

1982

## School Textbooks. Nonpublic Schools.

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## Official Title and Summary Prepared by the Attorney General

**SCHOOL TEXTBOOKS. NONPUBLIC SCHOOLS. LEGISLATIVE CONSTITUTIONAL AMENDMENT.**

Authorizes Legislature to provide that textbooks available to pupils attending public schools may be loaned on library-type basis to pupils entitled to attend public schools but who attend nonpublic schools which do not exclude pupils from enrollment because of race or color. Specifies that authorizing a textbook loan program shall not be construed as authorizing provision of instructional materials other than textbooks; that appropriations for the textbook loan program shall not be made from funds budgeted for support of public schools; and that so providing textbooks is not an appropriation for school support. Summary of Legislative Analyst's estimate of net state and local government fiscal impact: No impact until implemented by legislation. When implemented, state annual costs could exceed \$4 million for a program similar to that in 1980-81 in grades kindergarten-8 and an additional \$1 million annually in grades 9-12. Also unknown state and local administrative costs.

**FINAL VOTE CAST BY THE LEGISLATURE ON SCA 40 (PROPOSITION 9)**

Assembly—Ayes, 59  
Noes, 16

Senate—Ayes, 29  
Noes, 6

**Analysis by the Legislative Analyst****Background:**

The State Constitution requires the Legislature to provide for a system of public schools. The Constitution also requires the State Board of Education to adopt textbooks for use in grades 1 through 8, to be furnished without cost to the students in these public schools. Under current law, the state government provides funding to local school districts to buy the textbooks and instructional materials for grades kindergarten through 8. The state does not provide funds to purchase instructional materials and textbooks for students in grades 9 through 12. Instead, school districts use their general financial aid from the state and their local revenues for this purpose.

Prior to fiscal year 1981-82, the Superintendent of Public Instruction was required to lend to pupils attending tax-exempt private schools textbooks and instructional materials for grades kindergarten through 8. The annual state cost for these textbooks and materials for students in private schools was \$3.6 million in fiscal year 1980-81. This loan program did not cover pupils in grades 9 through 12.

In 1981, the California Supreme Court ruled that the textbook loan program for students in private schools violated the State Constitution.

**Proposal:**

This measure would amend the State Constitution to permit the Legislature to reestablish a textbook loan program for pupils in nonpublic schools. The measure contains no limitation with respect to the grades for

which such books could be provided. Specifically, it authorizes the Legislature to provide that textbooks which are available to public school pupils can be loaned, on a library-type basis, to pupils in nonpublic schools, with the following limitations:

1. This measure would prohibit the lending of textbooks to pupils attending schools which exclude pupils from enrollment because of their race or color.

2. This measure would extend the authorization to establish a textbook loan program only to the provision of textbooks and would not authorize the provision of other instructional materials.

3. This measure also would prohibit any appropriation for this loan program from funds budgeted for the support of public schools.

**Fiscal Effect:**

By itself, this measure would have no direct state or local fiscal impact because it authorizes, rather than requires, the Legislature to take specific action.

However, if the Legislature were to reestablish a private school pupil textbook loan program, similar to that which existed in 1980-81, state costs for private school pupils in grades kindergarten through 8 could be over \$4 million annually. If the program were extended to pupils in grades 9 through 12, the costs would be significantly higher, possibly exceeding an additional \$1 million per year. Local public schools or libraries or the state could incur unknown costs to administer this "loan" program, depending on the nature of the implementing statute enacted by the Legislature.

## Text of Proposed Law

This amendment proposed by Senate Constitutional Amendment 40 (Statutes of 1982, Resolution Chapter 66) expressly amends the Constitution by amending sections thereof; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

### PROPOSED AMENDMENTS TO ARTICLE IX, SECTIONS 7.5 AND 8

First—That Section 7.5 of Article IX thereof is amended to read:

SEC. 7.5. (a) The State Board of Education shall adopt textbooks for use in grades one through eight throughout the State, to be furnished without cost as provided by statute.

(b) *Notwithstanding Section 8 of this article or Section 5 of Article XVI, the Legislature may provide that textbooks which are available to pupils attending the public schools may be loaned on a library-type basis to pupils entitled to attend the public schools but who attend schools other than the public schools, except that textbooks may not be loaned to those pupils who attend schools which exclude pupils from enrollment because of their race or color.*

*The authorization to establish a textbook loan program shall extend only to the provision of textbooks and shall not be construed as authorizing the provision of any instructional materials other than textbooks.*

*In no event shall any appropriation be made for the textbook loan program from funds budgeted for the support of the public schools.*

Second—That Section 8 of Article IX thereof is amended to read:

SEC. 8. (a) No public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools; nor shall any sectarian or denominational doctrine be taught, or instruction thereon be permitted, directly or indirectly, in any of the common schools of this State.

(b) *Notwithstanding subdivision (a) and Section 5 of Article XVI, the provision of textbooks to pupils attending schools other than the public schools, pursuant to subdivision (b) of Section 7.5, may not be construed as an appropriation for the support of any school.*

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## Arguments in Favor of Proposition 9

**PROPOSITION 9, THE EQUAL TEXTBOOK RIGHTS AMENDMENT, WILL MAKE TEXTBOOKS AVAILABLE TO ALL SCHOOL-AGE CHILDREN IN CALIFORNIA.**

This program was successful for seven years and benefited hundreds of thousands of needy students in California before it was stopped in 1981.

The United States Supreme Court has approved our position three times and authorized Ohio, New York, and Pennsylvania to operate similar textbook programs. Because this is constitutional, 17 states offer textbooks to their local students.

The program is quite simple. The books are loaned to individual students, not to schools, on a library-type basis. This amendment prohibits a student from receiving a textbook if he attends a school which excludes anyone on the basis of race or color.

*Proposition 9 specifies that public education funds cannot be used for the textbook loan program.*

**ALL PARENTS PAY TAXES TO PURCHASE THESE TEXTBOOKS. IS IT FAIR TO EXCLUDE SOME CHILDREN FROM USING THESE BOOKS BECAUSE OF THE SCHOOL THEY ATTEND?**

If the children who have been using the textbook loan program were to enroll in public schools it would cost the taxpayers of California over \$1 billion annually.

*For the sake of our children and for the betterment of their education I urge you to vote yes on Proposition 9, the Equal Textbook Rights Amendment.*

**ALAN ROBBINS**

*San Fernando Valley State Senator, 20th District*

All California children need access to quality learning materials. **OUR PUBLIC LIBRARIES DO NOT DISCRIMINATE IN LOANING BOOKS TO CHILDREN; NEITHER SHOULD OUR STATE TEXTBOOK PROGRAM.**

Taxpaying families of children in nonpublic schools support public education while also saving their fellow taxpayers over \$2,000 per child annually. As an elected superintendent of schools I know this saves us over a billion dollars a year.

The State of California provides the highest quality textbooks available in America; *by sharing these textbooks with all of the students in our state, we strengthen the education of every child.*

For ALL the children, I urge my fellow Californians to vote YES on Proposition 9 to allow the restoration of a nondiscriminatory textbook program without any fiscal drain on public school funds.

**VIRGIL S. HOLLIS**

*County Superintendent of Schools*

*My son is severely handicapped and neurologically impaired. Since our local public school does not have an appropriate educational program for him, Sean attends Dubnoff Center in North Hollywood.*

*Without the passage of Proposition 9, my son is denied the use of state textbooks. As a concerned parent I urge you to vote "yes" on Proposition 9 so that my son and thousands like him will be able to borrow the textbooks that I help to pay for as a taxpayer.*

**KAREN ANNE FITZSIMMONS**

*Cochairperson, Californians for Equal Textbook Rights*

## Rebuttal to Arguments in Favor of Proposition 9

The assertion that "public education funds cannot be used for the textbook loan program" is deliberately deceptive. Dollars which could otherwise be used for public education will now be diverted to this giveaway before they are earmarked for public education or used as a tax break. All of us pay the taxes which support education, not just parents of children in parochial schools.

In the former program, parochial schools selected, ordered, received, retained and disposed of the textbooks. Few textbooks were ever returned to the state. As administered, the program was and again will be an outright grant of public aid to parochial schools.

Public textbooks are no more separate from public education than teachers are, and we don't "loan" teachers to parochial schools. Public schools are like public libraries: everyone can choose to go to them. But we taxpayers don't pay for someone's choice of buying a book rather than borrowing it from a public library. Nor should we pay for someone's choice of a parochial school rather than a public one.

**WHEN A HANDICAPPED CHILD CANNOT GET AN APPROPRIATE EDUCATION IN A PUBLIC SCHOOL, THE STATE ALREADY PAYS THE FULL COST OF AN APPROPRIATE PRIVATE SCHOOL, INCLUDING TEXTBOOKS.** Handicapped children in private schools don't need Proposition 9.

**DON'T VOTE FOR JUST THOSE FEW WITH CHILDREN IN PAROCHIAL SCHOOLS. VOTE FOR ALL OF US TAXPAYERS—VOTE NO ON 9.**

**MARILYN RUSSELL BITTLE**

*President, California Teachers Association*

**ALLEN I. FREEHLING**

*Rabbi  
President, Southern California Region,  
American Jewish Congress*

**HARRY D. JACKSON**

*Pastor  
Chairman, California Council for Religious Freedom*

## Argument Against Proposition 9

This amendment to the California Constitution would permit the spending of increasingly scarce tax dollars for private and parochial schools at a time when public schools are being forced to cut back. Before 1981, this program was called a textbook "loan" program. However, it was not a loan at all—it cost state taxpayers about \$4 million per year to buy these textbooks to give to private and parochial schools.

In 1981, a unanimous California Supreme Court declared that spending public money to provide textbooks for nonpublic school pupils was unconstitutional. This amendment would overrule that court decision, and once again state taxpayers would be giving millions of dollars in handouts to private and parochial schools while public schools suffer bigger and bigger funding cuts.

Private and religious education is a necessary, indeed a vital, component of California's educational network. Approximately 85% of all private schools which participated in the "loan" program in California were religious schools. All parents should have the choice to send their children to a private or religious, instead of a public, one, but state taxpayers should not have to pay for it.

The constitutional guarantee of separation of church and state means the freedom to go to a religious school, but not at public expense. Providing free textbooks would be a direct public subsidy of private and religious schools. Not providing

free public textbooks for private and religious schools would also protect those schools from state control over what textbooks they will be allowed to use. No child will be forced out of a private or parochial school if the taxpayers do not pay for his or her books.

Furthermore, it is not clear what "textbook" will be interpreted to mean. Will the Legislature define it to include, besides traditional books, expensive computers and computer programs? The cost of such items could be staggering.

At best, Proposition 9 is a smokescreen for government handouts to private and religious institutions at the expense of the public schools. At worst, it opens a floodgate of constitutional questions and legislative efforts designed to radically alter our system of education in California.

**HERSCHEL ROSENTHAL**  
*Member of the Assembly, 45th District*

**CHRIS ADAMS**  
*President, California State PTA*

**EDGAR KOONS**  
*Pastor, Hazel Avenue Baptist Church,  
Fair Oaks, California  
President, American Council of Christian  
Churches of California*

## Rebuttals to Argument Against Proposition 9

**PROPOSITION 9 ALLOWS TEXTBOOKS TO BE LOANED TO PUPILS; IT DOES NOT GIVE BOOKS OR MONEY TO ANY SCHOOL.** It is the children who receive and use these books.

**PROPOSITION 9 IS STRICTLY LIMITED TO TEXTBOOKS AND ONLY TEXTBOOKS.** It does not apply to anything else.

**WITHOUT PROPOSITION 9 THE MOST SEVERELY HANDICAPPED AND MENTALLY RETARDED CHILDREN WILL BE LEFT WITHOUT ACCESS TO FREE PUBLIC TEXTBOOKS.** The parents of these children join in seeking your "yes" vote on the *Equal Textbook Rights Amendment*.

**ALAN ROBBINS**  
*San Fernando Valley State Senator, 20th District*

*Proposition 9 completely protects public school funding and totally prohibits the expenditure or use of any funds budgeted for the support of public education.*

**WHO CAN BE HARMED IF STATE TEXTBOOKS ARE LOANED TO STUDENTS WHOSE PARENTS SEND THEM TO NONPUBLIC SCHOOLS?**

*For the benefit of all the children vote YES on 9, the Equal Textbook Rights Amendment.*

**VIRGIL HOLLIS**  
*County Superintendent of Schools*

*Over 300,000 children who receive their education either at nonsectarian schools or religiously affiliated schools need the restoration of their right to use state textbooks for math, reading, and other basic subjects.*

If you vote yes on Proposition 9, then our children who attend nonpublic schools will *regain the freedom to choose whether they use these textbooks or not.*

Anyone truly committed to the separation of church and state would never allow students to be discriminated against because of their attendance at religiously affiliated schools. **TO ELIMINATE DISCRIMINATION AGAINST STUDENTS AT CHURCH-SPONSORED SCHOOLS, AND TO ELIMINATE DISCRIMINATION AGAINST ANY CATEGORY OF CHILDREN, VOTE YES ON 9.**

**DR. EDWARD B. (TED) COLE**  
*Pastor, First Baptist Church of Pomona  
Cochairman, Californians for Equal Textbook Rights*