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Proposition 56:

Cigarette Tax to Fund Healthcare, Tobacco Use Prevention, Research, and Law Enforcement

Initiative Constitutional Amendment and Statute

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I. EXECUTIVE SUMMARY

The most commonly cited purpose of tobacco control law in California is for the reduction on tobacco consumption because of the direct and indirect costs, including healthcare costs and “smoking-caused productivity losses.”¹ A University of California, San Francisco (“UCSF”) study found that the economic burden of smoking in California amounted to \$18.1 billion in 2009. Furthermore, the study states that tobacco control in California has resulted in fewer smoking-related deaths and lower smoking-related costs and rates.² Currently, in California, cigarette smoking is the most common way to use tobacco.³ Other tobacco products can be consumed through smoking (like cigars) or other forms of ingestion, such as chewing tobacco.⁴ Through existing and recently passed state laws, California’s tobacco control laws are meant to further reduce tobacco consumption, which has slowed compared to the national rates.⁵

Proposition 56 is an initiative constitutional amendment and statute.⁶ It will increase taxes on a pack of cigarettes and other tobacco products. In addition, it will introduce an excise tax on electronic-cigarettes, which have only been subject to sales tax. The proposition will increase funding for healthcare programs to treat tobacco-related research, diseases, cancers, and conditions.⁷ These tobacco-related health issues cost Californians more than \$13.29 billion in healthcare each year (there is also a loss in productivity of about \$10.35 billion annually).⁸

Voting “yes” on Proposition 56 means the tax on a pack of cigarette and other tobacco products will increase by an additional \$2 and it imposes a new tax on electronic-cigarettes. The revenue from the tax would be spent on healthcare programs, tobacco control and prevention, law enforcement, UC physician training.

Voting “no” on Proposition 56 means there will be no new excise tax increases for a pack of cigarettes or other tobacco products.

¹ ELIZABETH COX, RACHEL BARRY, STANTON A. GLANTZ, RICHARD L. BARNES, CENTER FOR TOBACCO CONTROL RESEARCH AND EDUCATION UC SAN FRANCISCO, *Tobacco Control in California, 2007–2014: A Resurgent Tobacco Industry While Inflation Erodes the California Tobacco Control Program*, TOBACCO CONTROL POLICY MAKING: UNITED STATES, (Oct. 24, 2014) at 17, available at <http://escholarship.org/uc/item/4jj1v7tv> (on file with the *California Initiative Review*).

² *Id.*

³ CAL. SEC’Y OF STATE, OFFICIAL VOTER INFORMATION GUIDE: CALIFORNIA GENERAL ELECTION, TUESDAY NOVEMBER 8, 2016, at 46, available at <http://voterguide.sos.ca.gov/pdf/complete-vig.pdf> [“NOVEMBER 2016 VOTER GUIDE”] (on file with the *California Initiative Review*).

⁴ *Id.*

⁵ Cox et al, *supra* note 1, at 15.

⁶ NOVEMBER 2016 VOTER GUIDE, *supra* note 3, at 46.

⁷ Cal. Proposition 56, § 1(d) (2016).

⁸ *Id.*

II. BACKGROUND

A. Existing Tobacco Tax Laws

California state tobacco tax laws are excise taxes on cigarettes and other tobacco products. Excise taxes are levied on the distributors, and the extra costs are passed onto the purchasers as higher prices.⁹ The current excise tax is \$0.87 per cigarette pack.¹⁰ Existing law requires the Board of Equalization to set the tax for other tobacco products (i.e., cigars or chewing tobacco) at a rate equivalent to the tax per cigarette pack.¹¹ Moreover, the excise tax on cigarettes and tobacco products are comprised of taxes passed through the State Legislature and the initiative process.

In addition to the state excise tax, cigarettes and other tobacco products are subject to a federal excise tax¹² and local sales tax.¹³ The federal excise tax on cigarettes is \$1.01.¹⁴ Local sales taxes are based on retail prices of the products and vary according to city and county.¹⁵ Moreover, while e-cigarettes are not subject to federal or state excise taxes, they are currently subject to local city and county sales taxes.¹⁶ The state excise tax, the federal excise tax, and the local sales tax altogether make the price of an average pack of cigarettes about \$6.00.¹⁷

1. California Legislature Enacted Laws

The California Legislature has only enacted two cigarette taxes in the past 57 years. The first, enacted in 1959, was a \$0.10 tax per cigarette pack.¹⁸ The revenue from this tax allocates proceeds to the State General Fund, which supports the state budget.¹⁹ Second, the legislature enacted a \$0.02 tax per cigarette pack in 1993.²⁰ The revenue from the 1993 tax is allocated into the Breast Cancer Fund and used for funding breast cancer related research and services.²¹

⁹ CAL. REV. & TAX. CODE §§ 30101, 30462; CAL. REV. & TAX. CODE §§ 30101, 30461.6; CAL. REV. & TAX. CODE §§ 30122, 30123; CAL. REV. & TAX. CODE §§ 30131.2, 30131.3; *see also* LEGISLATIVE ANALYST OFFICE, Proposition 56 (2016), at 1.

¹⁰ *Id.*

¹¹ *Id.*

¹² Children's Health Insurance Program Reauthorization Act of 2009, 42 U.S.C. § 701 (2009).

¹³ LEGISLATIVE ANALYST OFFICE, *supra* note 9, at 4.

¹⁴ 42 U.S.C. § 701 (2009).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ LEGISLATIVE ANALYST OFFICE, *supra* note 9, at 4.

¹⁸ CAL. REV. & TAX. CODE §§ 30101, 30462.

¹⁹ *Id.*

²⁰ CAL. REV. & TAX. CODE §§ 30101, 30461.6

²¹ *Id.*

2. *Proposition 99*

Proposition 99 was an initiative on the 1988 ballot that imposed a tax of \$0.25 per cigarette pack and on other tobacco products.²² The revenue from this tax gets allocated into the Cigarette and Tobacco Products Surtax Fund.²³ This fund supports tobacco education, tobacco prevention efforts, tobacco-related programs, tobacco-related healthcare services, environmental protection, and recreational resources.²⁴

3. *Proposition 10*

Proposition 10 was an initiative on the 1998 ballot.²⁵ It imposed a \$0.50 tax per cigarette pack and on other tobacco products.²⁶ The revenue from this tax is allocated into an established California Children and Family Trust Fund Account.²⁷ The stated purpose of the initiative was to reduce tobacco use, especially among teenagers.²⁸ Therefore, the initiative established a fund to support early childhood development programs.²⁹ This tax was added to the 1959 and 1993 legislature enacted taxes and the 1988 initiative enacted tax.³⁰ Thus, this initiative established the current tobacco excise tax of \$0.87.³¹

Furthermore, Proposition 10 established a higher tax for other tobacco products.³² Proposition 10 imposes an additional \$0.50 on top of the \$0.50 increase on the tax per cigarette pack for other tobacco products.³³ Therefore, while the excise tax per cigarette pack is an additional \$0.50, the total increase in excise tax on other tobacco products is an additional \$1.00. Proposition 10 established the current state excise taxes on a pack of cigarettes at \$0.87 and on other tobacco products at \$1.37.³⁴

4. *Existing Federal Tobacco Taxes*

In addition to state tobacco tax laws, there is a federal excise tax on cigarettes and other tobacco products.³⁵ On April 1, 2009, the federal tax on cigarettes and other tobacco products was raised from \$0.39 to \$1.01 as a result of the Children's Health Insurance Program

²² CAL. REV. & TAX. CODE §§ 30122, 30123.

²³ *Id.*

²⁴ *Id.*

²⁵ CAL. REV. & TAX. CODE §§ 30131.2, 30131.3.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ LEGISLATIVE ANALYST OFFICE, *supra* note 9, at 4.

³⁴ *Id.*

³⁵ *Id.*

Reauthorization Act of 2009.³⁶ The current federal excise tax of a pack of cigarettes is \$1.01 per pack.³⁷ There is an equivalent \$1.01 excise tax on other tobacco products.³⁸ E-cigarettes are not subject to this federal excise tax.³⁹

Federal excise tax on cigarettes does not preempt state excise tax on cigarettes – the federal excise tax is in addition to the state excise tax on cigarettes.⁴⁰ Federal preemption is when the federal government occupies a field and supersedes any lower level government that regulates the area.⁴¹ While the federal government does legislate in the area of tobacco taxes, federal preemption does not apply in the area of cigarette taxes because the Family Smoking Prevention and Tobacco Control Act of 2009 (“Tobacco Control Act”) specifically states that state and local entities have the authority to enact stricter tobacco sales and distribution regulations than the Tobacco Control Act provides.⁴²

5. Sales Tax

Along with the imposed state excise and federal excise taxes, cigarettes and other tobacco products are also subject to local city and county sales tax.⁴³ Sales tax is based on the retail price of the product.⁴⁴ Therefore, it varies depending on the city and county, and ranges from 7.5 percent to 10 percent in California.⁴⁵ The statewide sales tax average is 8 percent, and it adds about 50 to 60 cents to the total cost of a pack of cigarettes – about \$6 per pack.⁴⁶

Moreover, while cigarettes and other tobacco products are subject to excise and sales taxes, electronic-cigarettes have only been subject to sales tax.⁴⁷ Currently, the only tax imposed on e-cigarettes is local sales tax.⁴⁸

³⁶ 42 U.S.C. § 701 (2009); *see also* TOBACCO FREE KIDS, *Federal Tobacco Taxes*, http://www.tobaccofreekids.org/what_we_do/federal_issues/federal_tobacco_taxes/ (last visited Oct. 6, 2016) (on file with the *California Initiative Review*).

³⁷ *Id.*

³⁸ *Id.*

³⁹ 26 U.S.C. §§ 5701, 5702; *see also* UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, ELECTRONIC CIGARETTES: EFFECT ON FEDERAL EXCISE TAXES COLLECTED ON TRADITIONAL CIGARETTES IS NOT CURRENTLY EVIDENT (SEPT. 2015) at 10, *available at* <http://www.gao.gov/assets/680/672467.pdf> (on file with the *California Initiative Review*).

⁴⁰ Family Smoking Prevention and Tobacco Control Act of 2009, 21 U.S.C. § 387 (2009) [“Tobacco Control Act”]; *see also* TOBACCO CONTROL LEGAL CONSORTIUM, *Preemption: The Biggest Challenge to Tobacco Control*, PUBLIC HEALTH LAW CENTER, at 1, <http://publichealthlawcenter.org/sites/default/files/resources/tclc-fs-preemption-tobacco-control-challenge-2014.pdf> (on file with the *California Initiative Review*).

⁴¹ TOBACCO CONTROL LEGAL CONSORTIUM, *supra* note 40, at 1.

⁴² Tobacco Control Act, 21 U.S.C. § 387(a)(2)(B); *see also* TOBACCO CONTROL LEGAL CONSORTIUM, *supra* note 40, at 1–2.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ LEGISLATIVE ANALYST OFFICE, *supra* note 9, at 4.

⁴⁷ *Id.*

⁴⁸ *Id.*

B. Legal Challenges to Proposition 99 and Proposition 10

Despite legal challenges, California courts have upheld the initiatives that raise the tobacco tax and allocate the revenue from the tax to various funds. The legal challenges to date have been based on constitutional arguments that looked at the single-subject rule, revision to the California constitution, and separation of powers issues. These cases provide precedent regarding how the courts might address future challenges to additional taxes on tobacco products. Proposition 56 is modeled on Propositions 99 and 10, as it proposes a state excise tax increase that will be allocated into a special fund and with revenues used for tobacco-related purposes, such as healthcare costs, tobacco prevention and control, and research. As the following cases show, constitutional challenges to tobacco tax initiatives have not been successful in California courts. The courts have upheld the use of the funds for various tobacco-related activities and the power of voters to increase the tax on cigarettes and tobacco products through the initiative process.

1. *Kennedy Wholesale, Inc. v. State Board of Equalization*⁴⁹

In *Kennedy Wholesale Inc.*, a distributor of tobacco products brought an action against the California State Board of Equalization challenging the constitutionality of Proposition 99, an initiative imposing a \$0.25 tax per pack of cigarettes and on other tobacco products.⁵⁰ The distributor made two arguments: (1) the initiative violated article XIII, section 3 of the California Constitution, which states that state taxes must be enacted through a two-thirds vote of the Legislature; and (2) the initiative violated the single-subject rule.⁵¹ The California Supreme Court rejected both contentions.

a. *Tax Statutes*

First, the California Supreme Court found the plaintiff's argument that only the Legislature can impose taxes as one that sought to limit the initiative power.⁵² In addition, the plaintiffs wanted the court to apply the requirement of a two-thirds vote for tax statutes to also apply to initiative statutes.⁵³ The court declined this interpretation because it conflicts with article II, Section 10 of the California Constitution, which provides for passing an initiative statute with only a majority vote.⁵⁴ The Court declined the plaintiff's interpretations, and instead harmonized the two provisions in favor of the "one of the most precious rights of our democratic process" – the initiative process.⁵⁵ The California Supreme Court reasoned that when there is ambiguity over how to interpret statutory language and initiative language, it favors initiative provisions over the statutory provision because the initiative indicates the voters' intent.⁵⁶

⁴⁹ *Kennedy Wholesale, Inc. v. State Board of Equalization*, 52 Cal. 3d 245 (1991).

⁵⁰ *Id.* at 248.

⁵¹ *Id.* at 245, 253–54.

⁵² *Id.* at 250.

⁵³ *Id.* at 251.

⁵⁴ *Id.*

⁵⁵ *Id.* at 250.

⁵⁶ *Id.*

b. Single-Subject Rule

Moreover, the California Supreme Court also rejected the plaintiff’s argument that Proposition 99 violated the single-subject rule, which states that initiatives may not contain more than one subject.⁵⁷ The plaintiff argued that Proposition 99 “logrolls” and “exploit[s] the initiative process” by combining multiple and “disparate” interests in the funding and spending provisions.⁵⁸ The initiative imposed a tobacco tax and directed the revenue into a fund that supports anti-smoking efforts, the environment, and medical services.⁵⁹

The court disagreed with the plaintiff and stated that Proposition 99 satisfied the single-subject rule because the tax on tobacco products and the use of the tax were allocated for tobacco-related programs and activities.⁶⁰ The court stated the single-subject rule does not require a showing that each provision of an initiative needs to be independently approved.⁶¹ Instead, it is natural for voters to object to some parts, while they still approve the measure.⁶² Thus, the California Supreme Court did not find the plaintiff’s single-subject violation argument convincing because despite the various programs and uses for the tobacco tax revenue, its provisions were reasonably related to one another.

*2. California Association of Retail Tobacconists v. State of California*⁶³

The California Association of Tobacco Retailers (“Association”) brought an action against the California State Board of Equalization, challenging the constitutionality of Proposition 10.⁶⁴ The Association had several constitutional challenges to the initiative, including the single-subject rule and a claim that Proposition 10 was a revision of the California Constitution.⁶⁵

a. Single-Subject Rule

The court looked at the single-subject limitation challenge, and held that the initiative did not violate the rule. Article II, Section 8(d) of the California Constitution sets forth the single-subject rule, which limits initiatives to only address one topic for the voters to consider in order to avoid confusion.⁶⁶ The Association contended that Proposition 10 addressed separate subjects of tobacco consumption and childhood development.⁶⁷

⁵⁷ *Id.* at 253.

⁵⁸ *Id.* at 255.

⁵⁹ *Id.*

⁶⁰ *Id.* at 254.

⁶¹ *Id.* at 255.

⁶² *Id.*

⁶³ *California Ass’n of Retail Tobacconists v. State Board of Equalization*, 109 Cal. App. 4th 792 (4th Dist. 2003).

⁶⁴ *Id.* at 792.

⁶⁵ *Id.* at 802–03.

⁶⁶ *Id.* at 808.

⁶⁷ *Id.*

However, the court found the initiative did not violate the single-subject rule because the stated purposes of Proposition 10 were related – reducing teenage tobacco consumption and promoting, supporting, and optimizing childhood development programs and services to prevent tobacco-related effects at an early age.⁶⁸ The court relied on the California Supreme Court’s decision in *Senate of the State of California v. Jones*,⁶⁹ which stated that an initiative does not violate the single-subject rule if all of the parts are “reasonably germane” to each other.⁷⁰ The parts do not need to be strictly related – the provisions need to only have a reasonably related common theme or purpose.⁷¹ The court rejected the Association’s argument and found that the components of the Proposition 10 had a common purpose to improve health and reduce tobacco consumption among the younger demographic because the revenue from the tobacco tax is deposited into a fund that is largely meant to address tobacco-related objectives.⁷²

b. Revision of the California Constitution

The Association challenged the initiative as one that revises the California Constitution instead of amending it, violating Article XVIII, Sections 1 and 2.⁷³ An initiative revises the California Constitution when it “necessarily or inevitably appear[s] from the face of the challenged provision that the measure will substantially alter the basic governmental framework set forth in the Constitution.”⁷⁴ The Association argued that the Proposition 10 removed legislative power from the Legislature.⁷⁵ The court rejected the argument that the initiative is a revision because it found the people can exercise their legislative power through the initiative process to appropriate tobacco tax revenue for specified purposes, and therefore, was not an improper removal or transfer of power from the Legislature.⁷⁶

C. Recently Passed Tobacco Control Legislation

The California Legislature recently passed a number of new tobacco control legislation, and the Governor approved the new legislation this past May 2016. While none addressed the tobacco tax, the new state legislation expanded regulation on smoking, tobacco products, and the largely unregulated e-cigarettes. Moreover, the new legislation may have an impact on tobacco consumption because the provisions affect cigarette, tobacco products, or electronic-cigarette purchases.

⁶⁸ *Id.* at 810.

⁶⁹ *Senate of the State of California v. Jones*, 21 Cal. 4th. 1142, 1157 (2d Dist. 1999).

⁷⁰ *California Ass’n of Retail Tobacconists*, 109 Cal. App. 4th at 810.

⁷¹ *Id.* at 809.

⁷² *Id.* at 809–13.

⁷³ *Id.*

⁷⁴ *Id.* at 834.

⁷⁵ *Id.*

⁷⁶ *Id.* at 834–36.

1. *AB2X-7*

AB2X-7 prohibits smoking of tobacco product in all enclosed spaces of employment.⁷⁷ “Enclosed spaces” includes covered parking lots, lobbies, lounges, waiting areas, elevators, stairwells, and restrooms.⁷⁸ A place of employment now includes an “owner-operated business,” which is an employment site where the owner-operator of the business is the sole worker.⁷⁹ Unless exempted under the specified situations of the law, this new legislation mostly prohibits employee smoking in the workplace.⁸⁰

2. *AB2X-9*

AB2X-9 expands the eligibility for tobacco-related funding to include charter schools.⁸¹ Existing law requires that the State Department of Education provide funding for county offices of education.⁸² The funds are used for prevention, intervention, and cessation programs in school districts and now charter schools.⁸³ In addition, the law requires all school districts, charter schools, and county offices that receive funding from the tobacco use prevention program to enforce a tobacco-free campus.⁸⁴

3. *AB2X-11*

AB2X-11 raises licensing fees on cigarette and tobacco products manufacturers, importers, distributors, wholesalers, and retailers.⁸⁵ In addition, the new law requires retailers to have a separate license for each retail location.⁸⁶ This new legislation raises the licensing fees set forth in the Cigarette and Tobacco Products Licensing Act of 2003, from \$1,000 to \$1,200.⁸⁷

4. *SB2X-5*

SB2X-5 expands on existing law, the Stop the Tobacco Access to Kids Enforcement (STAKE) by defining the term “smoking” and including electronic devices, like e-cigarettes, in the definition of “tobacco products.”⁸⁸ The legislation also applies the expanded definition of “tobacco products” to other existing laws that regulate them, such as laws on licenses, licensing fees, and smoking areas.⁸⁹ Because the bill only specifies that the expanded definition of

⁷⁷ AB 7, 2016 Leg., 2015–2016 Reg. Sess. (Cal. 2016).

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ AB 9, 2016 Leg., 2015–2016 Reg. Sess. (Cal. 2016).

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ AB 11, 2016 Leg., 2015–2016 Reg. Sess. (Cal. 2016).

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ SB 5, 2016 Leg., 2015–2016 Reg. Sess. (Cal. 2016).

⁸⁹ *Id.*

“tobacco products” applies to licenses, licensing fees, and smoking areas, the bill did not impose an excise tax on electronic-cigarettes, which are still only subject to sales taxes.

5. SB2X-7

SB2X-7 raises the minimum age to purchase tobacco products from 18 years old to 21 years old.⁹⁰ The law prohibits any person, firm, or corporation that “sells, gives, or in any way furnishes” cigarette, tobacco, cigarette papers, or any instrument or paraphernalia meant for smoking or ingesting tobacco to any person who is under the age of 21.⁹¹ Electronic devices, such as electronic cigarettes also cannot be purchased by individuals under 21 years old.⁹²

6. *New Federal Regulation of All Tobacco Products and E-Cigarettes*

In May 2016, the Food and Drug Administration (“FDA”) issued new rules that extend its regulatory authority to all tobacco products, including e-cigarettes.⁹³ The FDA already has regulatory authority over the manufacturing, distribution, and marketing of cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco products.⁹⁴ This new rule now regulates all tobacco products, which include electronic cigarettes, cigars, hookah, pipe tobacco, nicotine gels, and any future product that falls under the statutory definition of “tobacco product” in the Federal Food, Drug, and Cosmetic Act.⁹⁵ In addition to regulating manufacturers and retailers, the new rule also restricts access and purchases of all tobacco products and e-cigarettes to those who are at least 18 years of age (requiring photo identification) and prevents tobacco products from being sold in vending machines.⁹⁶ The stated purposes of the new rule are to protect Americans from the threat of tobacco-related health issues and prevent youth from starting to use these products.⁹⁷

D. Failed State Tobacco Control Legislation in California

In the past ten years, less than ten pieces of tobacco control legislation and no tobacco tax increases have passed the California Legislature.⁹⁸ While some tobacco laws were passed, they had little practical effect because the policies merely allowed universities, housing property owners, and state mental facilities to enact smoke-free policies, which was “something they

⁹⁰ SB 7, 2016 Leg., 2015–2016 Reg. Sess. (Cal. 2016).

⁹¹ *Id.*

⁹² *Id.*

⁹³ Sabrina Tavernise, F.D.A. *Imposes Rules for E-Cigarettes in a Landmark Move*, NEW YORK TIMES (May 5, 2016), <http://www.nytimes.com/2016/05/06/science/fda-rules-electronic-cigarettes.html> (last visited Oct. 6, 2016) (on file with the *California Initiative Review*).

⁹⁴ FOOD & DRUG ADMINISTRATION, *The Facts on the FDA’s New Tobacco Rule*, <http://www.fda.gov/downloads/ForConsumers/ConsumerUpdates/UCM507132.pdf> (last visited Oct. 6, 2016) (on file with the *California Initiative Review*).

⁹⁵ *Id.*; see also 21 C.F.R. §§ 1100, 1140, 1143 (2016).

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ COX, *supra* note 1, at 61.

could [already] do without the law.”⁹⁹ Furthermore, there has been a rise in electronic-cigarettes in recent years, but only one 2010 law, which prohibits the sale to minors (must be at least 18 years old to purchase), has been enacted.¹⁰⁰ In addition, the eight attempts to increase the cigarette excise tax in the past nine years died in the Legislature.¹⁰¹

Most tobacco control legislation, including tobacco tax increases, fail in the Legislature as a result of the tobacco industry’s lobbying contributions.¹⁰² Because of the tobacco industry’s influence in the Legislature, tobacco control advocates look to other avenues for support of cigarette and other tobacco products tax increases.¹⁰³ The alternative tends to be the initiative process.¹⁰⁴

1. *California Tobacco Control Legislation from 2007 to 2013*

Tobacco control legislation has not been very successful.¹⁰⁵ While many bills have been introduced, few have actually been passed.¹⁰⁶ A study from UCSF provides data of success rates of tobacco control legislation in California.¹⁰⁷ The report found that between 2007 and 2014 forty-nine tobacco control bills were introduced in the California Legislature.¹⁰⁸ Of the forty-nine bills proposed, which dealt with smoking restrictions, taxation, retailer licensing, and electronic-cigarettes, sixteen passed the Legislature, but only nine became law.¹⁰⁹

Furthermore, of the forty-nine proposed bills, eight involved an increase of the cigarette excise tax.¹¹⁰ All eight failed in the Legislature mainly because of the required two-thirds vote for tax increases in both houses.¹¹¹ The data on failed tobacco control legislation from the past ten years demonstrates the difficulty to pass any tobacco control state legislation.¹¹² However, it especially shows the challenge to pass tobacco tax increases in the Legislature because of the required two-thirds vote.¹¹³

2. *Failed Cigarette Tax Bills in 2015*

In 2015, two complementary bills, AB 1396 and SB 591, were introduced in the California Legislature. These bills would have raised the existing cigarette and other tobacco

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 62.

¹⁰² K.L. Lum, R.L. Barnes, & S.A. Glantz, *Enacting Tobacco Control Taxes by Direct Popular Vote in the United States: Lessons from 20 Years of Experience*, 18 TOB CONTROL 377, 377 (2009).

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ COX, *supra* note 1, at 61–62.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

products excise tax.¹¹⁴ The proposed tax would have been in addition to the existing excise tax on a cigarette pack and other tobacco products.¹¹⁵ Furthermore, the bills would have created the California Tobacco Tax Act of 2015 Fund, which is where the tax revenue would have been deposited.¹¹⁶ Proceeds from the fund would have been made available to supplement existing funds and tobacco control and prevention programs, along with funding for healthcare and law enforcement.¹¹⁷ Both these bills failed to pass their houses of origin.

E. Failed Tobacco Tax Initiatives

In addition to failed legislative attempts to raise the tobacco tax, California has only passed two tobacco tax initiatives, Proposition 99 in 1988 and Proposition 10 in 1998.¹¹⁸ In the past ten years, there have been two additional attempts to increase the tobacco tax through the initiative process, Proposition 86 (2006) and Proposition 29 (2012).¹¹⁹ Both initiatives were defeated through heavy campaigning from the tobacco industry.¹²⁰

1. Proposition 86 (2006)

Proposition 86 was a November 2006 initiative that attempted to increase the tobacco tax in California from \$0.87 to \$2.60.¹²¹ The revenue from the increased tax would have been used for hospital and physician services and tobacco control.¹²² The initiative failed to pass – with 51.7% voting “no” to the tobacco tax increase.¹²³

2. Proposition 29 (2012)

Proposition 29, the California Cancer Research Act, was an initiative statute on the California ballot in June 2012.¹²⁴ The purpose of the initiative was to decrease tobacco consumption in California because cigarette smoking and other tobacco products have been shown to impact health.¹²⁵ Along with reducing tobacco consumption, Proposition 29 would have increased fiscal revenue and reduce healthcare spending.¹²⁶ The measure would have increased the existing cigarette and tobacco products excise tax, adding an additional \$1 to the

¹¹⁴ AB 1396, 2015 Leg., 2015–2016 Reg. Sess. (Cal. 2015) (proposed Feb. 27, 2015, not enacted); SB 591, 2015 Leg., 2015–2016 Reg. Sess. (Cal. 2015) (proposed Feb. 27, 2015, not enacted).

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ COX, *supra* note 1, at 169.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.* at 170.

¹²⁴ Cal. Proposition 29 (2012); *see also* COX, *supra* note 1, at 169.

¹²⁵ *Id.*

¹²⁶ *Id.*

existing \$0.87 tax.¹²⁷ So, the tax on a pack of cigarettes would have been raised from \$0.87 to \$1.87 (and raised from \$1.37 to \$2.37 for other tobacco products).

In addition to the increased cigarette and tobacco products tax, the revenue would have been collected into the California Cancer Research Life Sciences Innovation Trust Fund.¹²⁸ The funds would have been allocated to support the California Tobacco Control Program, cancer and other biomedical research, law enforcement (to enforce cigarette and tobacco products sale to minors), and administrative costs.¹²⁹

The Legislative Analyst Office (“LAO”) projected a net increase of \$735 million annually as a result of the increased excise tax.¹³⁰ Also, state and local revenues would have increased by tens of millions of dollars annually.¹³¹ Following the tax increase, LAO projected decreased tax revenues if there was decline in cigarette and other tobacco products purchases as a result of the increased tax.¹³²

The election campaign for Proposition 29 was hotly contested and close. The American Cancer Society, the American Heart Association, the American Lung Association, and the Campaign for Tobacco-Free Kids were among the many organizations that supported Proposition 29.¹³³ The supporters, mostly of the medical, public health, and tobacco control fields focused on the cancer research aspect of the initiative and how it would save lives.¹³⁴ The opposition mainly came from the tobacco industry, Philip Morris and RJ Reynolds.¹³⁵ The opposition campaign attempted to cast doubt on the initiative by highlighting certain output related aspects of the measure, such as how the money would not actually be used for cancer research and how money raised from the taxes should be used – that it should go towards the State’s General Fund and to more “pressing needs” of healthcare, education, and public services, instead of cancer research.¹³⁶ Proposition 29 failed to pass in 2012.¹³⁷ The initiative results were 50.2 percent “no” and 49.8 percent “yes.”¹³⁸ The vote spread was only 0.4 percent.¹³⁹

¹²⁷ *Id.*

¹²⁸ Cal. Proposition 29 (2012).

¹²⁹ *Id.*

¹³⁰ LEGISLATIVE ANALYST OFFICE, Proposition 29 (2012) at 1.

¹³¹ *Id.*

¹³² *Id.*

¹³³ COX, *supra* note 1, at 173.

¹³⁴ *Id.* at 180.

¹³⁵ *Id.*

¹³⁶ *Id.* at 184.

¹³⁷ *Id.* at 194.

¹³⁸ *Id.*

¹³⁹ *Id.* at 170.

III. PROPOSED LAW

A. Increase in Taxes of Cigarettes and Other Tobacco Products

Proposition 56 will amend section 30121 of the Revenue and Taxation Code.¹⁴⁰ The changes to this section state that “cigarettes” still has the same meaning.¹⁴¹ However, it proposes a change to the section involving the definition of “tobacco products” by expanding its meaning to include electronic cigarettes.¹⁴² “Tobacco products” is amended as “a product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffled, or ingested by any other means, including but not limited to, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff, but does not include cigarettes. Tobacco products shall also include electronic cigarettes.”¹⁴³

In addition to the expansion of the definition of “tobacco products,” Proposition 56 also amends section 30121 to include a provision with the definition of “electronic cigarettes.”¹⁴⁴ This proposed change defines “electronic cigarettes” to mean “any device or delivery system sold in combination with nicotine which can be used to deliver to a person nicotine in an aerosolized or vaporized form.”¹⁴⁵ It also includes any liquid substance containing nicotine whether sold together or separately from the device.¹⁴⁶

In addition to the existing taxes imposed on cigarettes, other tobacco products, and e-cigarettes, an additional \$0.10 excise tax per cigarette is imposed, which means that there will be an additional \$2 per pack of 20 cigarettes.¹⁴⁷ For cigarettes, the tax per pack will increase to \$2.87.

This \$2 tax increase will be equivalent for other tobacco products.¹⁴⁸ For other tobacco products, the tax will increase to \$3.37 per tobacco product.¹⁴⁹ Lastly, because e-cigarettes are included under the definition of other tobacco products, e-cigarettes will be taxed at \$3.37 per product.¹⁵⁰

¹⁴⁰ Cal. Proposition 56, § 3, *amending* CAL. REV. & TAX. CODE § 30121 (2016).

¹⁴¹ *Id.* at § 3, *amending* CAL. REV. & TAX. CODE § 30121(a).

¹⁴² *Id.* at § 3, *amending* CAL. REV. & TAX. CODE § 30121(b).

¹⁴³ *Id.*

¹⁴⁴ *Id.* at § 3, *amending* CAL. REV. & TAX. CODE § 30121(c).

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at § 4, *adding* CAL. REV. & TAX. CODE § 30130.51(a).

¹⁴⁸ *Id.* at § 4, *adding* CAL. REV. & TAX. CODE § 30130.51(b).

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

B. California Healthcare, Research, and Prevention Tobacco Tax Act of 2016 Fund

This measure also creates the California Healthcare, Research, and Prevention Tobacco Tax Act of 2016 Fund (“the Fund”).¹⁵¹ All revenues made pursuant to the taxes will be deposited into this fund.¹⁵² Moreover, the revenues that are deposited into the fund shall only be used for the specified purposes set forth by this initiative.¹⁵³

The specified purposes set forth by this measure include replacing revenues lost due to lower tobacco consumption as a result of the excise tax increase of the proposition.¹⁵⁴ Five percent of these funds will be used for administrative costs to support the Fund.¹⁵⁵ In addition, these funds will also be allocated to various state entities, including law enforcement for tobacco-related laws, UC physician training, and the California Department of Public Health (“DPH”) state dental programs.¹⁵⁶ As specified by the LAO, \$48 million is proposed to be allocated to various state entities for enforcement; \$40 million is proposed to be allocated for UC physician training to increase the number of primary care and emergency care physicians; \$30 million is proposed to be allocated for DPH – state dental programs; and \$400,000 is to be allocated for the California State Auditor to audit the agencies receiving these funds.¹⁵⁷

After allocating and transferring the necessary funds – money toward various state entities, UC physician training, DPH, and administrative costs as described above to the Fund – the remaining funds will be transferred into the created Healthcare Treatment Fund, which increases funding for existing healthcare programs and services.¹⁵⁸ Eighty-two percent of these remaining funds will be transferred and used for healthcare programs, which include increasing the level of payments for Medi-Cal beneficiaries.¹⁵⁹ Thirteen percent of the revenue will be used for funding comprehensive tobacco prevention and control programs.¹⁶⁰ This includes dissemination of evidence-based health promotion and health communication activities that evaluate and monitor tobacco use.¹⁶¹ Funds will also be used for school programs to prevent and reduce the use of tobacco and nicotine products.¹⁶² Lastly, the remaining five percent of the excess funds will be distributed to the University of California for medical research of cancer, heart, and lung tobacco-related diseases.¹⁶³ The funds will be used for grants and contracts.¹⁶⁴

¹⁵¹ *Id.* at § 4, adding CAL. REV. & TAX. CODE § 30130.53(a).

¹⁵² *Id.* at § 4, adding CAL. REV. & TAX. CODE § 30130.53(b).

¹⁵³ *Id.* at § 4, adding CAL. REV. & TAX. CODE § 30130.53(b)–(d).

¹⁵⁴ LEGISLATIVE ANALYST OFFICE, *supra* note 9, at 9.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ NOVEMBER 2016 VOTER GUIDE, *supra* note 3, at 49 (Providing the Legislative Analyst Office’s analysis, Figure 4).

¹⁵⁸ Cal. Proposition 56 § 4, adding CAL. REV. & TAX. CODE 30130.55 (2016).

¹⁵⁹ *Id.* at § 4, adding CAL. REV. & TAX. CODE 30130.55(a).

¹⁶⁰ *Id.* at § 4, adding CAL. REV. & TAX. CODE 30130.55(b).

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.* at § 4, adding CAL. REV. & TAX. CODE 30130.55(c).

¹⁶⁴ *Id.*

IV. DRAFTING ISSUES

There are not any significant drafting issues with Proposition 56, but the drafters have included a severability clause as a protective device in the event any portion of the initiative were deemed invalid. In order for invalid portions of a statute to be severed, the courts would “look first to any severability clause...”¹⁶⁵ and “the presence of such a clause establishes a presumption in favor of severance.”¹⁶⁶ As stated in *Gerken v. Fair Political Practices Commission*,¹⁶⁷ “a severability clause normally calls for sustaining the valid part of the enactment, especially when the invalid part is mechanical severable...”¹⁶⁸ The California Supreme Court in *Gerken* stated that Court will find “the final determination” of severability to depend on whether the Legislature would have adopted the valid portions even if it had foreseen the partial invalidity of the initiative or if the valid portions constitute an “operative expression of legislative intent”¹⁶⁹ In addition, the Court in *Gerken* presented the test for severability depends on whether the electorate would have separately considered and adopted the initiative in absence of the invalidity of the severable portions.¹⁷⁰

This initiative includes a severability clause. Therefore, any unconstitutional or invalid portions of the measure may be severed without affected the remaining provisions. There are no potential severability issues to this measure. Similar to other tobacco tax initiatives, which have generally been upheld, Proposition 56 does not have any potentially invalid sections. In the past, tobacco tax initiatives have typically been challenged by parties on single-subject and revision issues. There have not been any severability issues in the past.

V. CONSTITUTIONAL AND STATUTORY ISSUES

A. Constitutional Issues

An initiative may not embrace more than one subject.¹⁷¹ The single-subject rule requires the application of the “reasonably germane” test. This test states that an initiative measure does not violate the single-subject requirement if all the parts are “reasonably germane” to each other and to the general purpose or objective of the initiative.¹⁷²

The inclusion of e-cigarettes may raise single-subject issues because e-cigarettes have not been defined as a tobacco product in the past, and thus may not be considered part of the tax of tobacco products. The general purpose of this proposition is to define and tax tobacco products. This measure changes and expands the definition of tobacco products, and with this proposition,

¹⁶⁵ *California Redevelopment Association v. Matosantos*, 53 Cal. 4th 231, 271 (2011).

¹⁶⁶ *Id.*

¹⁶⁷ *Gerken v. Fair Political Practices Commission*, 6 Cal. 4th 707, 707 (1993).

¹⁶⁸ *Id.* at 714 (citing *Calfarm Ins. Co. v. Deukmejian*, 48 Cal. 3d 821, 258 (1989)).

¹⁶⁹ *Id.*

¹⁷⁰ *Gerken v. Fair Political Practices Commission*, 6 Cal. 4th at 714–15 (citing *People’s Advocate, Inc. v. Superior Court*, 181 Cal. App. 3d 316, 332–33 (1986)).

¹⁷¹ *Senate of State of California v. Jones*, 21 Cal. 4th, 1142, 1154–57 (1999).

¹⁷² *Id.*

e-cigarettes would be considered a tobacco product. Therefore, in applying the reasonably germane test, there most likely is not a single-subject issue because the purpose of this measure involves changes to definitions and taxes of tobacco products will be taxed. Thus, the change to include e-cigarettes as a tobacco product and the inclusion of taxing e-cigarettes would make these provisions reasonably related to each other.

B. Statutory Issues

There are no statutory issues in the changes proposed by Proposition 56.

VI. PUBLIC POLICY ISSUES

A. Fiscal Impact

The increase in the excise tax by Proposition 56 is expected to increase revenue. Currently, the excise tax on cigarettes is \$0.87, and this current excise tax is estimated to raise over \$800 million in 2015 to 2016 year.¹⁷³ Proposition 56 is projected to increase net state revenue of \$1 billion to \$1.4 billion in 2017 to 2018. There will be no net increase in revenue in the initial years of the proposition.¹⁷⁴ However, the revenue may decrease over time due to the potential decline in tobacco consumption.¹⁷⁵ This tax revenue will primarily be used on health care spending for low-income Californians.¹⁷⁶

In 2015, tax revenue from California tobacco taxes totaled to \$747.9 million.¹⁷⁷ Nationally, the average tax per cigarette pack is \$1.65.¹⁷⁸ California is currently thirty-seventh in the country in its tobacco tax as it is only \$0.87 per pack.¹⁷⁹ New York has the highest cigarette tax per pack as it is at \$4.00 per pack, and New York's tobacco tax revenue totals to \$1.251 billion.¹⁸⁰ Proposition 56 will increase California's tobacco tax to \$2.87 per pack, which will place California's tax as the eighth highest in the country. Currently, New Jersey's tax \$2.70 per pack is the ninth highest tobacco tax in the country and its total revenue from the tax is \$682.7 million.¹⁸¹ Currently, Minnesota has the eighth highest tax rate on tobacco products, with a tax of \$3.00 per cigarette pack and total revenue from the tax at \$556.7 million.¹⁸² Based on California's current total tax revenue of \$747.9 million from a tax of only \$0.87 per pack, the increase in the taxes will most likely raise the estimated \$800 million.

¹⁷³ LEGISLATIVE ANALYST OFFICE, *supra* note 9, at 3.

¹⁷⁴ *Id.* at 1.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ TOBACCO FREE KIDS, STATE CIGARETTE TAX RATES & RANK, DATE OF LAST INCREASE, ANNUAL PACK SALES & REVENUES, AND RELATED DATA, available at <http://www.tobaccofreekids.org/research/factsheets/pdf/0099.pdf> (on file with the *California Initiative Review*).

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

In instances where states have increased taxes on tobacco products, the state saw increases in cigarette tax revenues.¹⁸³ Despite reduction in smoking rates and taxed pack sales, the increased tax on cigarettes typically brings in “much more revenue than is lost by the declines in the number of taxed packs.”¹⁸⁴ For example, the State of Maryland saw an increase in cigarette tax revenues when it raised its cigarette taxes in 1991, 1992, 1999, 2002, and 2012. Reported data shows how Maryland’s cigarette tax revenues did not “decline sharply in the years following a significant cigarette tax increase.”¹⁸⁵

In California, although there have been declines in cigarette tax revenue, there generally have been increases in cigarette tax revenue when the State has passed an increase to cigarettes.¹⁸⁶ For example, in 1990, following the \$0.25 increase from Proposition 99, state cigarette tax revenue increased from a little over \$2 million to almost \$8 million.¹⁸⁷ In addition, following the increase of \$0.50 per pack from Proposition 10, there was a substantial increase from \$6 million in the year 1999 to over \$1 billion in the year 2000.¹⁸⁸

Most California tobacco users smoke cigarettes, and the tobacco tax increase will raise state revenue.¹⁸⁹ The California Department of Public Health estimated that 12 percent of adults smoked cigarettes in 2013, which is a decline from 24 percent in 1988.¹⁹⁰ The DPH also reports that 4 percent of adults use e-cigarettes in 2013, which is double from 2012.¹⁹¹ Since there has been a decrease in smokers, there in turn has been a decrease in cigarette purchase, and in effect, tax revenue from cigarettes.¹⁹² However, although there has been an increase in the use of e-cigarettes, there has not much information on the impact of taxing e-cigarettes. It can be inferred that including e-cigarettes in the category of products taxed, revenue will increase.

Proposition 56 will increase funding for various state and local health programs, such as the California Department of Health Care Services.¹⁹³ This Department administers Medi-Cal, which provides healthcare coverage to over 13 million low-income individuals – nearly one-third of Californians.¹⁹⁴ Medi-Cal pays for health care services, prescription drugs, dental care, and

¹⁸³ TOBACCO FREE KIDS, TOBACCO TAX INCREASES ARE A RELIABLE SOURCE OF SUBSTANTIAL NEW STATE REVENUE, <http://www.tobaccofreekids.org/research/factsheets/pdf/0303.pdf> (on file with the *California Initiative Review*).

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ Jim Miller, *Data Tracker: California Tobacco Sales, Revenue Down*, SACRAMENTO BEE, (March 4, 2016) <http://www.sacbee.com/news/politics-government/capitol-alert/article64143422.html> (on file with the *California Initiative Review*).

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ LEGISLATIVE ANALYST OFFICE, *supra* note 9, at 4–5.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.* at 6.

¹⁹⁴ *Id.*

doctor visits.¹⁹⁵ It has a budget of nearly \$95 million. Over \$1 billion will be generated from the increased tax that will mostly be used for state health programs.¹⁹⁶

Proposition 56 will also increase funding for the DPH, which oversees and administers a variety of programs with the goal of optimizing health and well-being.¹⁹⁷ DPH addresses various health issues, such as tobacco-related diseases. DPH administers the California Tobacco Control Program (a Proposition 99 program) that funds activities to reduce and prevent tobacco-related diseases (it has a budget of about \$45 million in 2015-2016).¹⁹⁸

Overall, the excise tax is expected to generate additional revenue for existing tobacco funds because along with the increased tax on cigarettes and tobacco products, e-cigarettes will be subject to the tax.

B. Proponents (Yes on 56)

1. Tobacco's Health Impacts

Tobacco is a deadly and costly product that harms all individuals, even those who do not smoke.¹⁹⁹ It is the number one preventable death, and it kills approximately 40,000 Californians annually.²⁰⁰ According to the CDC, cigarette smoking harms every organ in the body, causes many diseases and reduces the health of smokers.²⁰¹ Some of the health risks associated with tobacco use and smoking include an increased risk to develop heart disease, stroke, and lung cancer.²⁰² Moreover, smokers are at more risk to develop cardiovascular disease, respiratory disease, and cancer.²⁰³ In addition, it may affect fertility, bone health, and other health risks.

2. Tax Revenue to Pay for Expensive Healthcare Costs

The tax from tobacco-related products will help pay for healthcare costs.²⁰⁴ Currently, the cost of a pack of cigarettes is about \$6.²⁰⁵ However, research shows that the healthcare costs of smoking are about \$9.23 per pack.²⁰⁶ Moreover, the indirect costs of losses from smoking-caused productivity are approximately \$8.23 per pack.²⁰⁷

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* at 11.

¹⁹⁷ *Id.* at 6–7.

¹⁹⁸ *Id.* at 4–5.

¹⁹⁹ NOVEMBER 2016 VOTER GUIDE, *supra* note 3, at 52.

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² CENTERS FOR DISEASE CONTROL AND PREVENTION, HEALTH EFFECTS OF CIGARETTE SMOKING, http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/ (on file with the California Initiative Review).

²⁰³ *Id.*

²⁰⁴ NOVEMBER 2016 VOTER GUIDE, *supra* note 3, at 52.

²⁰⁵ LEGISLATIVE ANALYST OFFICE, *supra* note 9, at 4.

²⁰⁶ Cox et al, *supra* note 1, at 17.

²⁰⁷ *Id.*

Proponents of Proposition 56 argue that an increase in taxes of tobacco products will provide revenue to pay for healthcare costs, such as those associated with tobacco use.²⁰⁸ The tax will only apply to those who use tobacco products, including electronic cigarettes, and the money will fund already existing programs to prevent smoking, improve healthcare, and health research.²⁰⁹

3. *Preventing Youth Smoking*

Proponents argue that this increase in taxes on tobacco-related products will prevent youth smoking. There has been research to indicate that there is a correlation to increase in cigarette prices and the decline in youth smoking. Research has shown that, as cigarette prices increased in the late 1990s and early 2000s, youth smoking declined.²¹⁰ According to the U.S. Surgeon General, increasing tobacco taxes will help reduce youth smoking. In a report by the U.S. Surgeon General, research found that raising taxes on tobacco products reduces the prevalence of tobacco use, especially among kids and young adults.²¹¹ Moreover, in every state that has significantly raised cigarette taxes, the smoking rates have gone down.²¹² Research has shown that a \$0.61 to \$0.66 federal cigarette tax increase that passed in April 2009 had a substantial and immediate effect on youth smoking.²¹³ There has been a 9.7 to 13.3 percent decline in reported youth smoking following the federal cigarette tax increase in 2009.²¹⁴

4. *Impact on Jobs and the Economy*

There will be a positive impact on the California economy and jobs.²¹⁵ Through the tobacco tax, California will see increased jobs and economic activity as a result of the jobs created for research and law enforcement.²¹⁶ In addition, the fact that the money will be, for the most part, kept inside California, there will be a positive impact on the California economy.²¹⁷

C. **Opponents (No on 56)**

²⁰⁸ NOVEMBER 2016 VOTER GUIDE, *supra* note 3, at 52.

²⁰⁹ Cal. Proposition 56 § 2 (2016).

²¹⁰ TOBACCO FREE KIDS, RAISING CIGARETTE TAXES REDUCES SMOKING, ESPECIALLY AMONG KIDS (AND THE CIGARETTE COMPANIES KNOW IT), <http://www.tobaccofreekids.org/research/factsheets/pdf/0146.pdf> (on file with the *California Initiative Review*).

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ STANTON A. GLANTZ, CENTER FOR TOBACCO CONTROL RESEARCH AND EDUCATION UC SAN FRANCISCO, *Economic Impact of the California Cancer Research Act on Job Creation and Economic Activity*, ECONOMIC SERIES AND RELATED METHODS, at 2 (Feb. 2, 2012), available at <http://escholarship.org/uc/item/73g8m5j5> (on file with the *California Initiative Review*); see also Stanton Glantz, *Big Tobacco Aims Its Guns to Kill California Tobacco Tax*, THE CONVERSATION (Aug. 21, 2016, 8:21 PM), <https://theconversation.com/big-tobacco-aims-its-guns-to-kill-california-tobacco-tax-63750> (on file with the *California Initiative Review*).

²¹⁶ *Id.* at 3.

²¹⁷ *Id.*

1. *More Money for Insurance Companies*

Opponents to Proposition 56 argue that this initiative is not what it appears to be as it is a “tax hike grab” by insurance companies and other wealthy special interests to increase their profits.²¹⁸ By “special interests,” the opponents are referring to doctors, insurers, and hospitals.²¹⁹ Mainly, the opponents argue that this initiative will not be providing money to the public – rather it provides profits for insurance companies, hospitals, and health care providers.²²⁰

Opponents claim that only 13 percent of the revenue from the tax increase will go towards new anti-smoking programs, and believe that, if there is a tax on smokers, more of this money should be going towards helping smokers.²²¹ The “No on 56” campaign spokesperson, Beth Miller, stated, “If we’re going to tax smokers, more should be dedicated to help them quit.”²²²

Instead, opponents claim that 82 percent of the tax revenue will be going to insurance companies, hospitals, and health care providers.²²³ The opponents of this proposition state that the money will be going to health care providers and hospitals “for treating the very same Medi-Cal patients they already treat today,” and that hospitals and health care providers are not required to accept more Medi-Cal patients to get this money.²²⁴ Therefore, the opponents state that, “instead of treating more patients, insurance companies and hospitals can increase their bottom line and more richly reward their CEOs and senior executives.”²²⁵

2. *Massive Waste in Money and Resources*

Opponents to Proposition 56 argue that this measure will also lead to massive waste, fraud, and abuse as millions of dollars can be spent annually with no accountability to taxpayers.²²⁶ Moreover, opponents argue that the tax revenues should be allocated elsewhere.²²⁷ Opponents argue that this measure will take money from schools, and will not be providing money to solve problems in communities.²²⁸ Some of these problems include, fully funding

²¹⁸ NOVEMBER 2016 VOTER GUIDE, *supra* note 3, at 53.

²¹⁹ Michael Hiltzik, *Column: The Tobacco Industry Takes a Page from Its Old Playbook for a Deceptive Campaign against Cigarette Taxes*, LOS ANGELES TIMES (October 7, 2016), available at <http://www.latimes.com/business/hiltzik/la-fi--hiltzik-prop-56-20161006-snap-story.html> (on file with the *California Initiative Review*).

²²⁰ *Id.*

²²¹ NO ON 56, PROP. 56 ALLOCATES JUST 13% TO HELP SMOKERS, <http://noonproposition56.com/facts/just-13/> (last visited Oct. 18, 2016) (on file with the *California Initiative Review*).

²²² Michael Hiltzik, *supra* note 219.

²²³ NO ON 56, PROP. 56 FATTENS INSURANCE COMPANY PROFITS, <http://noonproposition56.com/facts/fattens-insurance-companies/> (on file with the *California Initiative Review*).

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ NOVEMBER 2016 VOTER GUIDE, *supra* note 3, at 53.

²²⁷ *Id.*

²²⁸ *Id.*

schools, repairing roads, solving the drought, and fighting crimes.²²⁹ The tax revenue from this initiative will not be helping to solve these problems.²³⁰ More specifically, an opponent to Proposition 56, Chris Mann, who is the founder of Inland Empire Taxpayer Association, stated that this proposition “fails to address pressing needs facing California families – like fixing schools, roads, water storage and violent crime.”²³¹

VII. CONCLUSION

If Proposition 56 is passed, this measure will increase the cigarette tax, as well as taxes on e-cigarettes, and other tobacco products. This proposition will raise the excise tax of \$0.87 by \$2.00 per pack. Thus, the cigarette tax will be \$2.87, and taxes on other tobacco products, including e-cigarettes will be \$3.37 per pack or per unit. The revenue from this tax will go towards existing healthcare programs, tobacco prevention, and tobacco-related diseases research. There have been a number of other propositions in recent years that have attempted to raise the cigarette tax, but these past measures have failed. One main aspect of this initiative that is different from these previous initiatives that have attempted to raise the tax is the inclusion of e-cigarettes as a tobacco product. Therefore, this is the first tobacco tax initiative that will be taxing e-cigarettes.

Proponents of this initiative have listed a number of reasons for support of this measure. One of the main reasons is the negative impact of tobacco on health and health care costs. The proponents argue that tobacco use increases health risks. Moreover, another main argument made by the supporters of Proposition 56 is that an increase in the taxing of tobacco products will reduce and prevent youth smoking. The proponents also argue that the revenue from this tax will go towards expensive healthcare costs for low income Californians. Moreover, the increase in tobacco tax will provide positive economic and job benefits.

Opponents of this initiative argue that the revenue from this tax should be used to solve other public issues. The opponents of Proposition 56 argue that there are a number of other social issues that need to be addressed, and the revenue from this tax will not help solve problems and take away money from schools and other priorities.

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ NO ON 56, PROBLEMS IN CALIFORNIA, <http://www.noonproposition56.com/facts/doesnt-solve-problems/> (on file with the *California Initiative Review*).

