has always depended on grassroots supporters. Howard Jarvis always fought for average taxpayers who pay government's bills, and we at HJTA continue his crusade.

Everyone knows at least one person, and probably more, who should join our movement.

The vast majority of those who know about Proposition 13 support it, but many are not aware that their taxpayer protections are under constant attack by Sacramento

politicians.

Taxpayers' best defense is an informed public. You can support Proposition 13 by helping HJTA recruit new Members who will strengthen the taxpayers' cause in Sacramento and throughout the state.

Please use the coupons below to send us the name and address of at least one taxpayer who would benefit from learning more about Proposition 13 and the tax-fighting work of HJTA. If you know of more than one, provide their information or pass a coupon on to them, and we will be glad to reach out to them as well.

HJTA MEMBERS: HELP HJTA HELP YOU

Howard Jarvis Taxpayers Association is California's number-one taxpayer advocacy organization. By recruiting new Members, we strengthen the taxpayers' cause in Sacramento and throughout the state.

Help protect Proposition 13! Every HJTA Member knows at least one person who should join HJTA. Please send us their names and addresses. HJTA will send them information on our ongoing work and a membership application. Thank you!

Mail to: HJTA, 621 South Westmoreland Avenue, Suite 200, Los Angeles, CA 90005-3971

Please send information on the tax-fighting work of the Howard Jarvis Taxpayers Association and a membership application to:

Name: _____

Street Address: _____

City: _____ State: _____ ZIP: _____

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