



# A PROPOSAL TO DEMOCRATIZE LOCAL TAXING POLICIES IN CALIFORNIA TO MEET THE NEEDS OF CHILDREN AND YOUTH

By Funding the Next Generation  
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Funding the Next Generation promotes policies that increase local resources to serve children.  
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*FOR DISCUSSION*

## **A PROPOSAL TO DEMOCRATIZE LOCAL TAXING POLICIES IN CALIFORNIA TO MEET THE NEEDS OF CHILDREN AND YOUTH**

### GOAL

The goal of this proposal is to increase resources that support the education, health and well-being of children. This policy paper discusses how efforts to create local dedicated funding streams to meet the needs of children have resulted in a call for a constitutional amendment that would place District and County Boards of Education on a level playing field with the governing bodies of cities and counties with respect to local revenue raising.

### BACKGROUND

California set the pace for the country in 1991 when San Francisco voters were the first in the nation to pass a measure to dedicate a portion of their budget annually for children and youth services, known as the Children's Fund. In 1996, Oakland followed suit. And then again in 2006, San Francisco created a second dedicated fund – this time the Public Education Enrichment Fund for preschool and a variety of school-based services. These measures have been extremely popular and have been reauthorized several times by 75% of the voters.

The San Francisco Children's Fund, the largest dedicated fund in the country, has had a transformative impact on the city. Over half of the city's children are served each year through hundreds of programs, including afterschool and youth development programs, childcare, violence prevention, and family support.

Since San Francisco created the Children's Fund (now called the Children and Youth Fund), a number of other cities and counties in the country have created dedicated funding streams, often inspired by the work of San Francisco. In California, the City of Richmond created the Richmond Fund for Children and Youth in 2018. However, San Francisco, Oakland and Richmond remain the only three local communities in California which have created sustainable children and youth funds through the ballot.

In 2014, Funding the Next Generation was founded by Margaret Brodtkin, whose leadership led to the creation of San Francisco Children's Fund, to begin a movement for local funding for children's services and to assist coalitions throughout California achieve this goal. As a result of Funding the Next Generation, stakeholders in cities and counties throughout California have begun work to create special funding streams for children in their communities. Over 40 communities have sought out information about local funding options; and over a dozen have taken serious steps toward achieving the goal, 10 measures going to the ballot. However, these measures have met with limited success.

## PROBLEM

The primary barrier faced in creating local Children's Funds in California has been the state's extremely restrictive taxing laws, put in place through Proposition 13 (1978) and Proposition 218 (1996). In most cases, a 2/3 vote is required to pass new taxes for a special purpose. In addition, there are limited local governmental bodies with taxing authority. Local communities are left with very few options for revenue raising for children's services, despite the fact that polling repeatedly shows that a majority of voters supports raising taxes to serve children and youth. This has eroded a fundamental principle of democracy by undermining the will of the majority.

Another problem that has emerged is the difference between what is allowed in general law cities and counties versus charter cities and counties. The revenue strategy that enabled San Francisco and Oakland to pass their initial children's funding measures has been determined to be illegal in general law counties and cities. This is particularly unfortunate since this approach, known as a "carve out" of existing resources, only requires a majority vote.

## CHANGING NEEDS AND CHANGING TIMES

Recently, there have been some developments that begin to loosen the 2/3 lock on raising local revenue. In 2000 with the passage of the School Facilities Local Vote Act (Prop 39), the California electorate began to modify the tax law restrictions by passing a constitutional amendment allowing school bonds to pass by 55%. Since then, the percent of school bonds that are passed annually has gone up by 15 to 20 percentage points. In August 2017, the California Supreme Court continued to loosen the state's restrictions in its opinion about voter initiatives (California Cannabis Coalition vs City of Upland). The Court concluded that the voters when using the initiative process were different from government agencies and implied that passing tax measures with only a majority vote could be legal. This was a groundbreaking development, which may forecast the continuation of the move toward a more democratic approach to taxes. However, the only two places that attempted this approach are San Francisco and Oakland, which are now dealing with lawsuits regarding their decisions to certify their 2018 children's funding ballot measures as a win. Most legal observers believe that this remains to be settled and will probably go back to the California Supreme Court.

The experience of the first 4 years of Funding the Next Generation have illustrated the problems inherent in the current revenue raising limitations in California. During that period 9 places have done polling indicating the following:

- The overwhelming majority of voters recognize the unmet needs of children and strongly support increasing services. Programs such as health care, education, preschool, childcare, violence prevention, job preparation, child abuse prevention all receive over 2/3 support in communities ranging from San Joaquin County, to the City of Richmond, to Napa.
- The majority of voters report that they are willing to tax themselves in order to provide services to children and youth. Different taxes do better in different places, but by and

large soda, sales, and marijuana taxes receive well over 50% of voter support. Unfortunately, local soda taxes are now not possible, due to recent actions by the State Legislature.

- When compared to other public services, programs for children rank either highest or second highest in what the public wants to support. A November 2017 poll in San Joaquin County, voters ranked their preferences for how marijuana taxes should be spent – children’s services ranked twice as high as any other choice, and 3 times higher than law enforcement and public safety as voters’ first choice.

Despite what polling has revealed, in 4 years of working with over a dozen places around the state, advocates and public officials have been frustrated in using the narrow legal opportunities available to create local funding streams for children’s services.

### CHALLENGES

The first obstacle to creating a dedicated fund is getting a measure on the ballot. While children’s services poll exceedingly well, elected officials at the city and county levels have prioritized other budget items that have traditionally been seen as more important. Children’s services have not been able to compete with police, fire, sheriffs, courts, jails and detention centers, transportation, and infrastructure for discretionary local dollars. Boards of Supervisors and City Councils have been reluctant to place children’s measures on the ballot in every community that Funding the Next Generation has worked with – even when there are strong champions on those boards and councils and strong polling. In places where a measure has been put on the ballot, it has often been done reluctantly and after extended discussion, and at times placed on the ballot so close to the deadlines that an adequate campaign has been difficult to mount

In the cases where an elected body has placed a measure on the ballot, communities have used the following strategies to structure a measure to meeting the 2/3 voter threshold needed to win:

#### Special taxes

- Special sales tax – The most straightforward approach is to put a special tax on the ballot, i.e. a tax that can only be spent on children and youth services. The most common tax considered is a sales tax. This has been true in recent attempts in California, but also around the country. A special tax in California requires a 2/3 vote. This was tried in 2016 in Marin, and after a vigorous campaign and widespread endorsements of the measure, it received 63% of the vote – short of the 2/3 needed, but clearly the desire of the voters. More recently, it was tried in Alameda County to fund early care for children, and narrowly lost, receiving 66.2% of the vote.
- Special marijuana tax – In June 2016, the City Council of Sacramento placed a special marijuana tax on the ballot. The tax was intended to fund youth services. The measure received 65.8% of the vote – only 700 votes short of the 2/3 needed to pass. A marijuana tax was on the ballot in November 2018, in San Joaquin County. Half the

funds would have gone to youth programs, but it received 63.5% of the vote, short of the 2/3 needed.

### General taxes

- Advisory measure + sales tax – Another approach has been to place a general tax on the ballot, rather than a special tax, since a general tax requires only a majority vote. The general tax measure is then accompanied by a separate advisory measure stating how the money should be spent – in this case, for children and youth services. This approach was used in Solano in 2016. Unfortunately, the advisory measure passed, but the tax did not. According to political analysts, this was largely because people were confused by this approach and believed they could get the Children’s Fund by simply passing the advisory measure. Another problem with this approach is that it does not have any real teeth in determining how the money will actually be spent if the tax passes – it is merely advisory.
- General tax with expenditure commitments from the legislative body placing the measure on the ballot - In Napa County, a coalition of children’s advocates forged a political compromise with their Board of Supervisors about how funds from a general tax would be spent: the children’s advocates priority was for services for children and youth and the Board of Supervisors’ priority was rebuilding the county jail damaged by the earthquake. This division of funding was agreed to in public meetings, put into a formal resolution, and reinforced continually throughout the campaign. However, the agreement had no actual teeth, and the measure did not pass. The post-election political analysis was that many did not trust how the funds would be spent; and others did not like the combination of priorities. Because only the Board of Supervisors had the authority to levy a tax, children’s advocates were forced to into an agreement that neither side particularly favored.
- General tax with an advisory body – Three soda taxes have been passed in the Bay Area in the 2016 election; and one in the 2014 election. They all included a mandated appointment of an advisory committee to oversee the tax. The strategy was to be specific about committee membership in the measure, so the committee would steer expenditures. For instance, the committee would be required to have nutrition and physical fitness experts, with the idea that funds from the soda tax would be used to mitigate the negative health impacts of soda. The limitation of this approach is that there is no requirement about how funds can be spent, although the oversight committees have so far held firm in recommending expenditures consistent with the articulated purpose of the funding. Another shortcoming of this approach is that some lawyers have cautioned that such specificity in the appointments of the oversight body is very close to making it a special tax and could be challenged in court.

Set-aside of existing taxes – As stated previously, this is the strategy used by San Francisco and Oakland in creating their children’s funds. Its appeal is that it requires only a majority vote. However, its limitation is that it does not raise new revenue.

- City - In Richmond, California, a community coalition collected signatures to place a revenue set-aside of the General Fund on the ballot. While they were unable to meet

their initial timeline for a November 2016 ballot, the measure was on the ballot in June 2018, with a companion measure requiring that new funds be raised for the measure to take effect. The Richmond Children and Youth Fund received a xx% vote; and the companion measure received xx%. A Real Estate Transfer tax was then placed on the November 2018 ballot to raise the revenue for the new Fund. Because the set-aside had already passed, the tax only needed a plurality vote, and received 63.8%. So far, this reflects the most successful strategy, but note that it required a great deal of local negotiations and 3 different ballot measures.

- County - In Napa County, however, the same strategy as Richmond was initially tried. The Napa County Counsel filed a motion in Court to prevent the measure from going on the ballot, citing a court opinion from 2006 (Totten vs. Board of Supervisors of Ventura County) that in General Law counties only elected bodies with budgetary authority could determine budget priorities. Voters could not set aside dollars in the county budget. This was a major blow to efforts to create dedicated funds for children's services. It precluded most places from following the strategy of San Francisco and Oakland. Of the 58 counties in California, 44 are General Law counties; and three-quarters of cities are General Law cities. The Napa opinion is shared by other county counsels around the state.

#### Summary of challenges

- Motivation of elected bodies to prioritize resources for children and youth in their revenue raising opportunities
- 2/3 voter threshold for special taxes for children's needs in California
- Legal restrictions on General Law counties and cities on imposing budget restrictions
- Weakness of strategies that rely on only advisory methods to determine how funds are spent

#### POLICY PROPOSAL

California voters need the ability to determine in a democratic way how, and for what, they want to tax themselves. Furthermore, there is strong evidence that when it comes to children, voters are particularly motivated to support taxes. Therefore, we propose the following as a basis for a California constitutional amendment:

- A. Give district and county school boards the authority to place general revenue measures on the ballot related to the education, health and well-being of students and children. In addition to funding schools, this could include revenue for early care, preschool, afterschool, school-based and school-linked health services, and career development programs and opportunities.
- B. Create a mechanism through the legislature to ensure equity, so that communities with limited taxing potential are not financially disadvantaged.

Rationale – Local government entities have the authority to place general taxes on the ballot for “general governmental purposes.” This proposal would include District and County Boards of Education in the same category as City Councils and Boards of Supervisors as “local government,” reasoning that education must also be considered a general activity of

government, indeed one of the most important general activities of government. This would lift education governing bodies out of second-class status with respect to local revenue raising and place them where they belong in terms of the core overall responsibilities of government. It puts them on a level playing field with the governing bodies of cities and counties.

This proposal helps further California's recent efforts to place greater local control over public education. It gives greater power over school funding to local voters whose children depend on their local schools.

Boards of Education are committed to the well-being of children, so are in a stronger position than city and county governing bodies to implement the public's desire to prioritize children when it comes to public spending. Furthermore, there are school boards at a county level, as well as district levels, thus giving communities the chance to determine which jurisdiction would be most effective in providing this basic governmental function. County Boards of Education are also in a position to develop financing mechanisms that promote equity among communities within a county.