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Right to Have Vote Counted.

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Right to Have Vote Counted. 
Legislative Constitutional Amendment.

This measure amends the California Constitution to declare that a voter who casts a vote in an election in accord with the laws of this state shall have that vote counted.

Summary of Legislative Analyst’s Estimate of Net State and Local Government Fiscal Impact:

• No additional cost to state or local governments.

Final Votes Cast by the Legislature on ACA 9 (Proposition 43)

Assembly: Ayes 79  Noes 0
Senate: Ayes 39  Noes 0
ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND
The State Constitution establishes a system of voter registration and elections for United States citizens at least 18 years of age who reside in the state. However, it does not explicitly guarantee the right of the voter to have his/her vote counted. The procedures, requirements, and deadlines for counting votes are set forth in the California Elections Code.

PROPOSAL
This measure amends the Constitution to explicitly state that every vote cast in accordance with state law shall be counted, thus affirming in the Constitution the right of the voter to have his/her vote counted.

In addition, Chapter 919, Statutes of 2001 (Assembly Bill 733, Longville) would explicitly place in state law the existing authority of county elections officials to petition the Superior Court for an extension of any post-election deadline to permit the tabulation or recounting of ballots and the authority of the court to grant such a petition. However, the operation of Chapter 919 depends on voter approval of Proposition 43.

FISCAL EFFECT
This measure would not result in additional costs to the state or local governments.

For text of Proposition 43 see page 66.
ARGUMENT IN FAVOR OF PROPOSITION 43

WHY DO WE NEED PROPOSITION 43?

In the 2000 presidential election, confusion over which ballots should or should not count led to a substantial delay in determining which candidate won in Florida. Many votes were not counted due to problems with equipment, questions about whether votes were validly cast, and uncertainty about which candidate some voters had selected.

In an effort to ensure that all votes cast in accordance with Florida law were counted, local election officials began hand recounts of ballots. Those recounts demonstrated that vote tallying machines were less than perfect, and that votes had been missed in the original tally.

Unfortunately, election officials were unable to complete hand counts before a deadline for certifying the state’s vote. This deadline fell more than a month before the President was to take office, leaving adequate time to complete hand recounts. Nevertheless, citing this deadline, the United States Supreme Court and the Florida Secretary of State effectively stopped hand counts and certified election results using incomplete vote totals. As a result, thousands of voters did not have their votes counted, even though they cast their votes in accordance with Florida law.

WHAT DOES PROPOSITION 43 DO?

Proposition 43 adds a section to the California Constitution that reads “A voter who casts a vote in an election in accordance with the laws of this state shall have that vote counted.”

By voting YES, you ensure that your vote will not be discarded because someone thought there wasn’t enough time to count your vote. If you follow all the applicable election laws when you vote, you should have the right to have your vote counted.

Proposition 43 is not a referendum on the 2000 presidential election. Instead it is an effort to declare, before an election controversy arises, the principles that should guide the counting of validly cast votes in an election. Proposition 43 does not change laws regarding recounting ballots or determining voter intent.

In addition, the approval of Proposition 43 will make effective a law that allows courts to extend post-election deadlines that prevent the proper counting of votes. This will help ensure that what happened in Florida doesn’t happen here.

IS PROPOSITION 43 NECESSARY?

The laws that govern the elections process in California attempt to ensure the integrity and smooth operation of our elections. But when these laws conflict with one another, there is no guarantee which law will prevail.

Proposition 43 expressly provides that you have a constitutional right to have your vote counted, regardless of problems that arise after you cast your vote.

The right to vote is meaningless if you can’t be sure that your vote will be counted. Elections shouldn’t be decided by courts or government officials—elections should be decided by the citizens who vote in them. Proposition 43 helps ensure that this is the case.

ASSEMBLYMEMBER JOHN LONGVILLE, Chair
Assembly Committee on Elections, Reapportionment, and Constitutional Amendments

BARBARA B. INATSUBU, President
League of Women Voters of California

JAMES K. KNOX, Executive Director
California Common Cause

REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 43

As we suggest in the PRIMARY argument against Proposition 43 on the next page, this measure sounds good—but will do more harm than good.

Among other things, Proposition 43 would create a state constitutional right to have every (validly cast) ballot counted even when, mathematically, the ballot could not possibly affect the outcome of an election! Proposition 43 makes no sense.

What we really need is some form of public financing of campaigns—at least for state offices such as Assembly and State Senate. It costs upwards of $500,000 to run a contested campaign for Assembly—twice as much for State Senate.

Many qualified persons do not run for public office—and many serious issues are downplayed or not even discussed—because of the domination of money from special interest groups and giant corporations.

PRIVATE FINANCING OF EXPENSIVE POLITICAL CAMPAIGNS HAS PRACTICAL CONSEQUENCES FOR EVERYONE

IT COSTS YOU MONEY For example: Californians paid billions to Texas-based corporations because of a sudden shortage of electricity that could have been avoided.

IT AFFECTS YOUR HEALTH For example: MTBE remains in California gasoline even though we have known, for years, that it pollutes the air and leaks into the soil and groundwater and then reaches our tap water. Chemicals added to tap water end up in the bloodstream of each person who drinks or cooks with tap water. In that regard, voters might want to examine www.NoFluoride.com.

For more information, see our website: www.VoterInformationAlliance.org.

GARY B. WESLEY
Attorney at Law

MELVIN L. EMERICH
Attorney at Law
ARGUMENT AGAINST PROPOSITION 43

This proposed amendment to the California Constitution sounds good. It would add a section to provide that “(a) voter who casts a vote in an election in accordance with the laws of this state shall have that vote counted.”

But what, if anything, would Proposition 43 really do? Maybe just promote ambitious litigation over the outcome of elections.

MISSING BALLOTS: In California, a voter may cast a vote by mailing in an absentee ballot or voting at a polling place. What if some ballots were lost, damaged or destroyed before being counted? Would that invalidate the election if the missing ballots could have changed the outcome? When a ballot is missing, how would it be determined whose ballot is missing and how it had been completed?

DEFECTIVE BALLOTS: Then, there is the problem of partially marked ballots—indentations and “hanging chad”—votes not counted by the vote-counting machine because the voter did not fully clear the chad. Before the Florida debacle, most of us had never even heard the word “chad” or given any thought to whether we had fully punched through a hole and cleared away the “chad” in making each ballot choice.

By demanding that every vote be counted, Proposition 43 could invite all kinds of litigation over whether all votes have, indeed, been counted. The outcome of some elections could remain uncertain for long periods of time. The truth is that far more mistakes are surely made in casting ballots—than in securing and counting them.

Moreover, the main problem with elections is not that some votes are cast but not counted. THE REAL PROBLEM IS THAT MOST CITIZENS DO NOT VOTE AT ALL, AND OUR CHOICE OF CANDIDATES IS TOO OFTEN A CHOICE BETWEEN TWO OR MORE UNQUALIFIED PERSONS.

What we need is public financing of election campaigns—at least for all state elected offices. Otherwise, candidates will continue to be recruited by—and beholden to—the special interest groups and wealthy corporations that provide the campaign money.

GARY B. WESLEY, Co-Chair
Voter Information Alliance (VIA)
MELVIN L. EMERICH, Co-Chair
Voter Information Alliance (VIA)

REBUTTAL TO ARGUMENT AGAINST PROPOSITION 43

Although opponents want you to think that Proposition 43 will promote post-election lawsuits, Proposition 43 helps ensure the integrity of our elections.

Proposition 43 expressly provides that you have a constitutional right to have your vote counted. It is only when we know that all votes have been properly counted that we can be confident of the legitimacy of election results. By ensuring that the counting of votes is afforded the highest level of protection, Proposition 43 will help prevent the kind of post-election uncertainty that emerged in Florida after the 2000 election.

Opponents claim that Proposition 43 may promote additional post-election litigation. In fact, Proposition 43 works within the framework of existing laws and guidelines to ensure that ballots are counted properly, without providing a basis for additional lawsuits.

We should demand that every legally cast vote is counted—only then can we be sure that the people’s voice is heard.

Proposition 43 presents a solution that will help ensure the integrity and legitimacy of California elections without encouraging frivolous lawsuits. That’s why Proposition 43 has earned strong bipartisan support and the endorsement of California Common Cause and the League of Women Voters of California.

VOTE YES ON PROPOSITION 43!

ASSEMBLYMEMBER JOHN LONGVILLE, Chair
Assembly Committee on Elections, Reapportionment, and Constitutional Amendments
BARBARA B. INATSUGU, President
League of Women Voters of California
JAMES K. KNOX, Executive Director
California Common Cause
**TEXT OF PROPOSED LAWS**

**Proposition 41 (cont.)**

19244. Notwithstanding any provision of the bond act, if the Treasurer sells bonds under this article for which bond counsel has issued an opinion to the effect that the interest on the bonds is excludable from gross income for purposes of federal income tax, subject to any conditions which may be designated, the Treasurer may establish separate accounts for the investment of bond proceeds and for the earnings on those proceeds, and may use those proceeds or earnings to pay any rebate, penalty, or other payment required by federal law or take any other action with respect to the investment and use of bond proceeds required or permitted under federal law necessary to maintain the tax-exempt status of the bonds or to obtain any other advantage under federal law on behalf of the funds of this state.

19245. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this article are not “proceeds of taxes” as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by Article XIII B.

**Proposition 42**

This amendment proposed by Assembly Constitutional Amendment 4 of the 2001–2002 Regular Session (Resolution Chapter 87, Statutes of 2001) expressly amends the California Constitution by adding an article thereto; therefore, new provisions proposed to be added are printed in italic type to indicate that they are new.

**PROPOSED ADDITION OF ARTICLE XIX B**

**ARTICLE XIX B**

**MOTOR VEHICLE FUEL SALES TAX REVENUES AND TRANSPORTATION IMPROVEMENT FUNDING**

**SECTION 1.** (a) For the 2003–04 fiscal year and each fiscal year thereafter, all moneys that are collected during the fiscal year from taxes under the Sales and Use Tax Law (Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code), or any successor to that law, upon the sale, storage, use, or other consumption in this State of motor vehicle fuel, and that are deposited in the General Fund of the State pursuant to that law, shall be transferred to the Transportation Investment Fund, which is hereby created in the State Treasury.

(b) (1) For the 2003–04 to 2007–08 fiscal years, inclusive, moneys in the Transportation Investment Fund shall be allocated, upon appropriation by the Legislature, in accordance with Section 7104 of the Revenue and Taxation Code as that section read on the operative date of this article.

(2) For the 2008–09 fiscal year and each fiscal year thereafter, moneys in the Transportation Investment Fund shall be allocated solely for the following purposes:

(A) Public transit and mass transportation.

(B) Transportation capital improvement projects, subject to the laws governing the State Transportation Improvement Program, or any successor to that program.

(C) Street and highway maintenance, rehabilitation, reconstruction, or storm damage repair conducted by cities, including a city and county.

(D) Street and highway maintenance, rehabilitation, reconstruction, or storm damage repair conducted by counties, including a city and county.

**Proposition 43**

This amendment proposed by Assembly Constitutional Amendment 9 of the 2001–2002 Regular Session (Resolution Chapter 114, Statutes of 2001) expressly amends the California Constitution by adding a section thereto; therefore, new provisions proposed to be added are printed in italic type to indicate that they are new.

**PROPOSED AMENDMENT OF ARTICLE II**

SEC. 2.5. A voter who casts a vote in an election in accordance with the laws of this state shall have that vote counted.