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# Proposition 2: Use Millionaire's Tax Revenue for Homelessness Prevention Housing Bonds Measure

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## **Proposition 2:**

# **Use Millionaire's Tax Revenue for Homelessness Prevention Housing Bonds Measure (2018)**

Legislative Initiative Statute and Bond Act

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## I. EXECUTIVE SUMMARY

Proposition 2 redistributes funds originally authorized for Department of Mental Health (DMH) under Proposition 63 (2004). Proposition 63 was passed into law in 2004 and was codified as the Mental Health Services Act (MHSA). The Act imposed a 1 percent income tax on personal income in excess of \$1 million.<sup>1</sup> Proposition 2 would create a Supportive Housing Program Subaccount within the Mental Health Services Fund, through which all general fund appropriations and MHSA funds would be collected and distributed.

Proposition 2 authorizes the DMH to distribute funds from MHSA to the No Place Like Home Program (NPLHP) to create permanent housing for individuals with mental illness who are homeless or at risk for chronic homelessness. It also authorizes the California Health Facilities Financing Authority (CHFFA) to enter into contracts with developers and others for this purpose.<sup>2</sup>

AB-1827 re-established the NPLHP and re-authorized the CHFFA to fund the NPLHP.<sup>3</sup> AB-1827 comprises sections 1 through 7 of Proposition 2.<sup>4</sup> AB-1827 gave the CHFFA the authority to distribute over \$2 billion in bonds, through the MHSA, to the NPLHP to mitigate the persistence of chronic homelessness in California by funding housing projects for the homeless.<sup>5</sup>

A YES vote supports allowing the state to spend MHSA revenue from Proposition 63 to help repay the \$2 billion in bonds authorized to fund the NLHP.<sup>6</sup> A YES vote codifies AB-1827, releasing the \$2 billion in bonds to fund the NPLHP.<sup>7</sup>

A NO vote opposes allowing the state to spend MHSA revenue from Proposition 63 to help repay the \$2 billion in bonds authorized to fund the NLHP.<sup>8</sup> A NO vote asks the court to decide if the legislature may constitutionally apportion funds from Proposition 63 to fund AB-1827.

## II. HISTORY

### A. Proposition 63 (2004)

The Mental Health Services Act (MHSA) or Proposition 63, 2004, was projected to generate approximately \$254 million in taxes on wealthy Californians in the 2004-2005 fiscal year, \$683 million in 2005-06 fiscal year, and then increasing amounts in subsequent years. Furthermore, uncommitted funds during fiscal year 2005-06 were to be used to establish county reserve accounts as required by the MHSA. Those accounts were to be funded with revenue generated by the Act in subsequent years.

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<sup>1</sup> Cal. Proposition 63 (2004).

<sup>2</sup> Cal. Proposition 2 (2018).

<sup>3</sup> Current Bill Status of AB 1827, [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB1827](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1827) (Last visited Oct. 15, 2018) [“AB 1827”].

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Cal. Proposition 2 at § 6 (2018).

<sup>7</sup> AB 1827.

<sup>8</sup> Cal. Proposition 2 at § 6 (2018).

Proposition 63's new tax was to affect the wealthiest 0.1 percent of California's taxpayers. With the passage of Proposition 63, the group earning more than \$1 million experienced a change in tax rate from 9.3 percent to 10.3 percent on every dollar they made over \$1 million. The funds were to be used to transform the State's public mental health system, expand it, and revolutionize the existing system with a focus on promoting recovery-oriented programs.

The funds were intended to provide services that are not already covered by individuals' or families' insurance programs or by federally sponsored programs. Proposition 63 aimed to ensure that all funds are spent in the most cost-effective manner and services are provided following best recommended practices, with local and state oversight to ensure accountability. Results have not been very successful for the MHSA, and homelessness in California has increased significantly since 2004.<sup>9</sup>

### **B. AB-1827 (2018)**

On June 27, 2018, California Governor Jerry Brown signed AB-1827 and filed the law with the California Secretary of State.<sup>10</sup> Filing a bill with the Secretary allows it to take effect, and the filed bill becomes the official copy of the law.<sup>11</sup> AB-1827 authorized the California Health Facilities Financing Authority (CHFFA) to sell up to \$2 billion dollars in bonds to fund the No Place Like Home Program (NPLHP).

The text of AB-1827 comprises sections 1-7 of Proposition 2. In addition to the sale of bonds, AB-1827 gave the CHFFA the authority to enter into contracts to build housing, to establish accounts for the purposes of managing funds, and to use certain MHSA funds to help repay any bonds sold. AB-1827 reintroduces 2016 legislation that authorized up to \$140 million annually in surplus funds obtained by the MHSA to be used to repay the bonds sold to fund the NPLHP.

### **C. *Bernard v. CHFFA***

The legislature's 2016 attempt to authorize the bonds to fund NPLHP and repay them through the MHSA is mired in litigation.<sup>12</sup> In 2016, AB-1618 and AB-1628 authorized the CHFFA to distribute funds from the MHSA to the NPLHP to create permanent housing for individuals with mental illness who are homeless or at risk for chronic homelessness.

Attorney M.A. Bernard represented state mental hospitals outside of California before moving to Sacramento, and filed suit against the CHFFA, allegedly to ensure the money primarily provides help to the state's severely mentally ill residents.<sup>13</sup> Bernard points to a 2006

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<sup>9</sup> See CAL. DEPT. OF HEALTH CARE SVCS., MENTAL HEALTH SVCS. ACT (MHSA) BACKGROUND, available at [https://www.dhcs.ca.gov/services/mh/Pages/MH\\_Prop63.aspx](https://www.dhcs.ca.gov/services/mh/Pages/MH_Prop63.aspx) ["MHSA BACKGROUND"].

<sup>10</sup> AB 1827.

<sup>11</sup> See CAL. SEC'Y OF STATE, BILL CHAPTERS, available at <https://www.sos.ca.gov/administration/bill-chapters/> ["BILL CHAPTERS"].

<sup>12</sup> *Bernard v. CHFFA*, Superior Court of Cal. Cnty. Of Sacramento, Case No. 34-2016-00203224; Third Amended Complaint, available at <http://documents.latimes.com/third-amended-complaint/> ["*Bernard* TAC"].

<sup>13</sup> *Id.*

letter from the state attorney general's office that cast serious legal doubt on a prior proposal to spend mental health dollars on housing bonds.<sup>14</sup> The plan was later abandoned.<sup>15</sup>

Because the 2016 measures intended to spend mental health dollars on housing bonds, the lawsuit argues the mandates of AB-1618 and AB-1628 are potentially illegal on two grounds. First, the California Constitution typically requires voter approval for all general obligation bond measures.<sup>16</sup> Though categorized as a revenue bond measure, use of Proposition 63 necessarily attaches to the state's taxing power.<sup>17</sup> Second, the legislature generally may not amend a citizen initiative statute without going through the initiative process, and Proposition 63 didn't specify financing housing construction as one of the ways money could be spent.<sup>18</sup>

Proposition 2 properly puts the bond proposal before the voters, and properly amends a previous initiative through the initiative process. If passed, Proposition 2 would render any court decision in *Bernard v. CHFFA* moot. *Bernard's* challenge necessarily fails if voters authorize a bond measure through Proposition 2.

### III. LAW

#### A. Existing Law

The passage of Proposition 63 (now known as the Mental Health Services Act, or MHSA) in November 2004, allowed the California Department of Mental Health (DMH) to provide increased funding, personnel and other resources to support county mental health programs and monitor progress toward statewide goals for children, transition age youth, adults, older adults, and families. The Act imposed a 1 percent income tax on personal income in excess of \$1 million.

The aim of the MHSA was to expand mental health service availability statewide, with funding coming from the 1 percent tax on incomes above one million dollars. However, management of the funds has not been efficient. A recent State Auditor report highlighted areas of opportunity for the state to ensure that MHSA funds are used correctly.<sup>19</sup>

According to the audit, ineffective oversight from the California Department of Health Care Services allowed local mental health agencies to amass roughly \$225 million in unspent funds as of the end of fiscal year 2015-16.<sup>20</sup>

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<sup>14</sup> Bill Lockyer, *Securitization of Revenues from Proposition 63 (Mental Health Services Act) Through the California Housing Finance Agency Service Contracts*, State of Cal. Dept. of Justice, Feb. 8, 2006, [http://www.capradio.org/media/5981199/AttorneyGeneralOpinion\\_SecuritizationOfProposition63Funds.pdf](http://www.capradio.org/media/5981199/AttorneyGeneralOpinion_SecuritizationOfProposition63Funds.pdf).

<sup>15</sup> Liam Dillion, *\$2 Billion to Help California's Homeless Isn't Being Spent – and No One Knows When it Will Be*, *The Los Angeles Times*, Mar. 1, 2018, <http://www.latimes.com/politics/la-pol-ca-homeless-housing-bond-stalled-20180301-story.html>.

<sup>16</sup> Cal. Const. Art. XVI, § 1.

<sup>17</sup> *Bernard* TAC at 25.

<sup>18</sup> Cal. Const. Art. II § 10(c).

<sup>19</sup> See CAL. SEC'Y OF STATE, OFFICIAL VOTER INFORMATION GUIDE: CALIFORNIA GENERAL ELECTION, TUESDAY, NOVEMBER 6, 2018, at 18-21, available at <https://vig.cdn.sos.ca.gov/2018/general/pdf/complete-vig.pdf> [“NOVEMBER 2018 VOTER GUIDE”].

<sup>20</sup> See CAL. STATE AUDITOR, *Mental Health Services Act: The State Could Better Ensure the Effective Use of Mental Health Services Act Funding*, Report 2017-117, Feb. 2, 2018, available at <https://www.auditor.ca.gov/pdfs/reports/2017-117.pdf>.

Problems have plagued MHSA for years. In 2015, for instance, the nonpartisan Little Hoover Commission pointed out “the state still cannot definitively quantify who has been helped by Proposition 63 spending and how.”<sup>21</sup> A year and a half later, the commission reiterated calls for stronger oversight and better reporting.<sup>22</sup>

Proposition 2 would allow the DMH to use MHSA funds to develop permanent housing for individuals with mental illness who are homeless or at risk for chronic homelessness.

## **B. Proposed Law**

Proposition 2 amends the MHSA, formerly Proposition 63, 2004, to authorize transfers of up to \$140 million annually from the existing Mental Health Services Fund to the No Place Like Home Program (NPLHP), with no *new* taxes.<sup>23</sup>

In 2016, the Legislature created the NPLHP to build and rehabilitate housing for those with mental illness who are homeless or at-risk of becoming homeless. The state plans to pay for this housing by borrowing up to \$2 billion through the issuance of revenue bonds.<sup>24</sup>

Proposition 2 ratifies existing law establishing the NPLHP as being consistent with the MHSA, approved by the electorate as Proposition 63 in November, 2004. The NPLHP finances permanent housing for individuals with mental illness who are homeless or at risk for chronic homelessness.

Proposition 2 also authorizes the California Health Facilities Financing Authority (CHFFA) to issue up to \$2 billion in previously authorized bonds to finance the NPLHP.<sup>25</sup> The issuance of the bonds was previously authorized by California Government Code sections 15441 to 15450, sections which became law in 2015.<sup>26</sup>

The state would borrow this money by selling bonds, which would be repaid with interest over about 30 years using revenues from the MHSA. This means less funding would be available for other county mental health services, but the measure allegedly will not use any general fund tax revenue other than the tax revenue already authorized by Proposition 63.<sup>27</sup> No more than \$140 million of MHSA funds could be used for the NPLHP in any single year. The bond payments are projected be around \$120 million in a typical year.<sup>28</sup>

Proposition 2 accomplishes the following:

- Allows the Department of DMH to distribute MHSA funds to the NPLHP to develop permanent housing for individuals with mental illness who are homeless or at risk for chronic homelessness.

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<sup>21</sup> See Little Hoover Commission, *Promises Still to Keep: A Decade of the Mental Health Services Act*, Report 225, January, 2015, available at <https://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/225/Report225.pdf>.

<sup>22</sup> NOVEMBER 2018 VOTER GUIDE.

<sup>23</sup> *Id.*

<sup>24</sup> See CAL. SEC’Y OF STATE, OFFICIAL VOTER INFORMATION GUIDE: CALIFORNIA GENERAL ELECTION, TUESDAY, NOVEMBER 6, 2018, ANALYSIS BY THE LEGISLATIVE ANALYST, available at <http://voterguide.sos.ca.gov/propositions/2/analysis.htm> [“LAO PROPOSITION 2 ANALYSIS”].

<sup>25</sup> Cal Gov. Code § 15463.

<sup>26</sup> Cal Gov. Code §§ 15441-15450.

<sup>27</sup> AB 1827.

<sup>28</sup> LAO PROPOSITION 2 ANALYSIS.

- Allows the CHFFA to enter into one-year and multi-year contracts with developers and others for the purpose of constructing permanent housing for individuals with mental illness who are homeless or at risk for chronic homelessness.
- Creates a Supportive Housing Program Subaccount within the Mental Health Services Fund in which all general fund appropriations and MHSA funds will be collected and distributed for the purpose of constructing permanent housing for individuals with mental illness who are homeless or at risk for chronic homelessness.
- Provides for the issuance by the CHFFA of bonds in an amount not to exceed \$2 billion for the purposes of financing permanent supportive housing pursuant to the NPLHP and related purposes.
- Allows the California Legislature to appropriate up to \$140 million per year from the MHSA to fund the NPLHP's Supportive Housing Program Subaccount.

#### **IV. DRAFTING ISSUES**

##### **A. Legislative Amendment Clause**

Generally, a legislative amendment clause would only be notable in the context of a citizen initiative statute. The California Constitution prevents the California State Legislature from amending or repealing an approved initiative measure without submitting the change to voters. However, a ballot measure may include a clause waiving this protection.<sup>29</sup>

Here, Proposition 2 is a legislative statute, and certainly contains an amendment clause that provides the measure may be amended by a 2/3rds vote of the California Legislature.<sup>30</sup> Therefore, Proposition 2 may be amended by the legislature without submitting the change to the voters.

The provision of a legislative amendment clause could prevent litigation like *Bernard v. CHFFA*. Bernard alleges, in part, that the legislature may not amend Proposition 63 (2004) through legislative statute. Citizen initiatives generally require amendment through the initiative process unless the initiative contains a legislative amendment clause.

##### **B. California Urgency Legislation**

Pursuant to Article IV of the California Constitution, an urgency measure is a bill affecting the public peace, health, or safety, and requires a two-thirds vote for passage.<sup>31</sup> An urgency statute, which must be approved by a two-thirds majority vote in each house of the Legislature, can take effect immediately after it is signed by the Governor and chaptered into law.<sup>32</sup>

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<sup>29</sup> Cal. Const. Art. II § 10(c).

<sup>30</sup> AB 1827.

<sup>31</sup> STATE OF CAL. LEGISLATIVE COUNSEL, A GUIDE FOR ACCESSING CAL. LEGISLATIVE INFO ON THE INTERNET, available at <http://www.leginfo.ca.gov/guide.html#U> ["LEGISLATIVE COUNSEL GUIDE"].

<sup>32</sup> BILL CHAPTERS.

AB-1827, the bill that comprises sections 1-7 of Proposition 2 was passed as an urgency statute. According to AB-1827, the facts constituting the necessity are: “In order to expeditiously provide necessary funding for the No Place Like Home Program (NPLHP), so as to ensure the efficient and timely development of supportive housing, it is necessary that this act take effect immediately.”<sup>33</sup>

## V. CONSTITUTIONAL ISSUES

### A. Federal

There does not appear to be a legitimate federal constitutional basis to challenge Proposition 2.

### B. State

#### 1. Amendment by Initiative

The Legislature may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without the electors’ approval.<sup>34</sup> Because the California Health Facilities Financing Authority (CHFFA) seeks to redirect funds authorized for Proposition 63 (2004) to the No Place like Home Program (NPLHP), the electors’ approval is likely required.

Proposition 2 properly amends Proposition 63 (2004) through the initiative process, and submits the decision whether to amend Proposition 63 to the electors. Further, Proposition 2 negates the challenge to the constitutionality of redirecting Proposition 63 to the NPLHP brought in *Bernard v. CHFFA* because amendment of initiatives by initiatives is constitutional.

#### 2. General Obligation Bonds versus Revenue Bonds

In California, multiple constitutional restrictions apply to revenue raising measure and public debt, primarily limiting obligations against the general fund or taxing power. The California State Constitution prevents the state from going into more than \$300,000.00 of debt except for specific purposes or in the case of war.<sup>35</sup> Both voter approval *and* a two-thirds vote of the legislature are required in order to exceed this limit.<sup>36</sup>

However, California often issues bonds that do not need to meet those requirements. Revenue bonds, generally funded by user fees, pay for themselves without tax revenue and are thus not subject to revenue raising requirements. AB-1827 categorizes the bonds funding the NPLHP as revenue bonds, as did AB-1618/1628.

The up to \$2 billion in bonds at issue are the bonds initially authorized by AB-1618/1628 (2016); these are the bonds challenged in the *Bernard v. CHFFA* case. Because the statutory scheme authorizing the NPLHP proposes to repay the bonds with Mental Health Services Act

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<sup>33</sup> AB 1827.

<sup>34</sup> Cal. Const. Art. II § 10(c).

<sup>35</sup> Cal. Const. Art. XVI, § 1.

<sup>36</sup> *Id.*



(MHSA) funds pursuant to Proposition 63, the bonds necessarily attach obligations to the state's *taxing power*. Bernard alleges that the bonds are therefore general obligation bonds, *not* revenue bonds. Bernard's challenge may very well succeed.

Proposition 2 rectifies the constitutional defects present in AB-1618/1628 (2016). First, AB-1827 became law as urgency legislation, and thus the NPLHP statutory scheme, including the issuance of bonds, has met the two-thirds vote requirement.<sup>37</sup> Second, even if the \$2 billion in bonds attach obligations to the state's taxing power and are categorized as general obligation bonds, Proposition 2 properly puts approval of the bonds before the people of California.

### 3. *Single Subject Rule*

The single subject rule requires that any measure presented to voters contain only provisions that are "reasonably germane to a common theme or purpose."<sup>38</sup> Indeed, even extensive reform in a particular area of public concern does not violate the single subject rule where a comprehensive package of provisions have a common sense relationship, and its various components are in furtherance of a common purpose.<sup>39</sup>

Proposition 2 is unlikely to be challenged on single subject rule grounds. While the measure makes significant changes to the California Welfare and Institutions Code, the purpose of those changes is to provide housing for the homeless. Because housing is a key factor for stabilization and recovery from mental illness and results in improved outcomes for individuals living with a mental illness, Proposition 2 finances the acquisition, design, construction, rehabilitation, or preservation of permanent supportive housing for individuals living with a severe mental illness who are homeless or at risk of chronic homelessness.<sup>40</sup>

It is likely that the changes to the California Welfare and Institutions Code contemplated by Proposition 2 are part of a comprehensive package of provisions that have a common sense relationship, and its various components are in furtherance of a common purpose.<sup>41</sup> Thus, Proposition 2 would likely easily survive a single subject rule challenge.

### 4. *Bernard v. CHFFA*

As illustrated by the *Bernard* case, California courts have not yet ruled on the constitutionality of redirecting funds compiled pursuant to Proposition 63 (2004) to the NPLHP. Further, because initiative statutes must generally be amended through initiative statute, the attempt by the legislature to amend Proposition 63 through AB-1618/1628 (2016) likely violates the California Constitution.

The court is likely to find that Proposition 63 must be amended through the initiative process. Additionally, the redirection of the bonds may require voter approval. Thus, Proposition 2 provides a constitutional vehicle to release the \$2 billion in bonds authorized by AB-1827 to the NPLHP, and to redirect Proposition 63 funds for Proposition 2 purposes.

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<sup>37</sup> LEGISLATIVE COUNSEL GUIDE.

<sup>38</sup> *Senate v. Jones*, 21 Cal. 4th 1142, 1158 (1999).

<sup>39</sup> *Id.* at 1167.

<sup>40</sup> AB 1827.

<sup>41</sup> *Jones*, 21 Cal. 4th 1142 at 1167.

If proposition 2 passes, any decision by the court in the *Bernard* case will essentially be rendered moot. However, if Proposition 2 does not pass, the court’s decision in the *Bernard* case would become dispositive. If the court approves the state’s plan, the state will go forward with the NPLHP. If the court rejects the state’s plan, the state may not go forward with the NPLHP.<sup>42</sup>

## **VI. POLICY CONSIDERATIONS**

Proposition 2 is a major change to the Mental Health Services Act previously enacted by Proposition 63.<sup>43</sup> Many have reported on the issues surrounding the implementation of the MHSA.<sup>44</sup>

### **A. Proposition 2 Proponents**

The proponents for Proposition 2 listed three major reasons to support this initiative.

#### *1. Arguments*

This initiative will build 20,000 permanent supportive housing units under the “No Place Like Home” Program. California contains one quarter of the nation’s homeless population. “As of 2017, California had about 134,000 homeless people, up nearly 14 percent from the prior year, according to a U.S. Housing and Urban Development Department report. And California accounted for almost half of country’s unsheltered population during 2017.”<sup>45</sup> Access to safe housing is important for rehabilitation and recovery, as well as regular treatment and healthcare.

This initiative strengthens support networks between healthcare and other organizations for the welfare of homeless people. It is crucial that not only do people have a safe place to live, but easy access to crucial healthcare facilities and other resources they need. Proponents argue that the initiative “will help establish and strengthen partnerships between doctors, law enforcement, mental health and homeless service providers to help ensure care is coordinated and tailored to meet the needs of each person suffering from mental health illness and homelessness, or who is at great risk of becoming homeless.”<sup>46</sup>

This initiative does not increase taxes. The money comes from Proposition 2 designated funds, which already passed. Proposition 63 was created to fund mental health programs, and using some of those funds to build housing for the homeless with mental health issues would meet the goals of Proposition 63.<sup>47</sup>

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<sup>42</sup> LAO PROPOSITION 2 ANALYSIS.

<sup>43</sup> Thomas Curwen, *With an Epidemic of Mental Illness on the Streets, Counties Struggle to Spend Huge Cash Reserves*, *The Los Angeles Times*, Aug. 19, 2018, <http://www.latimes.com/local/california/la-me-mhsa-unspent-balance-20180819-story.html>.

<sup>44</sup> David Siders, *Report Rips California’s Oversight of Mental Health Initiative*, *The Sacramento Bee*, Jan. 27, 2015, <https://www.sacbee.com/news/politics-government/capitol-alert/article8327628.html>.

<sup>45</sup> Jeff Daniels, *As California’s Homelessness Grows, the Crisis Emerges as a Major Issue in State’s Gubernatorial Race*, *CNBC Politics*, May 20, 2018, <https://www.cnn.com/2018/05/19/californias-homelessness-crisis-a-major-issue-in-governors-race.html>.

<sup>46</sup> NOVEMBER 2018 VOTER GUIDE.

<sup>47</sup> *Id.*

## 2. Organizations

- Affordable Housing Now, a Coalition of Housing California, California Housing Consortium, State Building and Construction Trades Council of California and Silicon Valley Leadership Group. Total contributions: \$2,066,900.00
- Chan Zuckerberg Advocacy. Total Contributions: \$250,000.00
- Members' Voice of the State Building and Construction Trades Council of California. Total Contributions: \$150,000.00<sup>48</sup>

### **B. Proposition 2 Opponents**

The official argument against the initiative was written by the National Alliance on Mental Illness (NAMI) Contra Costa, and they list four major points in their argument.

#### 1. Arguments

Proposition 63 already exists, and was ratified by California voters, negating the need for Proposition 2. Further, Proposition 63 is unnecessary, because the Legislature authorized counties to pay for housing for their severely mentally ill Prop 63 clients in 2017, in AB 727.<sup>49</sup>

Opponents claim the initiative will cost \$5.6 billion dollars in total for \$2 billion dollars of funding, so it will result in more debt for government.<sup>50</sup>

According to the opposition, a lot of the money goes towards administrative and construction cost. “Housing bureaucrats have already guaranteed themselves \$100 million (5% of the \$2 Billion), admittedly far more than needed to run the program, and have also agreed between themselves to take the entire \$140 million yearly as “administrative expenses,” whether or not they need that amount to pay off the bonds.”<sup>51</sup>

Systemic legal barriers still exist, like zoning laws. Opponents argue that even if there are funds for low-income, affordable housing, it takes a lot more bureaucratic work to get building plans and approved. Other local and state regulations such as ones for zoning rights must be cleared before anything can be built.<sup>52</sup>

#### 2. Organizations

The National Alliance for Mental Illness (NAMI), Contra Costa County is the primary organization opposing the measure. Otherwise, organizational opposition to Proposition 2 is scarce.

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<sup>48</sup> California Proposition 2, Use Millionaire’s Tax Revenue for Homelessness Prevention Housing Bonds Measure Initiative (2018), BALLOTPEDIA, [https://ballotpedia.org/California\\_Proposition\\_2\\_Use\\_Millionaire%27s\\_Tax\\_Revenue\\_for\\_Homelessness\\_Prevention\\_Housing\\_Bonds\\_Measure\\_\(2018\)](https://ballotpedia.org/California_Proposition_2_Use_Millionaire%27s_Tax_Revenue_for_Homelessness_Prevention_Housing_Bonds_Measure_(2018)) (Last visited Oct. 15, 2018) [“Proposition 2 Ballotpedia”].

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> NOVEMBER 2018 VOTER GUIDE.

<sup>52</sup> *Id.*

### C. Fiscal Impact

This initiative allows the state to use up to \$140 million per year of county mental health funds to repay up to \$2 billion in bonds. The projected annual payment on the bonds is roughly \$120 million, meaning that the MHSA will lose roughly \$120-\$140 million in annual funds that could otherwise be spent on services for the mentally ill.<sup>53</sup>

No more than \$140 million of Mental Health Services Act funds could be used for No Place Like Home in any year. The measure also allows the state to sell up to \$2 billion in bonds to pay for No Place Like Home. The bonds would be repaid over many years with Mental Health Services Act funds.

Because the measure allegedly does not raise taxes, it will have little fiscal impact on most Californians. However, the authorization of \$2 billion in bond sales means that California will lose money over time in interest payments. Because \$2 billion is a very substantial amount, interest payments would also likely be very substantial.

Further, the fiscal impact largely depends on the outcome of the *Bernard v. CHFFA* case; whether or not the courts would have approved the state's plan to pay for No Place Like Home. "If the courts would have approved the state's plan, the measure would have little effect. This is because the state would have gone forward with No Place Like Home in any case. If the courts would have rejected the state's plan, the state would not have been able to move forward with No Place Like Home. This measure would allow the state to do so."<sup>54</sup>

## VII. CONCLUSION

Proposition 2 was carefully and specifically crafted to ensure the NPLHP passes constitutional muster. Proposition 2 seeks to rectify the constitutional issues plaguing the adoption of the NPLHP, as illustrated by *Bernard v. CHFFA*. Proposition 2 both properly amends Proposition 63 (2004) through the initiative process, and properly puts a measure that attaches obligations to the state's taxing power before electors. Proposition 2 would allow the CHFFA to fund the NPLHP through the sale of \$2 billion in bonds, to be repaid, in part, with funds collected under the MHSA.

A YES vote supports allowing the state to spend MHSA revenue from Proposition 63 to help repay the \$2 billion in bonds authorized to fund the NLHP.<sup>55</sup> A YES vote codifies AB-1827, releasing the \$2 billion in bonds to fund the NPLHP.<sup>56</sup>

A NO vote opposes allowing the state to spend MHSA revenue from Proposition 63 to help repay the \$2 billion in bonds authorized to fund the NLHP.<sup>57</sup> A NO vote asks the court to decide if the legislature may constitutionally apportion funds from Proposition 63 to fund AB-1827.

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<sup>53</sup> LAO PROPOSITION 2 ANALYSIS.

<sup>54</sup> *Id.*

<sup>55</sup> Cal. Proposition 2 at § 6 (2018).

<sup>56</sup> AB 1827.

<sup>57</sup> Cal. Proposition 2 at § 6 (2018).