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# Proposition 22: Prohibits the State from Borrowing or Taking Funds Used for Transportation, Redevelopment, or Local Government Projects and Services. Initiative Constitutional Amendment.

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# CALIFORNIA INITIATIVE REVIEW

Proposition 22:  
Prohibits the State from Borrowing or Taking  
Funds Used for Transportation,  
Redevelopment, or Local Government  
Projects and Services.  
Initiative Constitutional Amendment.

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### I. EXECUTIVE SUMMARY

Proposition 22, also known as the Local Taxpayer, Public Safety and Transportation Protection Act of 2010,<sup>1</sup> is a proposed amendment to the California Constitution. The Proposition would prohibit the state from delaying distribution of funds such as fuel taxes and local property taxes designated for local government services, even during a severe, state-wide fiscal hardship.<sup>2</sup> If Proposition 22 is passed, the changes it would make to the California Constitution cannot be altered except by approval of a future constitutional amendment by California voters.<sup>3</sup>

Under the California Constitution, state and local government funding sources are interrelated.<sup>4</sup> Both state and local governments receive revenue from, for example, fuel and sales taxes.<sup>5</sup> There are also certain policy areas where responsibility is shared by both the state and local government, such as education.<sup>6</sup> In recent years, Californians have attempted on several occasions to limit the state's ability to redirect local funds.<sup>7</sup> Proposition 22 is the most recent in this string of voter-sponsored initiatives.

A “yes” vote on Proposition 22 will prohibit state government from accessing designated local government funding sources. The goal is to safeguard local government funding for transportation, public safety, emergency response, and other vital local services.<sup>8</sup> While protecting funding for local governments, a yes vote on Proposition 22 will also reduce General Fund spending in the amount reserved to localities, potentially reducing funding for state programs.<sup>9</sup> A “no” vote on Proposition 22 will leave the state's current authority to borrow local fuel tax and property tax funds unchanged.<sup>10</sup> The state will remain able to tap these sources of funds to finance state services, including education and programs for seniors.<sup>11</sup> However, using this funding for state programs may result in a parallel loss of funding for local programs dependent on local tax revenues.<sup>12</sup>

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<sup>1</sup> California Secretary of State, Text of Proposed Laws – Proposition 22, *available at* <http://www.voterguide.sos.ca.gov/pdf/english/text-proposed-laws.pdf#prop22>.

<sup>2</sup> California Secretary of State, “Proposition 22,” Voter Information Guide November 2, 2010, *available at* <http://www.voterguide.sos.ca.gov/propositions/22/> [hereinafter *Voter Information Guide*].

<sup>3</sup> See Legislative Analyst's Office, Proposition 22 Analysis, *available at* [http://www.lao.ca.gov/ballot/2010/22\\_11\\_2010.aspx](http://www.lao.ca.gov/ballot/2010/22_11_2010.aspx) [hereinafter *LAO Analysis*] (describing the changes Proposition 22 would make to the California Constitution).

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

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

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*; see *infra* Part II.C (discussing Propositions 1A, 2004 & 2006).

<sup>8</sup> Yes on 22, Protect Local Services, Stop State Raids and Vote Yes on Proposition 22, <http://www.savelocalservices.com/node/20> [hereinafter *Yes on 22*].

<sup>9</sup> *Voter Information Guide*, *supra* note 2; *LAO Analysis*, *supra* note 3.

<sup>10</sup> *Voter Information Guide*, *supra* note 2.

<sup>11</sup> No on Proposition 22! Bad for Children, Seniors and Taxpayers! <http://votenoprop22.com/> [hereinafter *No on 22*].

<sup>12</sup> *Yes on 22*, *supra* note 8.

## II. BACKGROUND AND EXISTING LAW

### a. State Use of Fuel Tax Revenues

The current law was enacted through two separate initiatives, both legislatively-referred constitutional amendments, both numbered Proposition 1A, approved by California voters in 2004 and 2006, respectively.<sup>13</sup>

Under existing law, the State of California is authorized to use fuel tax revenues, deposited in the Highway Users Tax Account, for transportation issues and bonds.<sup>14</sup> The Legislative Analyst's Office reports that the state annually collects approximately \$5.9 billion in fuel taxes for transportation purposes.<sup>15</sup> The state uses some of these funds to pay for highway, road, and transportation projects as well as servicing debt on voter-approved transportation bonds.<sup>16</sup>

Fuel tax revenues generally are earmarked for transportation projects.<sup>17</sup> However, there are certain circumstances in which the state is permitted to "borrow" from the fuel tax revenues to fund other projects, specifically for:

Cash Flow Purposes: The state can borrow fuel tax funds to help stabilize an uneven cash flow throughout the calendar year. According to the Legislative Analyst, cash flow loans of fuel tax revenues often top more than \$1 billion per year.<sup>18</sup>

Budget-Balancing Purposes: When a severe fiscal hardship exists, the state may temporarily borrow fuel tax revenue to meet budgetary needs. These funds must be repaid within three years.<sup>19</sup> The Legislative Analyst reports that at the time of its analysis in July 2010, the 2010-2011 state budget included \$650 million in fuel tax revenue loans to the state's General Fund.<sup>20</sup> Approximately two-thirds of fuel tax revenues are spent by the state; the remaining third is allocated by the Legislature to cities, counties, and transit districts. Changes to funding allocations

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<sup>13</sup> See *infra* Part C (discussing both initiatives in detail).

<sup>14</sup> See *LAO Analysis, supra* note 3 (describing current system for state use of fuel tax revenues).

<sup>15</sup> *Id.* at figure 2.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Article XIX, Section 6, of the California Constitution currently permits loans to the state General Fund from tax revenues under that Article, provided that one of the following conditions is met:

- 1) The amount loaned is repaid in full to the fund from which it was borrowed within the same fiscal year, or within thirty days of the date of enactment of the budget for the subsequent fiscal year; or
- 2) The amount loaned is repaid in full within three years of the date it was borrowed, if one of the following has occurred:
  - a. The Governor has proclaimed a state of emergency and declared that the emergency will result in a significant negative fiscal impact to the General Fund; or
  - b. The aggregate amount of General Fund revenue for the current fiscal year is projected to be less than the aggregate amount of General Fund revenue for the previous fiscal year.

<sup>20</sup> *LAO Analysis, supra* note 3.

can be accomplished by passing legislation in each house with a majority vote, subject to approval by the Governor.<sup>21</sup>

### **b. State Use of Property Tax Revenues**

Currently, as a result of Proposition 13, California homeowners pay a 1% tax on the value of their home, plus additional taxes for voter-approved debt.<sup>22</sup> These revenues are distributed by county auditors among local governments, including cities, counties, redevelopment agencies, school districts, community colleges, and special districts.<sup>23</sup> State law allows the state to order local governments to “shift” the allocation of these funds toward schools, thereby reducing the state’s costs to fund the programs. Recently, this resulted in the state ordering redevelopment agencies to shift \$1.9 billion in property tax funds to schools, thereby reducing the state’s General Fund burden for school programs in the same amount.<sup>24</sup>

In times of severe fiscal hardship, the state may temporarily shift these funds away from local governments. However, this amount must be repaid within three years, plus interest.<sup>25</sup>

### **c. Prior Initiatives Addressing Issues Related to Proposition 22**

Proposition 22 is the most recent in a series of initiatives designed to protect local government funding sources from state “raids.”<sup>26</sup> These include two legislatively-sponsored propositions, each numbered Proposition 1A, on the ballot in 2004 and 2006 respectively.<sup>27</sup>

#### Proposition 1A (2004)

California voters overwhelming approved Proposition 1A – “Protection of Local Government Revenues” - in the November 2004 general election.<sup>28</sup> Proposition 1A was a legislatively-referred constitutional amendment, designed to provide predictability for local government funding. Proposition 1A generally prohibited the state from shifting property tax revenues from local

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<sup>21</sup> *Id.*

<sup>22</sup> Examples of voter-approved debt include bonds approved by voters through bond act initiatives to pay for specific services such as transportation and school district funding. *LAO Analysis, supra* note 3.

<sup>23</sup> *Id.* at figure 3.

<sup>24</sup> *Id.*

<sup>25</sup> Cal. Const. Art. XIX A, §6 (amended through Proposition 1A in 2006; *see infra* Part II.C for full discussion of this prior initiative); California Secretary of State, Text of Proposed Laws – Proposition 22, available at <http://www.voterguide.sos.ca.gov/pdf/english/text-proposed-laws.pdf#prop22>.

<sup>26</sup> *Yes on 22, supra* note 8.

<sup>27</sup> *See* Stephen A. Strain, *Proposition 1A: Protection of Local Government Revenues*, CAL. INIT. REV., (Fall 2004) and Christopher Chaffee, *Proposition 1A: Transportation Funding Protection*, CAL. INIT. REV., (Fall 2006) (discussing the 2004 and 2006 initiatives, respectively, in detail).

<sup>28</sup> Proposition 1A passed with 83.7% of the vote. California Secretary of State, November 2, 2004 Presidential General Election Statewide Measures Summary 3, available at [http://www.sos.ca.gov/elections/sov/2004\\_general/ssov/formatted\\_ballot\\_measures\\_detail.pdf](http://www.sos.ca.gov/elections/sov/2004_general/ssov/formatted_ballot_measures_detail.pdf).

government agencies to schools and community colleges without a two-thirds legislative majority and a declaration of fiscal necessity by the Governor.<sup>29</sup>

### Proposition 1A (2006)

California voters approved Proposition 1A – “Transportation Funding Protection” – in the November 2006 general election. Proposition 1A was a legislatively-referred constitutional amendment, designed to protect fuel tax revenues. Specifically, it limited how frequently the state can use fuel tax revenues to fund non-transportation projects during a fiscal emergency.<sup>30</sup>

### **III. PROPOSED CHANGES TO EXISTING LAW**

#### **a. Transportation Funds**

Proposition 22 would amend Article XIX of the California Constitution in several significant ways. First, it would add a new Section 1, stating, “The Legislature shall not borrow revenue from the Highway Users Tax Account, or its successor, and shall not use these funds for purposes, or in ways, other than those specifically permitted by this Article.”<sup>31</sup>

The former Section 1 would be amended to provide that all fuel revenues and taxes shall be deposited into the Highway Users Tax Account, or its successor, which shall be a trust account.<sup>32</sup> These funds may be used solely for the purposes stated in the Constitution, which are limited to transportation projects.<sup>33</sup>

Section 3 of Article XIX B would be renumbered and amended to specify the exact procedure by which the Legislature may change the allocation of transportation funds.<sup>34</sup> Along with requiring a two-thirds supermajority, the amendments would require that prior to any re-allocation of funding or revenue under this article, the Legislature must identify another equitable basis for distributing the funds among cities, counties and other state areas, taking into account geography and jurisdictions.<sup>35</sup> Any legislative action would have to comply with the procedure laid out in the new subdivision (c).<sup>36</sup> This procedure would require the California Transportation Commission to hold public hearings, accept public comment, and create a published report supporting its recommendations.<sup>37</sup> Once this process is completed, the Legislature would have to approve the

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<sup>29</sup> Legislative Analyst’s Office, Proposition 1A (2004) Analysis, *available at* [http://lao.ca.gov/ballot/2004/1A\\_11\\_2004.htm](http://lao.ca.gov/ballot/2004/1A_11_2004.htm).

<sup>30</sup> Legislative Analyst’s Office, Proposition 1A (2006) Analysis, *available at* [http://lao.ca.gov/ballot/2006/1A\\_11\\_2006.htm](http://lao.ca.gov/ballot/2006/1A_11_2006.htm).

<sup>31</sup> California Secretary of State, Text of Proposed Laws – Proposition 22, at 101, *available at* <http://www.voterguide.sos.ca.gov/pdf/english/text-proposed-laws.pdf#prop22>.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 101-102.

<sup>35</sup> *Id.*

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

<sup>37</sup> *Id.*

changes by a two-thirds vote in each house, approving a bill that contains no unrelated provisions.<sup>38</sup>

Proposition 22 would entirely repeal Article XIX, Section 6, effectively prohibiting loans to the state General Fund.<sup>39</sup>

Article XIX A, Section 1, would be amended to provide that the Public Transportation Account is a trust fund and that the Legislature may not borrow funds from that account except as provided by that article.<sup>40</sup> This account must remain a trust fund, and no funds may be loaned from this account to the General Fund or any other fund.<sup>41</sup>

Article XIX A, Section 2, covers the use of local transportation funds. It would be amended to provide that the Legislature cannot change the status of local transportation funds as trust funds, and that only the local government that created the fund may allocate from the fund for limited transportation purposes.<sup>42</sup> In addition, this section would provide that the percentage of revenue allocated to local transportation funds shall not drop below 2008 levels.<sup>43</sup>

### **b. Property Tax Revenues**

In addition to limiting state access to fuel taxes and changing the way that transportation funding is allocated between the state and local governments, Proposition 22 also would place new restrictions on the state's ability to borrow revenue from local property taxes.<sup>44</sup>

Proposition 22 would amend Section 25.5 of Article XIII of the California Constitution to limit the ability of the state to modify allocation of ad valorem property tax funds.<sup>45</sup> Currently, the state is authorized to modify the allocation of these funds if the Governor declares a state of severe financial hardship, the Legislature passes an urgency statute to suspend subparagraph (A), and a statute is enacted to provide for full repayment to local agencies for their losses.<sup>46</sup> The proposed amendments would limit that procedure to only the 2009-2010 fiscal year.<sup>47</sup>

In addition, Proposition 22 would amend Section 25.5 to provide that local redevelopment agencies are not required to provide tax revenues for the benefit of the state.<sup>48</sup> However, the proposed amendment protects the state's ability to appropriate funds from redevelopment agencies to fund low-to-moderate income housing.<sup>49</sup>

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<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 102.

<sup>40</sup> *Id.* at 102-103.

<sup>41</sup> *Id.* at 103.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 100.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

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

<sup>48</sup> *Id.*

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

Finally, the proposition would add Article XIX C to the Constitution, which provides that when state action is successfully challenged under Articles XIX, XIX A, XIX B, or Sections 24 or 25.5 of Article XIII, funds must be appropriated to either the controller or the local government agency to restore the amount lost by the unlawful action.<sup>50</sup> Article XIX C would also provide for the payment of interest and protect plaintiffs from indemnifying government defendants.<sup>51</sup>

#### IV. DRAFTING ISSUES AND PRE-ELECTION LEGAL CHALLENGE

##### a. Statutory Interpretation and Drafting Issues

From the text of the initiative, it is unclear how the protections for city funding sources will affect county funds.<sup>52</sup> For example, counties are placed in the same category as the Legislature in Section 6.1 of the initiative (amending Article XIX A, Section 2 of the California Constitution) and forbidden from authorizing uses of transportation revenues that do not comport with the limited purposes listed in that section.<sup>53</sup>

However, counties are also mentioned in language similar to that used to refer to cities in other sections of the California Constitution that would be affected by the initiative, stating, for example, that the state would no longer be able to enact statutes that modify counties' allocation of their designated tax revenue funds among the agencies within their bounds.<sup>54</sup> Nowhere in the text of the initiative does it clearly state how county funding sources will be affected by the changes to the constitution that the initiative proposes.<sup>55</sup> This ambiguity in the text of the initiative has led some counties to oppose the proposition.<sup>56</sup>

##### b. Pre-Election Legal Challenge

On August 6, 2010, Sacramento Superior Court Judge Michael Kenny ruled in favor of the proponents of Proposition 22 in a legal challenge to the Legislative Analyst's Office's wording of the Fiscal Impact statement. The plaintiff, the League of California Cities,<sup>57</sup> argued that the statement was "misleading and inconsistent with the requirements of the Election Code" because it contained no reference to local governments.<sup>58</sup> Specifically, plaintiff stated that of the 58 words in the Fiscal Impact statement, 51 centered on the impact to state government and only 7 were related to local government.<sup>59</sup> The court agreed, stating that the ballot label should contain some express reference to local government.<sup>60</sup>

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<sup>50</sup> *Id.* at 105.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 103.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 100.

<sup>55</sup> *See id.* at 100-103 (referring to counties in two different contexts).

<sup>56</sup> *See infra* Part V.B (discussing Contra Costa County's opposition to Proposition 22).

<sup>57</sup> *See* <http://www.cacities.org> (describing the League of California Cities).

<sup>58</sup> *Yes on 22*, <http://www.savelocalservices.com/node/150>.

<sup>59</sup> Robert Greene, Op-Ed, *Lawsuit Filed Over Proposition 22*, L.A. TIMES, Aug. 3, 2010, available at <http://opinion.latimes.com/opinionla/2010/08/nov-2-election-proposition-22.html>.

<sup>60</sup> *Id.*



The original wording read: “Comparable increases in transportation and redevelopment resources.” It now reads: “Comparable increases in funding for state and local transportation programs and local redevelopment.”<sup>61</sup>

Proponents were pleased with the outcome of the suit, but still believe the Fiscal Impact statement does not articulate adequately the initiative’s projected effect on funding sources for local services.<sup>62</sup>

Despite their continued dissatisfaction, the proponents now focus their energies on their campaign, rather than continuing litigation.<sup>63</sup> Because of this change in focus, it is unlikely that the proponents would raise this issue again if the initiative does not pass.<sup>64</sup>

### V. POLICY CONSIDERATIONS

The debate surrounding Proposition 22 is largely a conversation about which policy choice is best for California. In a fiscal climate overshadowed by tense budget negotiations and a soaring deficit, any discussion that touches on the allocation of increasingly scarce public funds is likely to attract strong opinions on each side. This section will summarize the policy positions of both the proponents and opponents of Proposition 22.

#### a. Proponents

Proposition 22 is supported by Californians to Protect Local Taxpayers and Vital Services, which describes itself as “a coalition of local governments, transportation advocates, businesses, labor, public safety and others.”<sup>65</sup> The coalition receives major funding from the League of California Cities,<sup>66</sup> the California Transit Authority and the California Alliance for Jobs, Rebuild California Committee.

The proponents of Proposition 22 argue that despite past efforts from California voters to protect local services, the state government continues to “raid” local funding sources.<sup>67</sup> They argue that these actions have resulted in: cutting of police, fire and emergency 9-1-1 services; slashing of health care services; risk to road repair and maintenance, as well as congestion safety and relief; slashing of public transportation services, combined with an increase in the cost of fares; closing of parks and libraries, and shutting down of other vital local government services; and decreases in local economic development activity and job creation.<sup>68</sup>

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<sup>61</sup> *Id.*; *Voter Information Guide*, *supra* note 2.

<sup>62</sup> *Yes on 22*, <http://www.savelocalservices.com/node/150>.

<sup>63</sup> *Id.*

<sup>64</sup> *See id.* (describing proponents’ reaction to the outcome of the pre-election suit).

<sup>65</sup> *Yes on 22*, <http://www.savelocalservices.com/node/4>.

<sup>66</sup> *Yes on 22*, *supra* note 8.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

The proponents argue that restricting state authority to tap funds such as the fuel and property tax revenues allocated to local governments is the best way to protect funding for local government projects.<sup>69</sup> Proposition 22, they argue, will “once and for all” prevent the use of fuel taxes for any purposes other than transportation services and will ensure greater accountability by keeping local tax revenues dedicated to local issues.<sup>70</sup>

Testifying at a joint informational hearing on Proposition 22 before the Senate Committee on Transportation and Housing and the Senate Committee on Local Government, Chris Mackenzie, Executive Director of the League of California Cities, called Proposition 22 “a serious reform measure” necessary to protect local government funding sources.<sup>71</sup> One point in particular, during Mr. Mackenzie’s testimony summarized the proponents’ fundamental position regarding Proposition 22. Discussing the use of “rainy day funds” at the state and local levels, Mr. Mackenzie stated that “[the Legislature] can use local funds as your rainy day fund. That...is fundamentally wrong.”<sup>72</sup> This showcases the core sensibility of those supporting Proposition 22: it is wrong for the state to shift or borrow funds from local governments.

### **b. Opponents**

Proposition 22 is opposed by Citizens Against Taxpayer Giveaways, with major funding from California Professional Firefighters.<sup>73</sup> Other high-profile opponents include the California Teachers Association<sup>74</sup> and the Contra Costa County Board of Supervisors.<sup>75</sup>

The opponents of Proposition 22 argue that, instead of “protecting local government,” the proposed amendments will, “reduce funding for education, shrink budgets for fire and public safety and make it even harder to balance the state’s budget for education, health care and services for seniors, the blind and disabled.”<sup>76</sup>

The opponents argue that the amendments are aimed, not at protecting local services, but at protecting local redevelopment agencies’ funding.<sup>77</sup> These agencies, they argue, “freeze the amount of your tax dollars that can go to fire, paramedic and other critical neighborhood services, and go into debt for 30 to 40 years committing your tax dollars without voter approval. Redevelopment agencies are often used to funnel large taxpayer-funded subsidies to for-profit developers for housing and commercial development.”<sup>78</sup>

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<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Joint Informational Hearing on Proposition 22 Before California State Senate Committee on Transportation and Housing and Senate Committee on Local Government*, Sept. 22, 2010, video available at <https://www.calchannel.com/channel/viewvideo/1760/sName/asc/>.

<sup>72</sup> *Id.*

<sup>73</sup> *No on 22*, *supra* note 11.

<sup>74</sup> California Teachers Association, Initiative Recommendations, <http://www.cta.org/Issues-and-Action/Election-2010/Initiatives.aspx>.

<sup>75</sup> Lisa Vorderbrueggen, *Contra Costa Opposes Prop. 22*, Political Blotter, July 13, 2010, <http://www.ibabuzz.com/politics/2010/07/13/contra-costa-opposes-prop-22/>.

<sup>76</sup> *No on 22*, [http://votenoprop22.com/?page\\_id=262](http://votenoprop22.com/?page_id=262).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

Contra Costa County Supervisor Federal Glover has stated that while Proposition 22 protects cities and transit authorities, it is not clear that there will be similar protection for counties.<sup>79</sup> Richard Stapler, the Communications Director for the campaign against Proposition 22, explained that the reservations of county officials such as Supervisor Glover stem from the lack of protections for county funds in the text of the initiative.<sup>80</sup> Since no such protections are expressly included, Stapler argues, the only safe assumption is that counties will be unable to protect their funding sources when the cities within them can protect theirs.<sup>81</sup>

Stapler also described the purported protections for transportation funding in the initiative as a “sweetener,” further asserting that Proposition 1A already created these protections in 2006.<sup>82</sup> He also argues that under the constraints imposed by the two versions of Proposition 1A, since the state has already borrowed funds twice in ten years, “they can’t do it again for a long, long time,” making the protections Proposition 22 proposes to enact unnecessary.<sup>83</sup> Contending again that the underlying purpose of Proposition 22 is to protect redevelopment agencies, Stapler said it is “beyond the pale” that there would be no way for the Legislature to override city funds protections in a fiscal emergency if Proposition 22 is passed.<sup>84</sup>

## VI. CONCLUSION

Proposition 22 poses an important question to California voters this November: how far should the state be able to go to solve the tangled budget problems it faces? In essence, voters must decide which level of government is best suited to manage the limited tax revenues available. Does Proposition 22 protect vital local services such as transportation and public safety, preserving local control and authority? Or does it reduce necessary funding for state sponsored education and health care programs?

It comes as no surprise to the average Californian that our state faces serious financial hurdles. How to best allocate and prioritize our scarce resources is an important question, one which voters will answer in November.

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<sup>79</sup> Vorderbrueggen, *supra* note 75.

<sup>80</sup> Telephone Interview with Richard Stapler, Communications Director, No on Proposition 22! Bad for Children, Seniors and Taxpayers! (Oct. 2, 2010).

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*