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**Proposition 29:
Establishing \$1 Per Pack Tax on Cigarettes to Fund
Cancer Research and Prevention Programs**

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I. EXECUTIVE SUMMARY

Proposition 29 is designed to raise money for medical research and related costs by imposing an additional excise tax of \$1 per pack of cigarettes and comparable tax increases on other tobacco products.¹ Cigarettes and other tobacco products are subject to excise taxes in all 50 states.² Tobacco taxes are a form of “sin tax”, taxes designed to reduce the consumption of harmful products that are costly to society as a result of their use.³ Currently, California charges \$0.87 in taxes on one pack of cigarettes, which is below the average state tax rate of \$1.46 per pack.⁴ This \$0.87 tax is based on four prior acts of legislation.⁵

Proposition 29, the California Cancer Research Act, which proponents entitle Hope 2010, raises the excise tax on a pack of cigarettes by \$1, commencing October 2012. Furthermore, the Board of Equalization will proportionately raise the tax on other forms of tobacco, such as cigars, smoking and chewing tobacco, and snuff. Producers and sellers of cigarettes and other tobacco products will pay this \$1 excise tax to the government, and in turn will recover the tax by raising the price paid by the buyer.⁶

The funds raised from Proposition 29 will be deposited into the California Cancer Research and Life Sciences Innovation Trust Fund. The funds raised will primarily be used for cancer and other tobacco related research. However, some of the funds will go to policing the new and existing taxes. Proposition 29 also provides that if cigarette sales decrease, resulting in loss of funding for existing programs, Proposition 29 revenues will backfill, or offset the losses of these programs. Proposition 29 is expected to raise approximately \$855 million a year to contribute to the fund.⁷

II. THE LAW

A. Existing Law

Current state law imposes an \$0.87 per pack excise tax on cigarettes and other tobacco products on distributors who supply cigarettes and tobacco products to retail stores.⁸ The proceeds from

¹ See generally Proposition 29, Proposition 29 — Full Text of the Proposed Law, http://ag.ca.gov/cms_attachments/initiatives/pdfs/i895_initiative_09-0097.pdf (accessed Feb. 10, 2012) [hereinafter *Prop 29 Full Text*].

² Ann Boonn, *State Cigarette Excise Tax Rates & Rankings*, CAMPAIGN FOR TOBACCO-FREE KIDS (Dec. 23, 2011), <http://www.tobaccofreekids.org/research/factsheets/pdf/0097.pdf>. (An excise tax is a tax added to a specific good, in this case cigarettes. Excise taxes are included in the price of the product and thus are included when calculating sales tax on items).

³ Kaitlyn Christ & Richard Williams, *Taxing Sin*, MERCATUS CENTER - GEORGE MASON UNIVERSITY (July 2009), <http://mercatus.org/publication/taxing-sin>.

⁴ Boonn, *supra* note 2.

⁵ Legislative Analyst’s Office, *2009 Initiative Analysis: California Research Act (Version 3)*, 1 (January 15, 2010) <http://www.lao.ca.gov/ballot/2009/090811.aspx> (accessed February 9, 2012) [hereinafter *LAO Proposition 29 Report*].

⁶ *Prop 29 Full Text*, *supra* note 1.

⁷ *Id.*

⁸ *LAO Proposition 29 Report*, *supra* note 5 at 1.

the tax are used both for the state's General Fund and certain special fund purposes.⁹ Two legislative actions and two initiatives are the basis of this \$0.87 tax.

Cigarettes were first subject to a tax by the state of California in 1959, when the state legislature passed a \$0.03 per pack tax.¹⁰ Given that at that time the average price of a pack of cigarettes was only \$0.25, this \$0.03 tax would be equivalent to a \$0.20 tax today.¹¹ In 1967, California more than tripled this tax to \$0.10 (equivalent to \$0.60 today).¹² The funds collected from the current \$0.10 tax are deposited in California's General Fund.¹³ Thus, unlike Proposition 29, the revenue generated from this tax does not contribute to any special funding. Instead, it supports the budget of the entire state of California.

In 1988, California voters approved a cigarette tax used for special funding.¹⁴ This tax was named the California Tobacco Health Protection Act of 1988, or Proposition 99.¹⁵ Proposition 99 increased the state cigarette tax by \$0.25 per pack and added an equivalent amount on other tobacco products.¹⁶ The revenues from the tax are allocated to tobacco education and prevention efforts, tobacco-related disease research programs, and health care services for low-income uninsured persons, as well as environmental protection and recreational resources.¹⁷

In 1993, a \$0.02 per pack tax increase was enacted through a measure approved by the Legislature and Governor to create the Breast Cancer Fund.¹⁸ This fund was created to go directly to research and education efforts related to breast cancer.¹⁹ This is currently the largest state funded research effort in the nation and is administered by the University of California.²⁰

In 1998, California voters approved the California Children and Families First Act of 1998, also known as Proposition 10.²¹ The purpose of Proposition 10 was to reduce the use of tobacco, especially among teenagers.²² Proposition 10 increased the cigarette tax by \$0.50 per pack, and increased taxes on other tobacco products as well.²³ Funds from Proposition 10 are allocated to California Children and Families First program and the General Fund.²⁴ Drafters of Proposition

⁹ *Id.*

¹⁰ Michael LaFaive, Patrick Fleenor & Todd Nesbit, *California's Experience With Cigarette Taxation*, MACKINAC CENTER, Dec. 3, 2008, <http://www.mackinac.org/10057>.

¹¹ *Id.*

¹² *Id.*

¹³ *LAO Proposition 29 Report*, *supra* note 5 at 1.

¹⁴ *Legislative Mandate for Tobacco Control- Proposition 99*, CAL. DEPT. OF PUBLIC HEALTH, <http://www.cdph.ca.gov/programs/tobacco/Pages/CTCPLegislativeMandateforTobaccoControl-Prop99.aspx> (last modified Nov. 5, 2008).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *LAO Proposition 29 Report*, *supra* note 5, at 1.

¹⁸ *Id.*

¹⁹ *Affiliates and Partners*, CALIFORNIA BABY, <http://www.californiababy.com/affiliates-partners.html> (last accessed on Mar. 12, 2012).

²⁰ *Id.*

²¹ *LAO Proposition 29 Report*, *supra* note 5, at 1.

²² *Proposition 10 Facts*, FIRST5 CAL., <http://www.cfc.ca.gov/press/prop.asp> (last visited Feb. 13, 2012).

²³ *California Proposition 10, "First 5" Early Childhood Cigarette Tax (1998)*, BALLOTPEdia, [http://ballotpedia.org/wiki/index.php/California_Proposition_10,_%22First_5%22_Early_Childhood_Cigarette_Tax_\(1998\)](http://ballotpedia.org/wiki/index.php/California_Proposition_10,_%22First_5%22_Early_Childhood_Cigarette_Tax_(1998)) (last modified Aug. 19, 2011).

²⁴ *Proposition 10 Facts*, *supra* note 22.

10 were aware that an increase in taxes could result in a decrease in consumption of tobacco products and an increase in untaxed tobacco sales (i.e. smuggled cigarettes or out-of-state sales).²⁵ Therefore, Proposition 10 included a provision that would compensate Proposition 99 programs that are funded through tobacco taxes.²⁶ In order to be effective at the local level, commissions in each county were created to provide prevention and health services to children.²⁷

Therefore, a pack of cigarettes is currently taxed \$0.87.²⁸ Of the \$0.87, \$0.50 go to early child development, \$0.25 is used for tobacco education, prevention, tobacco disease research, and healthcare services for uninsured persons,²⁹ \$0.10 goes to the General Fund, and \$0.02 funds breast cancer research and screening for uninsured women.³⁰

B. Effects of Proposition 29

1. New Tobacco Tax

The enactment of Proposition 29, the California Cancer Research Act, would add Article 2.5 (commencing with Section 30130.50) to Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code.³¹ Proposition 29 would add \$0.05 a cigarette or \$1 a pack of cigarettes in excise taxes.³² Furthermore, the Board of Equalization (BOE), under current state law, would be required to increase excise taxes on other tobacco products in an amount equivalent to the increase in the tax on cigarettes.³³

2. Implementation of Proposition 29

While many initiatives become effective upon their approval by the voters, Proposition 29 specifies a date of implementation.³⁴ The tax will be implemented starting October 1, 2012.³⁵ Every dealer and wholesaler will have to pay \$0.05 for every cigarette in his or her possession on October 1, 2012. To determine the number of cigarettes in his or her possession on that date, dealers and wholesalers will be required to file an inventory within 180 days of that date.³⁶

3. Revenue Spending for Proposition 29

Proposition 29 creates a new fund where taxes will be deposited, called the California Cancer Research and Life Sciences Innovation Trust Fund. The receipts from the tobacco tax will first be used to compensate existing programs, which suffer losses due to the imposition of the new tax,

²⁵ *LAO Proposition 29 Report*, *supra* note 5, at 1.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Prop 29 Full Text*, *supra* note 1.

³² *LAO Proposition 29 Report*, *supra* note 5, at 2.

³³ *Id.*

³⁴ *Prop 29 Full Text*, *supra* note 1.

³⁵ *See id.* (implementing Proposition 29 on the first day of the first calendar quarter following 90 days after its effective date.).

³⁶ *Id.*

such as Children and Families First program, Breast Cancer Fund, and others. The remaining funds would be distributed among five funds: Hope 2010 Research Fund, Hope 2010 Facilities Fund, Hope 2010 Smoking Cessation Fund, Hope 2010 Law Enforcement Fund, and Hope 2010 Committee Account.³⁷

Sixty percent (60%) of the funds would be deposited into the Hope 2010 Research Fund for grants and loans to support research in the prevention, early detection, treatments, complementary treatments, and potential cures of lung cancer and other types of cancer, cardiovascular disease, and other tobacco-related diseases. The funds will be dispersed on the basis of scientific merit based on peer review. All qualified researchers will be granted equal access to compete for the available funds.³⁸

Fifteen percent (15%) of the funds would be deposited into the Hope 2010 Facilities Fund. These funds will be given out as grants and loans to provide facilities and capital equipment for the research described above. The committee created by Proposition 29 would determine whether the facilities and equipment are necessary for the research.³⁹

Twenty percent (20%) of the funds would be deposited into the Hope 2010 Tobacco Prevention and Cessation fund in order to operate comprehensive tobacco prevention and control programs. Eighty percent (80%) of the Hope 2010 Tobacco Prevention and Cessation Fund will go to the California Department of Public Health and Tobacco Control Program. The other twenty percent (20%) of the Hope 2010 Tobacco Prevention and Cessation Fund would be allocated to the California Department of Education for programs to prevent and reduce the use of tobacco products.⁴⁰

Three percent (3%) of the funds would go to the Hope 2010 Law Enforcement Fund to support law enforcement efforts to reduce any unlawful tobacco related activities including, cigarette smuggling, tobacco tax evasion, and counterfeit tobacco. Forty percent (40%) of the Hope 2010 Law Enforcement Fund would go to the State Board of Equalization, another forty percent (40%) would go to the State Department of Public Health, and the final twenty percent (20%) would go to the Attorney General for enforcing the laws regulating distribution and sale of cigarettes and other cigarette related laws.⁴¹

Two percent (2%) of the funds would be deposited into the Hope 2010 Committee Account for the carrying out of the costs and expenses in administering the act. In addition, any of the funds in the California Cancer Research Life Sciences and Innovation Trust Fund may be placed into the Pooled Money Investment Account to earn interest, which will be credited to the fund and apportioned in accordance with the rules of the Act.⁴²

4. Hope 2010 Cancer Research Citizens Oversight Committee

Section 30130.54 of the Hope 2010 Act creates the Hope 2010 Cancer Research Citizens Oversight Committee. The Committee will oversee the operations of the California Cancer

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

Research Life Sciences Innovation Trust Fund and its sub-funds by acting as trustee. Furthermore, the Committee will establish a process for soliciting, reviewing, and awarding grants and loans for research, facilities, and patient treatment. The Committee may also revoke any granted funds not in compliance with the research standards. Additionally, the Committee is responsible for establishing long-term research and financial plans for the fund.⁴³

The committee will be made up of nine members. Four members will be appointed by the Governor, one affiliated with a California Academic Medical Center and three from the Cancer Center Directors of National Cancer Institute designated cancer centers within California. Three Chancellors from the campuses of the University of California, which is a member of the California Institute for Quantitative Biological Research, will also be members. The Director of the California Department of Public Health will appoint the final two members.⁴⁴

To reduce bias, no one who is required to register as a lobbyist under any form of government may be appointed to the committee. Furthermore, no one may be employed or have any connection with a company which markets or distributes tobacco products during the past two years. The act specifies that those on the Committee may not use their position for private gain. Committee members also may only receive funds from the State for performance on the Committee.⁴⁵

5. Fiscal Impact

a. Effects on State and Local Revenues

It is assumed that the distributors of tobacco products will pass on the excise tax to the consumers directly.⁴⁶ As a result, each consumer will pay \$1 more per pack of cigarettes. The increase in price will likely lead to multiple consumer responses.⁴⁷ For example, it is likely that consumers will purchase fewer cigarettes than before.⁴⁸ Furthermore, the quantity of taxable tobacco products purchased will decrease as consumers look for ways around the tax, such as online and out-of-state purchases. However, because this tax increase is larger than previous taxes on tobacco products, the exact change in consumer behavior is unknown.

Currently, the state makes approximately \$850 million a year on taxes from cigarettes and other tobacco products.⁴⁹ The new tax will bring in an estimated \$855 million of revenues in the first year.⁵⁰ However, because cigarette consumption is declining within the state as people become aware of the detrimental effects of its use, that number would decrease each year.⁵¹

While Proposition 29 raises the excise tax of a pack of cigarettes by \$1, the Board of Equalization will require all other tobacco products' excise taxes to be proportionately raised.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *LAO Proposition 29 Report, supra* note 5, at 3.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* at 4.

⁵¹ *Id.*

Proposition 29 does not explain where the funds from the increase in taxes for other tobacco products will go. The current law requires that increases in excise taxes of tobacco products will be used to support Proposition 99.⁵² Therefore, Proposition 99 programs will receive the funds generated from the increase in non-cigarette tobacco products tax triggered by Proposition 29.⁵³ It is estimated that this increase would result in an additional \$45 million per year for Proposition 99 programs.⁵⁴

Furthermore, Proposition 29 will indirectly generate revenues for the State's general fund. Sales taxes are charged on the final price of consumer products. Excise taxes, such as the one described in Proposition 29, are included in the final price.⁵⁵ Therefore, this addition \$1 per pack of cigarettes would result in a higher amount of sales tax on each pack of cigarettes.⁵⁶ This increase would raise an estimated \$22 million per year for General Fund revenues for the state and \$10 million for local governments' sales tax revenues.⁵⁷

b. Effects on State and Local Costs

Both state and local governments incur costs by providing health care for low-income people and health insurance for state and local government employees.⁵⁸ Therefore, any change in state law, which affects the health of the general populace, will also have an effect on the costs to the government. This Act would not only lead to a decrease in tobacco consumption, which has been attributed to many health complications, but it would also create funding for treating inflicted individuals. As a result, both state and local governments will see a decrease in costs. However, it is also likely that the decrease in tobacco-related illness would lead to a longer life expectancy, which would ultimately add to government costs.⁵⁹ This offset in the costs makes it difficult to predict an exact change in government costs.

III. DRAFTING ISSUES

A. Severability

Proposition 29 contains a severability clause which may be used in the case that Proposition 29 is challenged in court. Specifically, Section 4 of Proposition 29 states: "If the provisions of this Act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force, and effect and to this end the provisions of this Act are severable."

If a statute is not severable, "then the void part taints the remainder and the whole becomes a nullity."⁶⁰ To determine whether a statute is severable courts apply a three-part test.⁶¹ The first part of the test is the grammatical criteria, where the court determines whether the language of

⁵² *Id.* at 2.

⁵³ *Id.*

⁵⁴ *Id.* at 4.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* at 5.

⁵⁹ *Id.*

⁶⁰ *People's Advocate, Inc. v. Superior Court*, 181 Cal.App.3d 316, 330 (1986).

⁶¹ *Id.*

the statute is mechanically severable, that is, where “the valid and invalid parts can be separated by paragraph, sentence, clause, phrase, or even single words.”⁶² The second part is the functional criteria, where the court determines if the statute had been severed, would the remainder of the statute “be complete in itself.”⁶³ The third part of the test, the volitional criteria, requires the court to determine whether the “remainder would have been adopted by the legislative body had it foreseen the partial invalidation of the statute.”⁶⁴

While Proposition 29 contains several paragraphs and sentences that are grammatically distinct, they are likely not capable of independent application and thus, would be very difficult to sever under the functional criteria. The function of Proposition 29 is to fund research for cancer and other tobacco-related diseases and to increase efforts to reduce tobacco use by financing prevention programs.⁶⁵ In order to accomplish this goal, Proposition 29 increases the rate at which tobacco products are taxed.⁶⁶ If Proposition 29 is enacted, several code sections will be implemented mandating research and health care services.⁶⁷ These programs will all be dependent on the California Cancer Research Life Science Innovation Trust Fund and its distribution of funds within it to, research, facilities, tobacco prevention and cessation, law enforcement, and the oversight committee.⁶⁸ Since the funding comes directly from the Fund created by the tax, rather than the State’s General Fund, all parts of the Proposition are dependent upon one another, as funding is mandated from a particular source. Therefore, it would be impossible to sever them because each depends on the other to carry out the purpose of this Act. If one portion were deemed unconstitutional, the remaining part would not be able to stand on its own and thus, severance to any portion of this Act would fail the functional test.

IV. CONSTITUTIONAL ISSUES

A. Single-Subject Rule

Article II § 8(d) of the California Constitution states that “[a]n initiative measure embracing more than one subject may not be submitted to the electors or have any effect.”⁶⁹ The California Supreme Court in *Senate v. Jones* developed a test to determine whether an initiative addresses more than one subject.⁷⁰ An initiative has been deemed to only address one subject when all the parts of the initiative are “reasonably germane to each other and to the general purpose or object of the initiative”.⁷¹ The various provisions are not required to each “effectively interlock in a functional relationship” so long as they are all “reasonably related to a common theme or purpose.”⁷² The purpose of this single-subject rule is to avoid confusing voters by only having initiatives on the ballot that deal with one issue. The drafters of the California Constitution wanted to ensure that if there are two unrelated matters that the matters are presented as two separate initiatives. This will avoid “log rolling,” hiding a less popular issue behind a more popular issue, in an effort to get the less popular issue passed.

⁶² *Id.*

⁶³ *Id.* at 332.

⁶⁴ *Id.*

⁶⁵ *Prop 29 Full Text*, *supra* note 1, at sec. 2.

⁶⁶ *Id.* at sec. 3.

⁶⁷ *See generally Id.*

⁶⁸ *Id.*

⁶⁹ Cal. Const. art. II, § 8.

⁷⁰ *Sen. of State of Cal. v. Jones*, 988 P.2d 1089 (Cal. 1999).

⁷¹ *Id.* at 1157.

⁷² *Id.*

Previous propositions, Proposition 99 and Proposition 10, which increased the tobacco tax, were challenged on Constitutional grounds; specifically, they were challenged under the single-subject rule.⁷³ Therefore, it is likely that because of the similarity between those propositions and the one at hand, Proposition 29 will face a similar challenge.

Proposition 99, which was enacted in 1988, used the tax on tobacco-related products to fund tobacco education and prevention efforts, tobacco related disease research programs, medical services for low-income uninsured persons, environmental protection resources, and recreational resources.⁷⁴ It was challenged in *Kennedy Wholesale, Inc. v. State Bd. Of Equalization*⁷⁵ for violating the single-subject rule because “the measure does not guarantee that every expenditure from the fund will be related to tobacco use.”⁷⁶ Specifically, opponents argued that the funds used for medical services of low-income patients were not correlated to this “tobacco prevention purpose” because it provided services for non-tobacco-related conditions. However, the California Supreme Court disagreed with the opponents’ argument and held that the measure did not violate the single-subject rule because the proposition represented a coherent effort to achieve the objective of reducing economic costs of tobacco use in California, “by raising the tax on tobacco products and directing the increased revenues to areas in which smoking has increased the state’s cost.”⁷⁷

Ten years later, Proposition 10, which imposed taxes on cigarettes and other tobacco products to fund public education regarding the effects of smoking on young children and anti-smoking programs, was enacted. The Proposition also faced a Constitutional challenge based on single-subject rule grounds in *California Association of Retail Tobacconists (“CART”) v. State of California*⁷⁸. The opponents argued that concern for early childhood development and the use of a tobacco tax were not reasonably germane and likely resulted in voter confusion. However, the court disagreed and held that the Proposition’s provisions, including the tax on tobacco products, were reasonably germane to its goal of promoting the healthy development of young children and evidence showed that such development was adversely affected by tobacco usage.⁷⁹ The Court explained that the program targeted, among other groups, pregnant women and the effects of secondhand smoke on children.⁸⁰ Since the tax decreased the likelihood that pregnant women and parents would smoke, it sought to improve the health and welfare of children by making it less likely that the children would be exposed to secondhand smoke. Additionally, it also targeted early childhood development and the prevention of children smoking. Therefore, Proposition 10 did not violate the single-subject rule because there was a sufficient correlation among its provisions.⁸¹

Considering the challenges prior tobacco-tax Propositions have faced, it is likely Proposition 29 will also be subject to similar single-subject challenges. However, it is also likely Proposition 29 will withstand such challenges given the courts’ trend of applying the “reasonably germane” test

⁷³ See generally *Kennedy Wholesale, Inc. v. State Bd. Of Equalization*, 53 Cal.3d 245 (1991); see also *Cal. Ass’n of Retail Tobacconists (“CART”) v. State of Cal.*, 109 Cal.App.4th 792 (2003).

⁷⁴ See *LAO Proposition 29 Report*, supra note 5.

⁷⁵ *Kennedy Wholesale, Inc.*, 53 Cal.3d 245.

⁷⁶ *Id.* at 254.

⁷⁷ *Id.* at 245.

⁷⁸ *Cal. Ass’n of Retail Tobacconists*, 109 Cal.App.4th 792.

⁷⁹ *Id.* 808.

⁸⁰ *Id.*

⁸¹ *Id.*

liberally.

As seen in the *Kennedy* court, a statute will not violate the single-subject rule where collateral effects are found.⁸² Because the wording of Proposition 29 does not make the research exclusive for tobacco related illnesses, but instead includes cancer and coronary diseases generally, opponents may make a challenge based on the single-subject rule. However, similar to *Kennedy*, the court will likely find this as a collateral effect because of the strong correlation between tobacco and cancer and coronary complications. Opponents may also argue that providing funding for law enforcement of the Act does not directly go to the research and prevention of tobacco related illnesses. In *California Association of Retail Tobacconists*, the court reasoned that the funding of hospitals treating tobacco illnesses is necessary to provide facilities and equipment in order to fully effectuate the policy of increasing research.⁸³ Similarly, here law enforcement funding is necessary to ensure illegal tax evasion does not occur which would deprive prevention and research programs of its funds. Therefore, providing funding not only through research grants, but also directly to law enforcement for this Act, would fall under the same subject as the rest of the proposition. Thus, a challenge based on the single-subject rule would not likely succeed.

V. PUBLIC POLICY CONSIDERATIONS

A. Supporting Arguments

In 2011, proponents raised \$1,484,480.63 in contributions for Proposition 29.⁸⁴ Californians for a Cure, sponsored by the American Cancer Society, the American Lung Association, the American Heart Association, and cancer research doctors, contributed \$1,389,201.67 in 2011.⁸⁵ Cancer survivor and State Senator Don Perata contributed \$70,512.96 to Proposition 29 in 2011.⁸⁶ American Cancer Society Cancer Action Network contributed \$ 24,766.00 to Proposition 29 in 2011. Other contributors include the mayor of Los Angeles Antonio Villaraigosa, Oakland City councilmember Ignacio De La Fuente, cancer survivor and Tour de France winner, Lance Armstrong, and the Campaign for Tobacco-Free Kids.⁸⁷

1. Proposition 29 Will Reduce the Number of Smokers

Proponents argue that by increasing the price of cigarettes, people will be less likely to purchase and consume cigarettes.⁸⁸ Studies have shown that each 10% cigarette price increase reduces

⁸² *Kennedy Wholesale, Inc.*, 53 Cal.3d at 253.

⁸³ *Cal. Ass'n of Retail Tobacconists*, 109 Cal.App.4th 792.

⁸⁴ *Californians for a Cure, Sponsored by the American Cancer Society California Division, Inc., American Lung Association in California, American Heart Association in California, American Heart Association & Cancer Research Doctors*. CAL-ACCESS, <http://cal-access.ss.ca.gov/Campaign/Committees/Detail.aspx?id=1322759&session=2011> (last visited Feb. 12, 2012) [hereinafter *Californians for a Cure*].

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Joel Fox, *Cigarette Tax Initiative: More Ballot Box Budgeting*, FOX & HOUNDS (Mar. 1, 2011), <http://www.foxandhoundsdaily.com/2011/03/8686-cigarette-tax-initiative-more-ballot-box-budgeting/>.

⁸⁸ Ann Boonn & Eric Lindblom, *Public Health Benefits & Cost Savings from a \$1.00 Cigarette Tax Increase in California*, CAMPAIGN FOR TOBACCO-FREE KIDS, (Nov. 16, 2009) http://CaliforniansForACure.org/facts/TFK+Analysis+2009.pdf?_c=10de11eh47096rm&sr_t=p; Jessica

youth smoking by 6.5%, adult smoking by 2%, and total consumption by 4%.⁸⁹ The Campaign for Tobacco-Free Kids projects that Proposition 29 taxes will decrease youth smoking by 13.7%.⁹⁰ Furthermore, an estimated 228,700 children in California alone would be kept from becoming addicted adult smokers.⁹¹ The reductions would not be limited to kids, but also adults as an expected 118,300 adults would quit as a result of the increase in price.⁹² These numbers were calculated by combining the predicted drops based on the price increase of the tax and the ongoing decline in use of tobacco products within the state.⁹³

Proponents of Proposition 29 argue that this drop in numbers is not only important because of the known negative health effects of tobacco use, but also because the cost to California per pack of cigarette is \$15.10.⁹⁴ Because a pack of cigarettes is currently only taxed \$0.87 a pack (32nd among all states) and the cost is so great to the state, smoking is a contributor to California's financial issues.⁹⁵ Proposition 29's tax would help by increasing the tax collected and therefore, decreasing the deficit between the cost to California for a pack of cigarettes and the revenue California makes per cigarette. Also, the additional costs to consumers would lead to a decline in smoking; and therefore, the total cost of cigarettes to the state would also decrease as fewer packs are purchased.⁹⁶ The estimated long-term health savings for the state, as a result in the decline in adult and youth smoking, are \$5.1 billion.⁹⁷ Proponents assert that increasing taxes on cigarettes and making them cost prohibitive is the most effective way to decrease smoking.⁹⁸

2. Proposition 29 Will Improve Our Health System

Proponents argue that by increasing the price of cigarettes, it will prevent some people from smoking and therefore, prevent them from getting diseases linked to cigarette consumption.⁹⁹ Proponents further argue that the use of tobacco products causes numerous health problems that burden our medical system.¹⁰⁰ By adding an addition \$1 to each pack of cigarettes, it is expected that about 104,500 people will be saved from premature smoking-caused deaths.¹⁰¹ In the next five years, 22,300 smoking-affected births will be avoided; and as a result, \$37.9 million in health savings from those unaffected births would accrue.¹⁰² In those same 5 years, there would be \$43.0 million in health savings from fewer smoking-caused heart attacks & strokes.¹⁰³

Guilfoyle, *Toll of Tobacco in The United States of America*, CAMPAIGN FOR TOBACCO-FREE KIDS (Sept. 16, 2011), <http://www.tobaccofreekids.org/research/factsheets/pdf/0072.pdf>.

⁸⁹ Boonn & Lindblom, *supra* note 88.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.* (This number is based on the Center for Disease Control ("CDC") State Smoking Costs Per Pack of Cigarettes sold, in which the CDC calculates the loss of productivity, the costs of healthcare, and other health related costs to the state, and dividing that between the number of packs sold in that state).

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

Proponents emphasize that the health system will be improved because it would no longer be stressed by the many cigarette related illnesses to the same degree.¹⁰⁴

3. Proposition 29 Will Fund Cancer and Other Medical Research

Proponents argue that this measure will provide necessary funds to research cancer, heart disease, strokes, lung disease, and other cigarette related diseases.¹⁰⁵ These funds are important in order to solve the many problems caused by cigarette consumption. Furthermore, the money invested in research will allow for the effects of cigarette use to be less severe as different cures are created.

4. Proposition 29 Creates a Direct Link Between the Taxpayer and Likely Beneficiaries

Proponents assert that because cigarette consumers have an increased risk of cancer and other diseases, taxing them directly is the best way to fund cures for those diseases.¹⁰⁶ Proponents reason that because cigarette smokers have much to gain from the proposed research, they should be the consumers funding that research.¹⁰⁷ By taxing cigarettes directly, there is a direct link between the likely beneficiary of the research and the funding of that research.

B. Opposing Arguments

Californian's Against Out-Of-Control Taxes and Spending funded primarily by Philip Morris USA and UST LLC, with a coalition of taxpayers, small businesses, law enforcement and labor contributed \$2,673,308.17 in 2011 in opposition of Proposition 29.¹⁰⁸

1. Proposition 29 Will Add to California's Financial Problems

Opponents argue that while California is in a major economic crisis, Proposition 29 creates additional spending for the government.¹⁰⁹ Opponents state that Proposition 29 raises taxes nearly \$1 billion, but does nothing to pay down the state's \$10+ billion budget deficit or fund existing critical programs, such as education or public safety.¹¹⁰ Opponents believe that the money would be better spent in funding existing programs; not new costly programs.¹¹¹ Opponents emphasize that creating additional spending for the state government when facing a budget deficit is detrimental to the state.¹¹²

2. Proposition 29 Will Take California Money Out of California

¹⁰⁴ *Id.*

¹⁰⁵ *See generally Prop 29 Full Text, supra* note 1.

¹⁰⁶ *California Proposition 10, "First 5" Early Childhood Cigarette Tax (1998), supra* note 23.

¹⁰⁷ *Id.*

¹⁰⁸ *Californians for a Cure, supra* note 84.

¹⁰⁹ *No on Proposition 29, CALIFORNIA AGAINST OUT-OF-CONTROL TAXES & SPENDING*, <http://www.noon29.com/the-facts?gclid=CL-87NfEqK4CFQN8hwodjAGrQg> (last visited Feb. 12, 2012).

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

Opponents argue that without guidelines for where the funding may be spent, Californians' money will be taken out of state.¹¹³ Proposition 29 does not require the Committee to spend the raised funds within the state or the United States.¹¹⁴ This means that funds could go to research, facilities, and equipment out of state.¹¹⁵ Therefore, money could be taken out of the state economy as the tax comes directly from Californians, and would be given to those not in California. Without a standard upon which grants may be given, California will suffer because money will be taken out of state.

3. Proposition 29 Will Increase the Black Market and Accompanying Crimes

Opponents argue that raising excise taxes on cigarettes will not decrease the number of people who smoke.¹¹⁶ Opponents state that while there may be a decrease in legal and taxable sales of cigarettes, the amount of tobacco products purchased and consumed will not decrease.¹¹⁷ Tobacco products will just be purchased across state lines, on the black market, and in Native American lands according to opponents. Others may make purchases online in order to avoid the tax.¹¹⁸ Opponents believe that Proposition 29 will have very little effect on decreasing actual tobacco consumption, but just an effect on California tobacco purchase.¹¹⁹

Furthermore, opponents state that Proposition 29 will lead to the creation of a black market because the rise in price of cigarettes will lead consumers to seek out less expensive means of getting their tobacco fix. This will lead to an underground market selling tobacco products without regulatory oversight.¹²⁰ Opponents are certain that the amount of crime, corruption, and gang activity that can arise from these black markets, will substantially increase parallel to the rise in tobacco prices.¹²¹

4. Proposition 29 Will Circumvent Voter-Approved Protections for School Funding

Opponents argue that Proposition 29 is a way for special interest groups to fund private corporations, while avoiding the California Constitutions' mandatory contributions to educational funding.¹²² The California Constitution requires all state revenues first set aside an amount for public education.¹²³ However, because Proposition 29 creates funding separate from

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ Telephone Interview with Charles Janigian, President of the California Association of Retail Tobacconists (September 11, 2006) (Notes on file with the University of the Pacific, McGeorge School of Law Capital Center for Government Law and Policy).

¹¹⁷ *Id.*

¹¹⁸ *Id.* See Michael LaFaive, Patrick Fleenor & Todd Nesbit, *Tax-Exempt Cigarette Sales on Indian Reservations*, MACKINAC CENTER, Dec. 3, 2008, <http://www.mackinac.org/10038> (Because Native American land is considered to be sovereign nations, those lands are exempt for taxes); *but also see California Use Tax Information*, CAL. STATE BOARD OF EQUALIZATION, <http://www.boe.ca.gov/ads/news06.htm> (last visited Mar. 13, 2012) (California legislature passed a bill requiring sales taxes to be collected on online purchases).

¹¹⁹ *No on Proposition 29*, *supra* note 109.

¹²⁰ LaFaive, et al., *supra* note 118.

¹²¹ *Id.*

¹²² *No on Proposition 29*, *supra* note 109.

¹²³ Cal. Const. art. XVI, § 8.

the state's General Fund, such an apportionment is not required.¹²⁴ Therefore, opponents argue that Proposition 29 is a means of circumventing the required contribution to the education funds.¹²⁵

VI. Conclusion

The current excise tax in California on a pack of cigarettes is \$0.87; 32nd among all states.¹²⁶ The California Cancer Research Act would add a \$1 excise tax on a pack of cigarettes in California, making it the 17th highest excise tax on cigarettes; slightly above the mean of \$1.46.¹²⁷ This tax will benefit the research of cancer and other cigarette related diseases as well as enforcement of the tax. However, voters must decide whether a tobacco tax is an appropriate means to fund cancer and other tobacco disease related research.

¹²⁴ *No on Proposition 29*, *supra* note 109.

¹²⁵ *Id.*

¹²⁶ *State Cigarette Excise Taxes: 2010*, NATIONAL CONFERENCE OF STATES LEGISLATURES, <http://www.ncsl.org/issues-research/health/2010-state-cigarette-excise-taxes.aspx> (last updated July 1, 2010).

¹²⁷ Boonn, *supra* note 2.