

A silhouette of a palm tree stands on the left side of the cover, set against a vibrant sunset sky with hues of purple, pink, and orange. The sun is partially obscured by the tree's trunk.

California Policy Options

2020

UCLA Luskin School
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Policy

Options

Edited by Daniel J.B. Mitchell

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Preface

For more than two decades, *California Policy Options* has informed researchers and journalists, as well as leaders and lawmakers, with up-to-date research and public policy recommendations on issues and opportunities in the state.

The chapters in this publication highlight a wide range of statewide issues and those that affect cities, local communities and individuals. This year's collection provides an overview of California's budget along with the annual economic forecast. Regional issues include transportation, affordable drinking water, energy and electric vehicles, while other chapters consider aspects of K-12 education, juvenile justice and reduction of the voting age in Los Angeles.

UCLA Professor-Emeritus Daniel J.B. Mitchell has again brought together a timely collection of California-focused articles that add to a long list of important readings, not only for policy and law makers, but for Luskin undergraduate students enrolled in the School's popular California Policy Issues course. The course, which has been co-taught by Prof. Mitchell and Visiting Professor Michael Dukakis to undergraduates since it was launched more than 20 years ago, is now included in the Luskin School's new Public Affairs major.

This edition, *California Policy Options 2020*, continues a long-established tradition of providing analysis of the state's public policy challenges from a variety of viewpoints as well as their political, economic and historic contexts.

Gary Segura

Dean, UCLA Luskin School of Public Affairs

Introduction

While much attention was focused as this volume was assembled on national issues and on the presidential election, state and local matters also remain important to California residents. In this issue of *California Policy Options*, we divide our ten chapters into three broad areas: fiscal affairs and economic conditions, infrastructure concerns, and local issues.

Fiscal Affairs and Economic Conditions

In 2010, Jerry Brown was elected governor of California pledging to deal with the state budget crisis caused by the Great Recession of 2008-09. Brown's remedies included new taxes and gubernatorial resistance to legislative pressure for increased expenditure. In addition, as the economy recovered, tax revenue returned and expanded. Brown built up a notable reserve in the state budget to deal with future crises. In 2018, California elected a new governor – Gavin Newsom. Thus, the governor's budget proposal for fiscal year 2019-20 represented the preferences of the new state executive. In his chapter entitled "*Time for an Old Guy; Time for a Young Guy: California Fiscal Affairs Shift from Brown to Newsom*," Daniel J.B. Mitchell examines the first Newsom budget proposal and enactment of the 2019-20 budget. Mitchell notes that budgeting is easier in Good Times than bad. What the new governor would prioritize should economic conditions become more adverse was unclear, at least during the first six months of his term.

A major determinant of tax revenue is the general condition of the state's economy. In his chapter on "*The California Economic Outlook: Fact Versus Fiction*," Robert Kleinhenz of Beacon Economics finds that the state's economy is "humming along" despite fears of recession and uncertainties surrounding such issues as international trade policy. Most metropolitan areas in California have shown job growth, although their paces of expansion vary. The state has various structural barriers to growth to surmount, notably the cost of housing. Whether 2020 turns out to be the year in which those structural issues are addressed is unclear. Absent an economic downturn, however, a state budget crisis such as developed during the Great Recession of 2008-09 seems unlikely.

On the spending side, education at all levels is a key component of the state budget. Because the state is a major funder of education, the legislature has viewed itself as having a role in educational policy that goes beyond merely providing dollars. Under former governor Jerry Brown, the state developed a Local Control Funding Formula (LCFF) that sought to direct funding especially to K-12 students in greatest need rather than on a simple per capita basis. In his chapter on "*Resources and Educational Equity: California's Effort to Remedy Inequality*," Joseph Bishop reports that the LCFF approach has boosted graduation rates. However, the approach is not as effective as might be hoped in reducing achievement gaps. His chapter suggests additional measures that could create a more positive impact.

Infrastructure

A major source of highway funding in California (and later of funding for other transportation projects) has been the gasoline tax. In their chapter on *“The Impact of ZEV Adoption on California Transportation Revenue,”* Hannah King, Martin Wachs, and Asha Weinstein Agrawal note that with more fuel-efficient cars on the road – including all-electric and other Zero Emission Vehicles (ZEVs) – the gasoline tax is becoming less useful as a revenue source for road maintenance, repair, and construction. The authors provide revenue estimates going forward under various scenarios. They note a dilemma. If the cost of ZEVs remains high, too few ZEVs may be sold to meet state environmental goals. On the other hand, if the price of ZEVs comes down substantially, the reduced revenue entailed will be insufficient to meet transportation needs.

Water supply has long been a contentious issue in California. Complex and costly infrastructure is deployed around the state to bring water from where it naturally is located to its final users. Key questions have been who has the “right” to water use and at what price. Those questions raise issues related to both economic efficiency and equity. In their chapter on *“Water Affordability in California: Challenges and Policy Solutions,”* Gregory Pierce, Kyra Gmoser-Daskalakis, and Nicholas Chow focus on drinking water and its pricing. Although there has been an upward trend in the retail price of water, the authors point to various viable programs that can function as offsets for low-income households.

Southern California has a major “logistics” sector, with the trucking of goods to and from the ports of LA and Long Beach as a major component. There are clear adverse environmental impacts of this traffic and the ports have been involved in various programs to decrease truck tailpipe emissions. Libby Bradley, Naseem Golestani, Kazutaka Izumi, Kento Tanaka, and Tsuyoshi Yamakawa in their chapter on *“Charging Infrastructure Strategies: Maximizing the Deployment of Electric Drayage Trucks in Southern California”* look at methods of developing a fleet of zero-emission electric trucks to handle the international cargo. In order to encourage such development, the authors consider potential geographic locations of electric charging stations as well as other steps to incentivize the switch from conventional vehicles to electric trucks.

Local Issues

Transportation has always been a key concern in California. Los Angeles County has been building a new rail system, both light and heavy rail, in the face of growing traffic congestion and environmental concerns about reliance on the automobile. However, major infrastructure projects such as subway construction inevitably impinge on localities and may spark local resistance. In his chapter on *“The Purple Threat: Beverly Hills vs. Metro,”* Grayson Peters documents the strong resistance that developed in Beverly Hills to the routing of the “Purple Line” subway line extension through that city. The result of this resistance was litigation delaying the project. Peters suggests that the episode demonstrates that public relations should be an important component of similar projects in the future.

Small and medium sized cities in California often use systems of citywide elections to select members of their city councils. That is, rather than the practice of using neighborhood districts found in larger cities, voters in the city votes for all members of the council. There are pros and cons to voting by district and by citywide elections. However, in some cases, the latter system was chosen at some point in the past to dilute the voting strength of racial and ethnic minorities. In 2001, the California legislature enacted the California Voting Rights Act which eased the path for private attorneys to sue cities using citywide voting and demand a switch to district elections. Under the threat of litigation costs – their own and those of

the plaintiffs' private attorneys if those attorneys prevail – many cities have converted to district elections. However, the City of Santa Monica, with its substantial revenue base, chose to resist, hired an expensive and high-profile law firm, and then lost. Its case is on appeal at this writing. As Daniel J.B. Mitchell points out in his chapter on *“How Local Should Politics Be? Santa Monica’s District vs. At-Large Voting Litigation,”* if the verdict is sustained on appeal, other cities in California are likely to switch to district voting. Presumably, such a step would make city councils more sensitive to local neighborhood concerns.

The U.S. has long had a decentralized system of voting arrangements, even for national elections. In their chapter on *“Reconsidering the Voting Age in Los Angeles and California,”* Laura Wray-Lake, Sara Wilf, and Benjamin Oosterhoff consider the possibility of lowering the voting age from 18 to 16. Although such a step could be considered at the state or even national level, the authors focus primarily on Los Angeles and on the Los Angeles Unified School District and its elected school board. They examine public opinion on the potential expansion of the franchise to younger individuals. While it is unclear how the existing electorate would vote on such an expansion, the authors suggest that they be given the choice.

Finally, in their chapter on *“Consent Policy for Youth Diversion in LA County,”* Susan Baik, Oceana Gilliam, Lindsay Graef, Nicolette Lewis, and Erica Webster point to options other than the standard criminal justice remedies for youths who are arrested for various low-level offenses. Where possible, the barriers to diversion from those remedies should be lowered say the authors. In addition, the authors recommend that decriminalization of some low-level offenses should be considered.

Daniel J.B. Mitchell

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Chapter 1

Time for an Old Guy; Time for a Young Guy: California Fiscal Affairs Shift from Brown to Newsom

Daniel J.B. Mitchell

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This chapter is based on information through early August 2019.

“There’s a time for an old guy and there’s a time for a young guy. There’s a time (for a guy) with no hair on the top of (his) head; there’s a time for a guy with really nice hair on the top of his head. I was the right man at the right time. Right now, Gavin Newsom is the right man at the right time.”

Governor Jerry Brown after the June 2018 primary¹

Jerry Brown in total served four terms as governor of California, a record no future governor will surpass unless term limits are abolished.² But Brown’s four terms came in two iterations. After his election in 1974, he served two terms as governor and then – in the midst of a state budget crisis – made an unsuccessful run for the U.S. Senate. At the time of his first iteration, he was the young guy with nice hair. Brown returned for two terms after the election of 2010. By then, he was the old guy with no hair on top. When he made his comeback as governor, Brown inherited a budget crisis from his predecessor, Arnold Schwarzenegger.

Gavin Newsom, Brown’s successor, had been mayor of San Francisco when he made a half-hearted attempt to run for governor in 2010. However, when it became clear that Brown would be the 2010 Democratic gubernatorial candidate, Newsom switched and ran for lieutenant governor instead. He then had to wait eight years for Brown to be termed out in order to make a second run for governor.

By the time Newsom made that second run, California had adopted its nonpartisan “top-2” primary system, and it was always clear that Newsom would come in first.³ The only question was whether the candidate who came in second in the June 2018 primary would be a Democrat or a Republican. If the former, there could be a real contest in the November general election. If the latter, Newsom would inevitably coast to victory, given the “blue state” politics of California. As it turned out, the runner up was a Republican, John Cox, a no-name businessman, and the inevitable happened. Newsom won in November without much effort.

As noted, Jerry Brown, in his elder iteration, inherited a budget crisis from Arnold Schwarzenegger. Governor Schwarzenegger had, in turn, inherited a budget crisis from his predecessor, Governor Gray Davis. Davis had begun his two terms during the dot-com boom of the late 1990s when money was rolling into Sacramento. But he was recalled and replaced by Schwarzenegger in 2003, thanks in large part to the fiscal crisis that accompanied the dot-com bust of the early 2000s. Davis’ predecessor, Governor Pete Wilson, had inherited a budget crisis from his predecessor, George Deukmejian, who inherited one from Jerry Brown The Younger. In short, of the five governors that preceded Newsom (Brown, Schwarzenegger, Davis, Wilson, and Deukmejian), only one – Davis – began his service without inheriting a budget crisis.

Thus, the recent political history of California is replete with governors facing a budget crisis challenge. Newsom, when he took office in January 2019, however, had escaped that fiscal fate. One of the first things an incoming governor has to do is prepare a budget proposal. So, Newsom’s first foray into state

¹Quoted in Jonathan J. Cooper, “Brown backs fellow Democrat Newsom for California governor,” *AP*, June 13, 2018. Available at <https://www.apnews.com/d1bd70c42718450baad781a22598a0b7>.

²Earl Warren, first elected governor in 1942, served three *consecutive* terms, but his third term was truncated by his appointment as chief justice of the U.S. Supreme Court. His record also will not be broken in the future, absent abolition of term limits. Term limits were imposed by a state ballot measure in 1990.

³The top-2 primary system was first used in California in 2011.

budgeting would be in Good Times. The question remained as to what would happen if the economic winds turned against him later in his first term (or maybe in his second).

This chapter looks at Newsom's first state budget from proposal to enactment and provides a background on the months before the proposal was aired. One of the realities facing any new governor is that he starts the first six months in office under a budget proposed and ultimately signed by his predecessor. Thus, the setting for Newsom's first budget was life under Brown's last one.

Background to the Transition

"What's out there is darkness, uncertainty, decline and recession. So good luck, baby."

Governor Jerry Brown presenting his final budget proposal when asked what fiscal conditions would face his then-unknown successor⁴

One way of interpreting Jerry Brown's second iteration as governor was as an expiation for the budget crisis that he left at the end of his first iteration to successor George Deukmejian. Budget crises have two components. The first is the general direction of the economy. If there is a national recession, there will inevitably be a California state recession. A state recession means a reduction, often sharp, in state tax revenue. And then there is internal policy, things that might have been done – or not done – to cushion the state budget from the external effect of recession.

The main thing a state or local government can do to reduce the impact of a recession is to build up a large budget reserve. In a way, a state or local government is similar to a household. Just as a household, it can have a reserve of saving to cushion the impact of a sharp drop in income. In the household case, a job loss might trigger a family income/budget crisis. In the government case, it is typically a recession that cuts into tax revenue. Jerry Brown, in his first iteration as governor, *had* built up a large reserve, but that reserve had perversely – when combined with a different type of political failing – produced a fiscal crisis.

In the late 1970s, a property tax revolt had begun to brew in California, as home prices shot up. At the time, California had a conventional property tax system whereby a local county assessor would regularly determine the value of properties (residential and commercial). Local governments – cities, school districts, and other entities – would then collect revenue based on a percentage of the assessment. Rapidly rising assessed values led to rapidly rising property tax bills.

Despite the brewing revolt, state legislators and Governor Brown seemed oblivious to what was happening until it was too late. Local property taxpayers looked at the large reserve Brown had accumulated as part of his positioning himself as a fiscal conservative but a social liberal. They wondered why the "obscene" reserve couldn't be used somehow to reduce their property taxes.

⁴Quoted in Jose A. Del Real, "Jerry Brown Warns of Recession and Reveals His Final Budget," California Today of *New York Times*, January 11, 2018. Available at <https://www.nytimes.com/2018/01/11/us/california-today-jerry-brown-warns-of-recession-and-reveals-his-final-budget.html>.

The upshot of the governor's and the legislature's political insensitivity to the growing property tax revolt was Proposition 13 of June 1978 which drastically cut local property taxes, limited future property tax rate increases, and rolled back assessments. Once Prop 13 passed, the state jumped in with its reserve to bail out local governments, or at least to allow them time to adjust. But in the early 1980s, two back-to-back national recessions cut into state revenue at the same time the reserve was being drained for the bailout. Thus, the combination of Prop 13's bailout and the recession impact was the root of Brown's budget crisis of that era and the fiscal legacy he left to incoming governor George Deukmejian.

When Brown came back into office as governor after the election of 2010, he backed a ballot proposition providing for an increase in state income and sales taxes. Voters approved the increases and later approved an extension of the income tax portion. Meanwhile, the state's economy was gradually recovering from the severe Great Recession of 2008, which had led to the budget crisis Brown had inherited from Schwarzenegger. Brown built up a "rainy day" reserve, which – in a way – was what he had tried to do in his first iteration. During the second iteration, however, there was no taxpayer revolt nor was there any equivalent of Prop 13 to drain the reserve.

Thus, the legacy Brown had left for Newsom was a large reserve and an economy in a period of boom. Perhaps under Newsom there would eventually come to pass Brown's prognostication of "darkness, uncertainty, and recession." But in the first six months of Newsom's term as governor when his 2019-20 state budget was proposed and enacted, none of those things happened.

General Background on Budgeting

"Don't screw it up."

Jerry Brown's final advice to incoming Governor Newsom⁵

Before we can trace the evolution of Gavin Newsom's first budget, a short lesson in budgetary methodology is needed. As is typical of state and local budgets, California divides its budget into various "funds." The largest is the General Fund which can be thought of as a state checking account from which ongoing day-to-day bills are paid. At the state level, the biggest source of expenditure is education, about 51% of the General Fund in Newsom's first budget.⁶ At the K-14 level, state spending for education is largely a passing of funding to local school districts and community college districts. Most such funding is governed according to Proposition 98 of 1988 which allocates money according to specified formulas. The University of California and California State University systems are directly funded by the state, and – in contrast to K-14 – are state government entities.

The state has other responsibilities apart from education. Twenty-eight percent of the General Fund goes to Health and Human Resources. About 9% of the General Fund goes to prison and incarceration-

⁵Quoted in Scott Shafer, "Passing the Torch, California Gov. Jerry Brown Tells Newsom, 'Don't Screw It Up,'" *National Public Radio*, January 7, 2019. Available at <https://www.npr.org/2019/01/07/682722290/passing-the-torch-california-gov-jerry-brown-tells-newsom-don-t-screw-it-up>.

⁶The various percentages from the 2019-20 budget cited here and below are taken from Department of Finance estimates available at <http://www.ebudget.ca.gov/2019-20/pdf/Enacted/BudgetSummary/SummaryCharts.pdf>.

related purposes. The rest goes to the myriad administrative functions undertaken by the state. Revenue for the General Fund comes primarily from three taxes: the personal income tax (70%), the sales tax (19%), and the corporation tax (9%). Through a combination of formula and discretionary allocation, some General Fund revenue is taken off the top and diverted to another fund, the Budget Stabilization Account (BSA), sometimes referred to as the “rainy day fund.” (More about that fund and other reserves later.)

Typically, when people refer to the state budget, they are referring to the General Fund. But the state budget has many funds that are earmarked for various purposes outside the General Fund. The largest external funds deal with transportation. The gasoline and other motor vehicle-related taxes go into funds that provide for roads and public transit. But there are many less visible funds such as Illegal Drug Lab Cleanup Account, the Medical Waste Management Fund, the San Joaquin River Conservancy Fund, and the Marine Invasive Species Control Fund, to name but a few.

Expenditures from the General Fund account for about 69% of all state expenditures (excluding spending from the various state pension funds). Special funds outside the General Fund account for 28% of the overall state budget. Finally, there are various bond funds that account for the remainder. The state borrows by issuing bonds for various capital purposes. Once the funds are raised, expenditures for those purposes are made as needed.

It is important to note that budgeting, at least when budgets are enacted, is an exercise in forecasting. The revenue that will be available depends on what the various taxes bring in, an amount heavily dependent on the direction of the state economy. Because the personal income tax represents a large share of state revenue, and because the income tax is “progressive,” i.e., it collects a disproportionate share of its revenue from top earners, state revenue is closely linked to the economic fate of a relatively small number of taxpayers.

The top 1% of tax filers pay 40-50% of the monies collected by the personal income tax.⁷ Those top earners tend to derive significant incomes from financial markets. Thus, the ups and downs of the stock market can be strongly reflected in personal income tax collections. As a result, budget forecasting involves not only projecting trends in the real economy but also financial booms and busts.

Any economic forecast is prone to error which becomes known only after the fact. The volatility of the California tax system (especially because of its dependence on financial markets as well as general economic trends) is an important motivation for building up reserves to handle fiscal uncertainties. There is no magic number or ratio that provides security against uncertainties (even if there are formulas that determine how much funding at a minimum must go into reserves).

Ultimately, all that can be said is that the more money there is in reserve, the more protection there is against some future economic and financial downturn. There is a political judgment to be made about a) how much to divert from the private sector in taxes, b) how much to spend on various public services, and c) how much to put away in reserve as insurance against uncertainty. Making those decisions is

⁷Legislative Analyst’s Office, *California’s Tax System: A Visual Guide*, April 12, 2018. Available at <https://lao.ca.gov/reports/2018/3805/ca-tax-system-041218.pdf>.

what legislatures and governors are supposed to do. And in California – with its direct democracy – such decisions are sometimes shared with voters.

In a sense, despite the fact that the budget is a product of both the executive and legislative branch, the governor has a built-in advantage. Under the California constitution, the governor is charged with initiating the budget process. In early January, a budget proposal for the coming fiscal year (which starts each July 1) must be presented to the legislature. To formulate the proposal, the governor has the Department of Finance with its budgetary experts.

In contrast, the legislature is fragmented. There are eighty members of the state assembly and forty members of the state senate. These 120 legislators have staff support, of course. But particularly with term limits and turnover, there is more expertise in the hands of the governor. To balance the process back in the 1940s, the legislature created the Legislative Analyst's Office (LAO) which provides commentary on, and critiques of, the budget outlook forecast and the specifics of the governor's proposal.

Once the governor has made the required January proposal, the legislature begins to hold hearings on that proposal, on the review of the proposal by the LAO, and on what witnesses and interest groups have to say. It is a practice, not a constitutional mandate, that in May, the governor presents the "May Revise," which is a modification of the original proposal that reflects additional information that has accrued about the state of the economy, tax collections, etc., as well as political developments. After the May Revise is presented, the assembly and the senate formulate what are essentially their own variants of the May Revise which eventually have to be reconciled with each other and the governor's proposal.

In its current political configuration, the legislature is dominated by Democrats. The Democratic leadership and the governor will confer on what is acceptable to the latter. Only a simple majority in the legislature is needed to pass a budget. If any tax increases are part of the budget, however, a two-thirds majority in both houses is needed. In the past, this super-majority requirement gave Republicans some limited leverage. But of late, the Democrats have the needed two thirds. So, Republicans have tended to be bystanders in the budget process.⁸

In principle, the governor could veto the entire budget. But absent some crisis, such a veto is very unlikely. However, the governor does have so-called line-item veto power. He can remove or reduce expenditures within the budget. However, since there is eventually a three-way deal among the leaders, even such vetoes will be limited. The legislature must enact a budget by mid-June under the constitution or lose a day's pay for each day beyond the official deadline.⁹ The governor then can determine what line-item vetoes, if any, are to be made.

⁸The two-thirds requirement for tax increases was part of Proposition 13 of 1978. There was a longstanding requirement of two-thirds support in each house for any budget, whether or not it included a tax increase. However, in 2010, Proposition 25 reduced the budget enactment requirement to a simple majority. Prior to that time, particularly during budget crises, budgets were often delayed beyond July 1. The state then didn't have a budget which prevented various expenditures and created more and more fiscal problems as time passed.

⁹Proposition 25 of 2010 created the daily pay penalty. However, under subsequent court interpretation, it is up to the legislature to determine exactly what passing a budget means. Typically, there is a main budget bill and then

Definitions and Numbers

“I’d say we’re in for contentious times and for too many rules, too many constricting mandates and probably too much spending” Brown told the Associated Press... He said Gov.-elect Gavin Newsom may have a hard time keeping fellow Democrats in check because “he’s got to please some of these groups enough of the time to still be viable as a political leader.”

Governor Jerry Brown in late December 2018¹⁰

Jerry Brown’s prognostication of “too much spending” above raises an interesting issue. “Too much” is clearly a subjective judgment call. But “spending” presumably is something that can be measured. And, more generally, concepts that surround budgeting such as spending, revenue, surpluses, deficits, and reserves presumably are objective facts. You might think that although we may disagree on whether budgeting behavior is prudent or not, we surely can agree on what the accounts that track budgeting mean. Sadly, it’s not so simple.

Stocks and Flows

One key element in budgetary language is a division between *stocks* and *flows*. Put simply, stocks refer to snapshots of the budget at a moment in time, often the beginning or end of a period such as a fiscal year. Let’s consider a simple example based on a household. Imagine a household that has a checking account for day-to-day expenses. At the beginning of the year, let us imagine that the household has \$1,000 in the account. That’s a *stock* observation. At the end of the year, it has, say, \$400 – another *stock* observation.

For the account to have dropped by \$600 during the year, it must be the case that the net *flows* into the account (income or revenue deposits) and the net *flows* out of the account (spending) came to -\$600, i.e., spending exceeded revenue by \$600. Perhaps \$40,100 came in and \$40,700 *flowed* out, for example. Note that the household, despite the net *outflow* from its checking account, is not in immediate trouble. Its checks won’t bounce as long as there is sufficient money left in the account to cover them. Still, if the same revenues and spending are repeated in the following year, there would be a potential problem; the account would be short by \$200.

In budgetary language, the checking account started with a reserve (*stock* concept) of \$1,000. Revenues were \$40,100 (*flow* concept). Spending was \$40,700 (*flow* concept). The account ran a deficit (*flow* concept) of -\$600. Thus, at the end of the year, the reserve (*stock* concept) in the checking account was \$400.

various “trailer” bills. It is often the case that the legislature passes the main bill, but the complete set of trailers comes later.

¹⁰Quote from “Ahead of Departure, Brown Predicts Too Much Democratic Spending,” *KPIX 5 San Francisco*, December 19, 2018. Available at <https://sanfrancisco.cbslocal.com/2018/12/19/jerry-brown-exit-interview-predicts-too-much-spending-democrats/>.

The point of potential crisis comes in the second year. But whether there is a crisis in part depends on whether the household has other reserves tucked away apart from the balance in its checking account. Perhaps it has a savings account with a balance of, say, \$300 at the beginning of the second year. If so, it could pull \$200 from that account in the second year and deposit it into its checking account. And if it did, no checks would bounce in year 2. But in year 3, with a balance of zero initially in its checking account and only \$100 left in its savings account, some kind of change in behavior would be required. Having reserves can push away a budget crisis resulting from deficits for a time. But eventually, some kind of corrective action would need to be undertaken. Either income would need to be boosted or spending would need to be reduced.

Moving to the State Level

The household example can be translated into state and local budgeting concepts. The checking account is similar to a governmental General Fund. Income into the checking account is analogous to tax and other revenue that flows into the General Fund. Checks written on the account are analogous to government spending. The amount in the checking account (or savings account) can be termed a “reserve.” The excess of spending over income during the course of a year is a “deficit.” If income had exceeded spending (which would have added to reserves rather than subtracted from them), we would term that excess a “surplus.”

Now let’s apply these concepts to the actual California state budget accounts. Governor Jerry Brown and the legislature enacted the fiscal year 2018-19 budget in June 2018. Since Brown was termed out in early January 2019, his last budget would run through the last six months of his term and then the first six months of his successor’s term. Note that at the point at which it was passed, that budget was entirely a forecast. What revenues would be collected in the year starting July 1, 2018 were estimates. Similarly, expenditures for that year were also estimates. Many expenditures depend on actual developments, e.g., the cost of operating the state prisons depends on the number of prisoners which, in turn, depends on sentencing behavior, crime rates, arrests, etc.

Table 1 shows the evolution of the estimates of the Brown 2018-19 budget during the fiscal year. Originally, it was estimated that the General Fund would have a starting reserve of about \$8.5 billion. Income of the General Fund was estimated to be \$133.3 billion. The outflow from the General Fund was estimated at \$138.7 billion. The excess of spending relative to income – the deficit in the General Fund – was -\$5.4 billion. Given that deficit, only \$3.1 billion would be left in the General Fund reserve at the end of the fiscal year.

The state has various equivalents of savings accounts, however, apart from the balance in the General Fund. The Budget Stabilization Account (BSA or “rainy day fund”) was originally created during the Schwarzenegger period but Governor Schwarzenegger was never able to make much use of it. Under Brown, the BSA was given real life through a combination of a formula - which takes revenue off the top before it goes to the General Fund - and other allocations made by the legislature.

Additionally, a “safety net reserve” was created for additional savings to get around certain limitations applicable to the BSA. Finally, there is a Prop 98 reserve available to school districts which up through

fiscal year 2018-19 had received no funding. When these reserves were summed, the initial estimate was that net total reserves would be \$17.1 billion at the end of the year.

At various points during the fiscal year, re-estimates are made of reserves, inflows, outflows, and surpluses or deficits. As noted, it was initially estimated that when all the reserves are added together, there would be a total of \$17.1 billion. Thus, there were more than enough funds available to offset the projected -\$5.4 billion deficit in the General Fund. In effect, that \$17.1 billion was projected to be Brown's fiscal legacy for his successor. Table 1 shows the re-estimates made in November 2018, January 2019, May 2019, and June 2019 of the final Brown budget. The total of all estimated reserves rose by almost \$5 billion to \$22.0 billion as the year progressed. (Re-estimates for a particular fiscal year continue to be made even after that year has ended.)

Table 2 provides a similar look at Governor Newsom's first budget (for 2019-20). It is the practice of the Legislative Analyst's Office (LAO) to provide a "workload" estimate in November for the next year's budget. Essentially, this is an estimate of what would happen if the existing set of taxes and programs continued on auto-pilot. As can be seen on the table, the LAO projected that if there were no changes, by the end of the next fiscal year, i.e., 2019-20, total reserves would be above \$30 billion. At the time, as Table 1 shows, the LAO was projecting that at the beginning of 2019-20, total reserves would be about \$24 billion. So, the LAO was suggesting that doing nothing would add about \$6 billion to total reserves.

We know from Table 1 that Brown's last budget in fact left a reserve total of about \$22.0 billion in June 2019. And we know from Table 2 that Newsom's first budget projects a total reserve twelve months later of \$20.6 billion. So, on net, Newsom's first budget ran an overall deficit of about -\$1.4 billion.

Table 3 compares Brown's last budget with Newsom's first budget. When you add all the reserves together, both had small deficits. Brown's is so small that it is within the noise factor. That is, he essentially left a balanced budget with a relatively large reserve. Newsom (and the legislature) chose to run a small deficit, but to leave a sizable total reserve. Perhaps this is the statistical reflection of Brown's prognostication at the head of this section that Newsom would have *"to please some of these groups enough of the time to still be viable as a political leader."*

It's hard to get away from the fact that Gavin Newsom's first budget was put together in an era of Good Times. The state's economy had recovered from the Great Recession by the time he took office. His predecessor had built up reserves that were sufficient to handle unforeseen perturbations in the economy that might occur during fiscal 2019-20. But one element of state budgeting had not been corrected and that is basic definitions.

Sloppy Language

The state has long featured sloppy budgetary language in both Good Times and Bad. In particular, the use of the terms "surplus" and "deficit" has always been loose. In the past, this looseness has involved two basic sins. Surpluses and deficits are *flow* concepts. But they have been sometimes confused with *stock* concepts such as reserves in California budget-speak. In addition, as *flow* concepts, they inherently involve a time period, typically the fiscal year. In the past, however, varying multiyear periods have been

used without clear specification. Sometimes, the motivation has been to disguise the fact that a problem is looming. Sometimes the motivation seemed to be to exaggerate the depths of a problem in order to stimulate legislative action. Sometimes, there seems to have been no motivation; just confusion.

It is difficult to evaluate fiscal policy if there is confusing descriptive language and the sins of the past were bad enough. But somehow, during the formulation of Newsom’s first budget, a new misuse of terminology developed. The word “surplus” started being used by both the governor and the Legislative Analyst to describe the fuzzy concept of “discretionary spending.”¹¹

First, in theory, almost any element of state spending is “discretionary” in the sense that even when there is a controlling legal obligation or formula involved, some legal change – perhaps a ballot proposition - could allow a change. And there are forms of spending that are discretionary but politically would be difficult to cut or eliminate. Only debt service is really not discretionary. So, there is no simple, objective, and meaningful definition of discretionary spending. Second, the numbers for this version of “surplus” fall into the \$20 billion range, which by coincidence is the range of total reserves. So, there is even more potential confusion.

Use of the term surplus to describe discretionary spending is a *really, really* bad practice. It seems to have arisen after the retirement of one Legislative Analyst in December 2018, and appointment of another. Prior to that time, although discretionary spending was discussed in LAO reports, it was not referred to as a “surplus.”¹² Note that even in the worst of times, there will be some discretionary spending – so there will always be a “surplus.” Good Times are good times to implement clear and precise budgetary language. But it hasn’t been happening. In fact, California seems to be going in the opposite direction.

Cash Accounts and Reserves

“Based on the experience of recent recessions, we estimate the state would need about \$20 billion in reserves to cover a budget problem associated with a mild recession and \$40 billion to cover a moderate recession.”

Legislative Analyst’s Office¹³

Up to this point, it may have appeared that the various reserves discussed are used only in economic downturns. In fact, there is a seasonal use for cash kept outside the General Fund. And there is more cash available than what is in the official reserves.

¹¹For example, Gabriel Petek, Legislative Analyst’s Office, “Amid Good Fiscal Times, Planning for the Future Is Crucial,” May 21, 2019: “*At a moment when the state anticipates \$22 billion in discretionary resources (also referred to as its surplus), few would dispute that California is in the midst of ‘good times.’*” Underline added. Available at <https://lao.ca.gov/Publications/Report/4051>.

¹²Legislative Analyst Mac Taylor retired in December 2018. His budgetary discussions, while referring to discretionary spending, did not characterize such spending as a surplus. See, for example, Legislative Analyst’s Office, “Initial Comments on the May Revision,” May 12, 2018. Available at <https://lao.ca.gov/Publications/Report/3832>.

¹³Legislative Analyst’s Office, “Initial Comments on the Governor’s May Revision,” May 12, 2019. Available at <https://lao.ca.gov/Publications/Report/4039>.

As noted, there are various funds outside the General Fund that are earmarked for specific purposes, such as transportation. Cash flows into these funds from various sources. For example, in the case of transportation, there are taxes related to gasoline consumption and various other taxes and fees related to motor vehicles. The elected state controller is charged with keeping track of all the inflows, outflows, and balances in the various accounts outside the General Fund including the official reserves.

There is a seasonal pattern to inflows into the General Fund. Income tax liabilities must be settled in April. Sales tax receipts come in disproportionately during the Christmas sales period in November-December. But expenditures from the General Fund don't follow the same pattern. Civil servants must be paid month after month.

When there isn't enough cash on hand in the General Fund to pay for ongoing expenses because of seasonal mismatch, the controller can engage in internal borrowing – pulling cash out of reserves and other funds outside the General Fund. As Table 4 shows, during Good Times – as in the 2018-19 fiscal year – such borrowing peaks in the winter months and then notably declines in April, as personal income tax receipts come in. The amount left in the external funds (including the reserve funds) and available to be borrowed legally is referred to as “unused borrowable resources.” As can be seen from the table, by June 2019, such resources amounted to over \$51 billion, an amount well beyond the cash in the official reserves.

Of course, the state has not always had such Good Times. If there aren't sufficient internal sources available, the state can borrow short term (within the fiscal year) from the outside financial market by issuing Revenue Anticipation Notes (RANs). In really extreme circumstances, it is possible to borrow across fiscal years through the issuance of Revenue Anticipation Warrants (RAWs). However, the more extreme the circumstances are, the more costly such borrowing will be in terms of interest rates that must be paid and difficulty in arranging loans. In a few cases of extreme budget crisis, the state has not paid all its bills on time and instead forced creditors to take IOUs known as Registered Warrants. The most recent such episode occurred in the summer of 2009 in the wake of the Great Recession.

Note that apart from such unusual cases, once the state begins to rely heavily on internal borrowing that goes beyond what is in the official reserves, it is effectively filling the external funds with IOUs from the General Fund. When the earmarked external funds are filled with such IOUs, they cannot fulfill the missions to which they are dedicated. You can't fill potholes in a highway with IOUs. So, overreliance on internal borrowing – as occurs when state economic conditions are difficult – has negative effects.

Nonetheless, the accounts maintained by the controller point to the fact that there is a greater cushion available to the state – or at least to the state's General Fund – than the official reserves. Table 5 shows the evolution of unused borrowable reserves from the ends of fiscal 2008-09 through 2018-19. In June 2019, on the eve of the episode in which the state issued IOUs to some creditors - such reserves were only 7% of annual disbursements from the General Fund. By the end of Jerry Brown's final budget, the ratio – which had risen year by year – stood at 35%.

There is one bit of bad news, however. Careful readers may have noted that while annual expenditures on Table 1 for fiscal 2018-19 were about \$143 billion as reported by the governor and the Department

of Finance, disbursements for the same fiscal year as reported by the controller on Table 5 are listed as about \$146 billion. In short, there is a discrepancy.

Budget aficionados will quickly explain that while the controller's accounts are on a cash basis, recording inflows and outflows of cash as they occur, the state budget enacted by the legislature and reported by the Department of Finance is on an accrual basis. Under accrual accounting, inflows and outflows are assigned to the period when they are due, not when they occur. Thus, if a tax liability is due in June, but the check arrives on July 1, in cash terms the receipt is recorded in the fiscal year beginning in July. But in accrual terms, it is recorded in the year ending in June when it was actually due.

There is a rationale for using accrual accounting for budget planning purposes. And there is also room for mischief, since it is up to the legislature and governor to determine the precise methodological details.¹⁴ And there is a rationale for the controller to use cash accounting, since she has to know what cash is available to pay bills. But in theory, it should be possible to reconcile discrepancies, such as the one cited above. In practice, California doesn't publish a reconciliation.¹⁵

How the Sausage Was Made: Summertime 2018 – Campaign Time

"Our values are under assault. We're engaged in an epic battle. It looks like voters will have a real choice this November, between a governor who's going to stand up to Donald Trump and a foot soldier in his war on California."

Gavin Newsom on coming in first in the June 5, 2018 gubernatorial primary and preparing to run against Republican John Cox in the general election¹⁶

When Jerry Brown ran for governor in 2010, the focus was heavily on the state budget because of the ongoing budget crisis. When he ran for re-election in 2014, there was still a focus on the budget in that Brown was backing a ballot proposition to put funding by formula into the "rainy day fund" (Budget Stabilization Account) to deal with future downturns. In contrast, the 2018 gubernatorial election was

¹⁴As an example, in 2009, the state postponed its paychecks for state employees from June 30 to July 1. If the state used true accrual bookkeeping, that change would have made no difference (although it affected cash accounting). The gimmick at the time "saved" almost \$1 billion purely cosmetically and only because the state's version of accrual accounting is not true accrual. Thereafter, the state continued the practice. Governor Newsom's first budget proposed undoing the gimmick (which means that there would be 13 months of pay in the fiscal year. See John Myers, "The one-day, \$1-billion California budget gimmick that has lasted for almost a decade," *Los Angeles Times*, February 10, 2019. Note that Myers seems to misunderstand the accounting trick and assumes that the cosmetic "saving" continues year after year. But after the first year, there are twelve rather than eleven months of pay again. Available at <https://www.latimes.com/politics/la-pol-ca-road-map-california-budget-payroll-gimmick-20190210-story.html>.

¹⁵There is also a discrepancy between cash receipts as reported by the controller and cash receipts as reported by the Department of Finance in their separate monthly reports. The latter explains the discrepancy as due to a lag in agencies' reporting of information to the former. It remains unclear, however, why the controller's reports have to be put out ahead of such lagged reporting.

¹⁶Quoted in "Gavin Newsom, John Cox secure California primary wins, move closer to becoming governor," *ABC 7 News*, June 6, 2018. Available at <https://abc7news.com/politics/gavin-newsom-john-cox-secure-california-primary-wins/3566225/>.

held in Good Times and the budget crisis was a thing of the past. The early months of the campaign coincided with Brown's final budget formulation. But fiscal policy *per se* was not a major issue in the campaign.¹⁷

Number 2 in Top-2

There was no doubt – given the tilt in California politics in the second decade of the 21st century - that the eventual gubernatorial winner would be a Democrat. But there were two Republicans in the nonpartisan race heading for the June 2018 primary as well as four Democrats. It was clear from polling that in that “top-2” primary, Lieutenant Governor Gavin Newsom would be the top vote getter. He had essentially been running for governor for eight years, waiting for Jerry Brown to be termed out. The question was whether the number 2 vote getter would be one of the three other Democrats or one of the two Republicans. If a Republican were number 2, the winner in November would be Newsom, and he would not really need to do much campaigning. If one of the Democrats were to be number 2, however, there would be a real contest and the outcome was not preordained.

National and state Republicans wanted one of the two Republicans – state senator Travis Allen or businessman John Cox – to be on the gubernatorial ballot in the November general election. This goal was not based on any idea that either one could win against Newsom or any other Democrat, but because of the impact on Republican voters. It was felt that if there were no Republican at the top of the ticket, Republican turnout in the election would be reduced, and Republican congressional candidates and legislative candidates could be hurt.

Although between Allen and Cox, Allen was arguably the most loyal Trump supporter (Cox reportedly did not vote for Trump in 2016), President Trump eventually endorsed Cox as the stronger of the two. In the primary, Cox came in second, thus knocking out Allen and also the Democrats competing with Newsom.¹⁸ Once the primary was over, Cox was given only nominal support by the Republican establishment. There was only one perfunctory radio debate between Cox and Newsom during the subsequent campaign period and little advertising.

After the Primary

With the budget not a focus, thanks to Good Times and the inevitability of a Newsom victory after the June primary was over, other issues became the political focus thereafter. Of course, Newsom was well aware that he would need to produce his first budget proposal in early January. But he had no need to be specific during the remaining campaign about what would be in it or about how his priorities might differ from Brown's. His stances on Brown's high-speed rail between the Bay Area and southern

¹⁷The description that follows of political events is drawn from various news sources. References are provided mainly for quotes and certain other facts.

¹⁸The Democrats, apart from Newsom, were state treasurer John Chiang, former Los Angeles mayor Antonio Villaraigosa, and state superintendent of public instruction Delaine Eastin. Cox in his youth had been a Democrat but ran unsuccessfully for various offices as a Republican in Illinois before coming to California. Allen did not endorse Cox until the end of July 2018. The debate by the six candidates on May 8, 2018 before the primary can be heard at https://archive.org/details/govdebate582018edit_201907.

California remained somewhat fuzzy. During the primary, he said there was sufficient funding to build it from the Bay Area to the Central Valley.¹⁹

Newsom did signal that he regarded the state's housing supply (or lack of it) as an important issue and touted an education platform of "cradle to career." These areas were both indirectly connected to what Newsom had earlier said was California's biggest problem: income inequality.²⁰ But these general ideas did not require putting detailed budgetary price tags on the policies. And Newsom did pick up – after the election – on one Brown budgetary failure, an effort to pass a cellphone tax to fund an upgrade to the 911 emergency system. The proposal failed for lack of a two-thirds majority under Brown, but it was later included in Newsom's first budget package (and was adopted).

During the summer of 2018, the issues in part revolved around various propositions that would be on the November ballot. Table 6 summarizes these propositions and their eventual outcome. Some of these propositions did have budgetary significance, especially those involving issuance of bonds (the debt service of which must eventually be paid) and an attempt to repeal an increase in the gas tax for transportation enacted by the legislature. The gas tax repeal (Prop 6) appeared to be – like the Cox candidacy – focused on encouraging Republican voter turnout and – also like the Cox candidacy – did not have major campaign funding behind it once put on the ballot.²¹ It never polled well and was ultimately defeated. A September 2018 PPIC poll showed 39% support among "likely voters." Even among Republicans, support was only 50%.²²

One proposition was removed from the November 2018 ballot by the state supreme court, a pet project of billionaire Tim Draper to split California into smaller states. Earlier, Draper had funded a campaign to break California into six pieces, but he failed to obtain sufficient signatures. He then successfully funded another campaign. This time, he revised the proposition to divide the state in three. Both propositions were wacko ideas, probably intended to dilute the state's electoral votes. And the court found that such a proposal could not be accomplished by initiative.²³

By the summer of 2018, it was too late to add initiatives or referenda to the November 2018 ballot. Any new petitions received were aimed at the 2020 general election. Brown signed a bill abolishing the bail system in the state. The bail industry then obtained the necessary signatures for a referendum on the

¹⁹You can hear Newsom's remarks on high-speed rail (and those of the other primary candidates) at <https://www.youtube.com/watch?v=Dxk2gyUkBsk>.

²⁰Quoted in Tom Elias, "Newsom: Income Equality State's Biggest Problem," *Santa Monica Mirror*, December 21, 2018. Available at <https://smmirror.com/2018/12/newsom-income-equality-states-biggest-problem/>.

²¹A Democratic state senator from a "swing district," Josh Newman, was recalled in June 2018 for having voted for the gas tax.

²²Public Policy Institute of California (PPIC), *Californians and Their Government*, September 2018. Available at <https://www.ppic.org/wp-content/uploads/ppic-statewide-survey-september-2018.pdf>.

²³An even wackier proposal for California to secede from the U.S. and become an independent country ("Calexit") – which seems to be promoted by a man residing in Moscow – comes and goes on social media.

new law, effectively preventing its implication – even if voters ultimately agreed with the legislature and governor – until after the November 2020 election.²⁴

An initiative has been placed on the 2020 ballot that offers a version of the “split roll” property tax concept which, if adopted by voters, would result in a dramatic change in Prop 13’s property tax restrictions. Under a “split roll,” commercial property would be taxed at current market value determined by periodic assessments while residential property would remain under the Prop 13 limitations. The Legislative Analyst’s Office estimated that the change could produce an added \$6.5 billion to \$10.5 billion in property tax revenue.²⁵ Polling suggested that such a proposition could obtain majority support if it were tied to support of popular programs such as education.²⁶ Governor Brown, however, remained neutral about the proposition, other than suggesting that economic conditions at the time of the 2020 general election would affect voter support.²⁷

Non-Budget Concerns

Absent a budget crisis as a focus, some of the attention was on symbolic gestures. For example, the legislature passed a bill that indicated a legislative “intent” to provide universal health care, but in fact set up a committee to study the issue and report in 2021. And there were aftershocks from the former budget crisis that arose as part of the Great Recession. When in crisis, the legislature sometimes takes questionable actions to shore up state funding that end up being undone later. A court in July 2018 ruled that the state had improperly funneled \$330 million in revenue from a lawsuit against financial institutions involved in mortgage/foreclosure misconduct into the General Fund rather than to affected homeowners. Litigation in that matter continued for another year before a final repayment order was issued, so any immediate budget impact was avoided.

Two other court decisions influenced California’s political affairs. The state supreme court’s *Dynamex* decision of April 2018 potentially made it difficult for employers – notably ride-sharing firms such as Uber and Lyft – to classify workers as “independent contractors” rather than as employees.²⁸ The former classification avoided payroll taxes and other labor and benefit obligations. As a result, the legislature began working on responses to *Dynamex*, an effort whose conclusion remains uncertain at this writing. The federal *Janus* decision of the U.S. Supreme Court of June 2018 made public sector labor unions unable to collect fees in lieu of dues from non-members.²⁹ Such unions are major players in California

²⁴When a referendum receives sufficient signatures to go on the ballot, the law on which there is to be a vote remains suspended until after the election. If voter reject the law, it dies. If voters endorse it, the law goes into effect.

²⁵Joint estimate dated February 5, 2018 of the Legislative Analyst’s Office and the Department of Finance for the Attorney General. Available at <https://lao.ca.gov/ballot/2017/170715.pdf>.

²⁶See Public Policy Institute of California, *Californians & Higher Education*, November 2018. Available at <https://www.ppic.org/wp-content/uploads/ppic-statewide-survey-november-2018.pdf>.

²⁷John Myers, “A sagging economy could doom a 2020 ballot measure to raise commercial property taxes, Gov. Jerry Brown says,” *Los Angeles Times*, December 23, 2018. Web link no longer available.

²⁸*Dynamex Operations v. Superior Court*. Available at <http://s3.amazonaws.com/cdn.orrick.com/files/S222732.PDF>.

²⁹*Janus v. American Federation of State, County, and Municipal Employees, Council 31, et al.* Available at https://www.supremecourt.gov/opinions/17pdf/16-1466_2b3j.pdf. Governor Brown signed a law in September

politics, and their loss of revenue could have significant effects. One resulting follow-on lawsuit sought fee refunds retroactively.³⁰ Going forward, the full political impact of *Janus* was uncertain.

California continued to play its role in the “resistance” to various policies by the Trump administration. As of July 2018, a *Los Angeles Times* count put the total of state lawsuits against Trump proposals at 38.³¹ Included was the legal challenge to asking a citizenship question on the 2020 Census, a challenge which eventually succeeded. Environmental deregulation proposed by the Trump administration was also opposed. Legislation challenged the Trump administration on such matters as “net neutrality” and the offering of cheap health insurance that omitted coverage requirements under federal “Obamacare.” At one point, Governor Brown referred to the president as a “liar, criminal, fool” with regard to a climate change-related policy.³² Trump, for his part, singled out candidate Newsom as favoring “open borders.”³³

However, at the same time as it functioned as part of the opposition to Trump administration, the state also requested federal aid in disaster situations such as wildfires, and generally received it. Although the state was generally successful in gaining those funds, it was less successful in denying the federal government some added revenue resulting from the 2017 Trump tax legislation.

That legislation limited deductions for property tax and state income tax to \$10,000, effectively taxing “blue” coastal states with high property values and progressive income taxes.³⁴ There were various proposals to allow state tax deductions for “charitable” contributions to state government to circumvent the ban. Brown vetoed one such bill sponsored by Democrat Kevin de León who, at the time, was running for the U.S. Senate against fellow Democrat Dianne Feinstein.³⁵ Other such proposals were never enacted, in part over concerns about their validity under U.S. tax law.³⁶

2018 limiting lawsuits in state court against unions for back dues and fees. However, some suits for such refunds were filed in federal court.

³⁰A claim for a retroactive refund was denied by one federal court. But various cases were filed around the country and the matter has not been determined at this writing.

³¹Patrick McGreevy, “California has sued to Trump administration 38 times. Here’s a look at the legal challenges,” *Los Angeles Times*, July 22, 2018. Available at <https://www.latimes.com/politics/la-pol-ca-california-sues-trump-20180722-story.html>.

³²Quoted in Tal Axelrod, “Jerry Brown knocks Trump as a 'liar, criminal, fool' on climate change,” *The Hill*, September 15, 2018. Available at <https://thehill.com/blogs/blog-briefing-room/energy-environment/406841-jerry-brown-knocks-trump-as-a-liar-criminal-fool> and <https://www.youtube.com/watch?v=bE6UhrWYt18>.

³³Eric Ting, “Trump calls out Gavin Newsom during Montana rally, Newsom responds,” *SFGATE*, September 7, 2018. Available at <https://www.sfgate.com/politics/article/Trump-Gavin-Newsom-rally-health-care-immigrants-13211462.php>.

³⁴President Trump was quoted as indicating that he was willing to reconsider the \$10,000 cap. However, his statement appeared to be an off-the-cuff remark. And, of course, it would take an act of congress to change the law. See Emily Cadei, “Trump ‘open to talking about’ a change in tax law that is costing Californians \$12 billion,” Capital Alert of *Sacramento Bee*, February 7, 2019. Available at <https://www.sacbee.com/news/politics-government/capitol-alert/article225644525.html>.

³⁵Under the top-2 primary system, incumbent Feinstein had come in first with de León second. Hence, there were no Republicans in the general election for the U.S. senate seat. Governor Brown endorsed Feinstein even before the June 2018 primary.

³⁶The IRS warned that such contributions might be deemed violations of tax law. The idea of converting state taxes into charitable contributions predated the Trump tax law since it effectively amounted to a federal subsidy of state

How the Sausage Was Made: Fall 2018 – Election and Beyond

“When it comes to fiscal discipline, I am absolutely in that same mold (as Jerry Brown)... I’m not profligate.”

Gubernatorial candidate Gavin Newsom³⁷

To the extent that there was a gubernatorial campaign, the highlight was a radio debate between Gavin Newsom and John Cox on the morning of Columbus Day. The day and time – combined with the radio-only format (no TV) – meant that few voters heard it. Cox tried to avoid mention of Donald Trump. Newsom brought Trump up. Generally, the two candidates disagreed on most issues during the debate with Newsom – not surprisingly – better able to cite facts and figures.

General Election

The 2014 gubernatorial election - with Jerry Brown running against a no-name Republican (Neel Kashkari) who had no real campaign chest (similar to Cox in that respect) – suggested that the Republican would nonetheless receive about 40% of the vote.³⁸ And in the end, the 2018 general election was a repeat of 2014. Newsom received just under 62%; Cox received just over 38%. Democrats won supermajority control of the two houses of the legislature.

At the national level, the GOP lost key congressional seats in California.³⁹ After the election, a former Republican state assembly leader stated that “the Grand Old Party is dead” and that “one party rule” would continue in California unless Republicans separated from President Trump or some new third party was formed.⁴⁰ Whether such developments are possible is a long-term matter. That Travis Allen who had competed with Cox in the primary, announced a quixotic drive to recall Newsom, before the governor-elect had even taken office, suggested such party reform would be difficult.⁴¹ In the immediate term, Newsom would be dealing essentially with politics *within* his party rather than with two-party conflict.

In the course of the 2018 general election campaign, Newsom indicated he would cut back the two Brown-favored infrastructure projects, the twin-tunnel water project (which he would reduce to one

government activity. See Phillip C. Blackman and Kirk J. Stark, “Too Good to Be True? How State Charitable Tax Credits Could Increase Federal Funding for California,” in Daniel J.B. Mitchell, ed., *California Policy Options 2013* (UCLA Luskin School of Public Affairs, 2013), Chapter 2. Available at https://issuu.com/uclapubaffairs/docs/2013_ca_policy_options.

³⁷Alexei Koseff, “‘The adult in the room’: Gavin Newsom says he’s not necessarily a big spender,” *Capitol Alert of Sacramento Bee*, October 31, 2018. Available at <https://www.sacbee.com/news/politics-government/capitol-alert/article220906265.html>.

³⁸Kashkari had been a Treasury Department official in the George W. Bush administration. At this writing, he is president of the Federal Reserve Bank of Minneapolis.

³⁹It appeared that the GOP was not geared up to take advantage of changes in state election law – so-called ballot “harvesting” – that Brown had signed in 2016. The new law allowed campaign workers to drop off mail ballots for voters and then collect and return them. Democrats were better able to take advantage of the new procedure.

⁴⁰Kristin Olsen, “GOP is dead in California: A new way must rise,” *CALMatters*, November 13, 2018. Available at <https://calmatters.org/commentary/my-turn-gop-is-dead-in-california-a-new-way-must-rise/>.

⁴¹Tweet of December 5, 2018: <https://twitter.com/JoinTravisAllen/status/1070377504353923072>.

tunnel) and the high-speed rail (of which, he said, he would initially build only the Bay Area to Central Valley leg).⁴² Cox attacked Newsom for an affair he had had with a wife of his campaign manager in 2007 when he was mayor of San Francisco. But it turned out that Cox had an illicit affair that led to his divorce back in Illinois. In short, the campaign – such as it was – was not especially illuminating about budget priorities except to suggest that Cox was largely against whatever Newsom might be for.

Once the November election had passed, however, Newsom needed to focus on specific priorities and on formulating a budget proposal. He announced the appointment of Ana Matosantos – who had been budget director under Governors Schwarzenegger and Brown – to be his cabinet secretary. Brown’s existing finance director Keely Bosler – the official most directly involved in budget preparation – was continued in office. Of course, many programs and issues simply pass from one governor to the next.

For example, under Brown, the state had formulated a modest pension saving plan known as “CalSavers” for employees in private firms without their own retirement savings programs. CalSavers was already in limited operation, but it was set for a full-scale launch at the start of the 2019-20 budget year.⁴³ The state’s wildfires problem continued without regard to election results or the change in governor.

Members of the legislature, many of whom continued in office, had their own priorities for the budget and for other state issues. While Newsom said such legislative proposals would be “whittled down,” his statement did not prevent bills from being filed.⁴⁴ On social issues, Brown had sent the state’s National Guard to the Mexican border for limited functions in an effort to appease the Trump administration. Newsom said he would be withdrawing those troops once in office.

Other issues that were passing from one governor to another included wildfires – particularly their impact on utilities such as PG&E (which fell into bankruptcy) – which were being held liable for damage caused by their equipment, the high-speed rail and twin tunnels, a pending court test of the “California Rule” on pensions (which says that accrued benefits cannot be cut),⁴⁵ problems of inefficiency at the

⁴²See George Skelton, “Gavin Newsom says he would scale back the bullet train and twin tunnels if elected,” *Los Angeles Times*, October 11, 2018. Available at <https://www.latimes.com/politics/la-pol-sac-skelton-john-cox-gavin-newsom-california-governor-debate-20181011-story.html>.

⁴³The intent of CalSavers is to increase saving for retirement. Workers would be able to opt out. But social science research indicates that people tend to go with the default settings of such programs, i.e., most people affected wouldn’t opt out. Several states are considering such programs. One possible counterargument is that by reducing take-home income, such plans *might* push low-wage enrollees toward higher-interest debt from credit cards and payday lenders. See Timothy F. Harris, Kenneth Troske, & Aaron Yelowitz, “How will State-Run Auto-IRAs Impact Workers?” *Journal of Retirement*, Fall 2018, pp. 27-33 Available at http://www.yelowitz.com/AutoIRA_Harris_Troske_Yelowitz.pdf. As a political matter, one impetus for creating CalSavers was to blunt public resentment towards public-sector defined-benefit plans due to their unfunded liability and the disappearance of such plans in the private sector.

⁴⁴Sophia Bollag and Alexei Koseff, “Democrats’ spending list needs to be ‘whittled down,’ Gavin Newsom says,” Capitol Alert of *Sacramento Bee*, December 5, 2018. Available at <https://www.sacbee.com/news/politics-government/capitol-alert/article230109659.html>.

⁴⁵Brown predicted “fiscal oblivion” if the California rule were not relaxed. See Adam Ashton and Amy Chance, “Jerry Brown predicts ‘fiscal oblivion’ if pensions are off limits for government employers,” *Sacramento Bee*,

Department of Motor Vehicles (DMV) leading to long lines, incorrect DMV handling of “Real ID” license issuance, and errors in “motor voter” election registrations. Finally, an initiative aimed at reversing sentencing and parole reforms under Prop 47 (2014) and Prop 57 (2016) which qualified for the 2020 ballot was under a legal challenge by Governor Brown at the time he left office; the new governor could continue the challenge or not.⁴⁶

How the Sausage Was Made: New Governor - New Budget

“To make the California Dream available to all, our state must be fiscally sound.”

Governor Gavin Newsom⁴⁷

It is often the practice for governors to leak some details of their January budget proposals before the official release. When a governor-elect is going to be the author of a new budget, that practice becomes more compressed since there are sensitivities about the incoming governor not impinging on the incumbent. Just a few days before his oath of office, however, there was some leaking about the Newsom budget, notably that there would be a focus on early childhood education and something on extending the California family leave program.⁴⁸

New Governor; New Budget

In any event, once the Newsom regime officially began on January 7, 2019, Jerry Brown more or less faded from view and didn’t weigh in on his successor’s policy decisions, budgetary or otherwise. With one exception when he endorsed an “establishment” candidate for the CALPERS board over a maverick, Brown avoided state politics and – to the extent he was visible – focused on his favorite Big Picture global issues: the nuclear threat and climate change.⁴⁹

December 21, 2018. Available at <https://www.sacbee.com/news/politics-government/the-state-worker/article223385445.html>.

⁴⁶The fate of this litigation at this writing remains unclear. The initiative is listed by the state secretary of state as qualified for the November 2020 ballot. Apart from trying to defend Props 47 and 57, Brown issued end-of-year and end-of-term clemency grants to various persons. In an unusual step, the state supreme court reversed some of them, an authority has in cases of “abuse of power.” Thus, the reversals were a rebuke to Brown that could be used in the campaign for the new initiative.

⁴⁷Media release: “Governor Newsom Proposes 2019-20 ‘California For All’ State Budget,” January 10, 2019. Available at <https://www.gov.ca.gov/2019/01/10/governor-newsom-proposes-2019-20-california-for-all-state-budget/>.

⁴⁸John Myers, “Gov.-elect Gavin Newsom will propose almost \$2 billion for early childhood program,” *Los Angeles Times*, January 2, 2019. Available at https://enewspaper.latimes.com/infinity/article_share.aspx?guid=ad829be0-9421-44cf-8b21-78d5d73c1c42; Claire Cain Miller and Jim Tankersley, “A California Dream for Paid Leave Has an Old Problem: How to Pay for It,” *New York Times*, January 6, 2019. Available at <https://www.nytimes.com/2019/01/06/upshot/a-california-dream-for-paid-leave-has-an-old-problem-how-to-pay-for-it.html>.

⁴⁹After leaving office, Brown became executive chairman of the Bulletin of Atomic Scientists, the organization that keeps the “Doomsday Clock.” CALPERS is the large state pension plan that covers most state employees (except at the University of California) and many local government employees. See Wes Venteicher, “Jerry Brown, his eye still on pensions, endorses candidate in CalPERS board election,” *State Worker of Sacramento Bee*, July 25, 2019. Available at <https://www.sacbee.com/news/politics-government/the-state-worker/article233092102.html>. In

The actual 2019-20 budget was due to be announced on January 10 by Governor Newsom. Table 7 shows the difference between forecast cash receipts and actual, figures that formed a backdrop to the formulation of the first Newsom budget. At around the time the first Newsom budget would have actually begun to be drafted (probably the months of October and November 2018), revenues were running somewhat above projections. But by the time the budget was officially unveiled, they had fallen behind forecast levels. It's possible, even likely, that the budget drafters had some advance information on the shift – which might have added a note of caution.

In principle, Newsom's first budget proposal in January proposed spending at virtually the same nominal amount as he projected for Brown's final budget. That seeming freeze might have suggested fiscal caution. But on the other hand, Newsom's *projection* of what Brown's final 2018-19 budget would be was higher than what the Legislative Analyst had forecast in November and higher than what Newsom's own Department of Finance ultimately concluded it turned out to be in June 2019. (See Tables 1 and 2.) In short, the seeming freeze had a cosmetic element. Similarly, a proposal to add to the rainy-day fund (BSA) had a cosmetic element since *total* reserves, including the rainy-day fund, were projected to *fall* under the proposal, as discussed earlier.

Meanwhile, Newsom had inherited Brown's tensions with the Trump administration. Wildfire fighting had budgetary implications for California, and President Trump periodically threatened to cut back on FEMA assistance on the grounds that California was doing a poor job of forest management. Much of those threats were tweets, however, not actual policy and – notably – the threats were opposed by California Republican legislators. Newsom did acknowledge state mismanagement in the DMV with its long lines and other problems, and he announced that a dramatically-named “strike force” would be appointed to study what needed to be done. (The strike force's recommendations were made public in July 2019.)

The January budget proposal did, as leaked, include expanded early childhood education. At the other end of the education spectrum, tuition was frozen at UC and CSU, i.e., possible tuition increases were in some sense “bought out” by the state. It included funding to encourage affordable housing and to address homelessness. The governor's budget proposal also contained a threat to withhold transportation funding from local governments that didn't cooperate with housing expansion. The state's Earned Income Tax Credit (EITC), a tax-subsidy for low-income *working* Californians, was proposed to be expanded.

One Time vs. Ongoing vs. Expectations

Much of the spending on new programs was labeled “one time.” While the label is meant to single that the program is not guaranteed to continue beyond one year, and that it could be cut back if Hard Times

summer 2019, Brown also was slated to become a visiting professor at UC-Berkeley in connection with a new institute dealing with climate policy and California-China relations. See Sophia Bollag, “Jerry Brown's new gig: Launching a California-China climate change institute at UC Berkeley,” Capitol Alert of *Sacramento Bee*, June 12, 2019. Available at <https://www.sacbee.com/news/politics-government/capitol-alert/article231494868.html>. (As of this writing, it is unclear whether Brown had begun this additional role.)

arrive, the label by itself doesn't control public expectations. That is, some one-time spending may prove to be difficult to cut back despite the label.⁵⁰

Even when new spending programs are proposed with new earmarked taxes to support them, expectations can be created about the spending side despite the fact that the taxes – the revenue side – ultimately were not enacted. The governor proposed a fund to clean up contaminated rural water supply. The effort would be funded by a new water tax, i.e., all water consumers would have been taxed to provide for the cleanup. As it turned out, however, the eventual enacted budget included the spending, but not the tax. Funding would come from the cap-and-trade program which is supposed to be used only for activities to reduce greenhouse gas emission.⁵¹

Apart from the water tax, the January budget proposed some changes in the larger tax system to make it “conform” to the federal system. Some of the changes proposed cut revenue, but others raised it to bring in an extra \$1.4 billion net. There were also changes aimed at obtaining more sales tax revenue from certain online sales from out-of-state sellers that had previously escaped taxation.

Events

Even though news reporting of the governor's budget proposal sometimes makes it seem that it is the adopted fiscal plan of the state, it is in fact only a recommendation that must be enacted by the legislature – which is likely to want to make changes – and then signed by the governor. And events continue to occur after the January proposed budget is announced that influence legislative preferences as well as cash inflows to the state.

For example, shortly after the Newsom's January budget was made public, a six-day teacher strike erupted in the Los Angeles Unified School District, by far the largest district in the state. One element in the agreement was that both management and labor would approach the governor and legislature for added funding. The budget for K-12 generally is the largest single item in the budget. Complaints that charter school funding was impinging on traditional public schools were also an element in the strike, and generally set in motion efforts in the legislature to curtail and regulate the charters.

Whether You Like It or Not, Words Matter – Part 1

While events such as the teacher strike were external to Sacramento and the governor, some events were self-made. Newsom's first state of the state address to the legislature on February 12, 2019 made various points. Some of it was aimed at highlighting opposition to federal/Trump policies, particularly on immigration. But, of course, it was not especially newsworthy that California had become a center of “resistance” to the Trump administration. He singled out the City of Huntington Beach for not meeting state obligations on housing. But the state had sued the city previously so no change in policy was being announced. He announced that the Brown twin tunnel water project would be downsized to one tunnel.

⁵⁰Of course, some programs are truly “one time.” A prime example was an allocation for an effort to promote full population response to the 2020 Census.

⁵¹The rationale was that poor quality water leads customers to use bottled water which involves emission of greenhouse gas for delivery.

But, as noted earlier, that decision had been suggested by Newsom during the gubernatorial election campaign. What did get attention was this statement of the governor:

...“Let’s level about high-speed rail... Right now, there simply isn’t a path to get from Sacramento to San Diego, let alone from San Francisco to L.A. I wish there were. However, we do have the capacity to complete a high-speed rail link between Merced and Bakersfield. I know that some critics will say this is a ‘train to nowhere’” ...⁵²

The problem was that by itself, the severely truncated rail link would not be viable due to lack of demand and traffic. How many people are in a great hurry to get from Merced to Bakersfield? It’s true that the full statement by the governor in the speech alluded to finishing the Merced-Bakersfield segment with the funding at hand and then seeking other sources of money for further construction. But the statement, especially the tone of the delivery which the printed text doesn’t capture, led to the interpretation that the project was essentially being scrapped.⁵³

The remarks were quickly walked back by Newsom, but not before President Trump tweeted that he wanted a refund of the federal dollars that had previously gone into the project. It was more than a tweet; there were actual administrative moves to claw back past funding. The remarks also had a more local effect. If the governor was no longer backing the high-speed rail, some legislators in the Bay Area and the LA area concluded, why not divert the funding to local commuter rail systems in the two regions? The diversion could be dressed up as enhancing existing systems that would someday and somehow connect to a future high-speed rail. These ideas were around before Newsom became governor. But Jerry Brown’s known support for the system tended to squelch such discussions. By the summer of 2019, assembly speaker Anthony Rendon was saying that he “like(d) the concept” of the fund diversion.⁵⁴

Apart from the specifics of the high-speed rail, there was a larger lesson. When a lieutenant governor says something, it is just somebody’s opinion. But when a governor says something, or even appears to say something, it is taken as official policy by friend and foe alike. As we will see below, despite the brouhaha related to the rail project, the cautionary lesson on words may not have been completely learned.

Indeed, there had been an episode of casual language that produced unwanted results when Newsom was mayor of San Francisco. In 2000, state voters had passed Prop 22 banning gay marriage in California with 61% of the vote, a position not especially popular in San Francisco. To test the law, then-Mayor Newsom began issuing gay marriage licenses until a court ordered a halt. While the gay marriages were being authorized in the city, Newsom spoke to a crowd and announced to the world that gay marriage was “gonna happen, *whether you like it or not.*”

⁵²“Governor Newsom Delivers State of the State Address,” February 12, 2019. Available at <https://www.gov.ca.gov/2019/02/12/state-of-the-state-address/>.

⁵³“California Scraps LA-San Francisco High-Speed Rail as Too Costly,” *Fortune*, February 12, 2019. Available at <https://fortune.com/2019/02/12/california-scraps-high-speed-rail/>. To get a sense of the “tone” of the statement, go to <https://www.youtube.com/watch?v=kcXq7Gmb0sl>.

⁵⁴Ralph Vartabedian, “In a blow to the bullet train, California might shift billions to L.A. and Bay Area projects,” *Los Angeles Times*, July 30, 2019. Available at <https://www.latimes.com/california/story/2019-07-28/california-redirects-funds-high-speed-rail-project>.

Prop 22 was eventually struck down by the state supreme court, but proponents of the ban produced a new ballot measure – Prop 8 of 2008 – which the court upheld. Prominent in the passage of Prop 8 was a TV ad which repeated Newsom’s “whether-you-like-it-or-not” remarks.⁵⁵ Voters don’t like to be told their opinions don’t matter, and the ad was therefore very effective. As with his statement on high-speed rail, while the words were important, the tone with which they were delivered particularly offended voters.

Prop 22 had passed with 61% of the vote. Prop 8 passed with only 52%. So public opinion was clearly becoming more tolerant of gay marriage. In fact, Prop 8 was behind in some polls and was opposed by then-Governor Schwarzenegger. It seemed quite possible that absent the TV ad with Newsom’s remarks, Prop 8 might have been defeated. Newsom said he was “humbled” by the passage of Prop 8, although it’s not clear whether he tied that outcome to his words.⁵⁶

Apart from careless language, there is also a saying about actions speaking louder than words. Shortly after the inauguration, it was found that the governor was running Facebook ads in so-called “swing” states outside California that might determine the outcome of the forthcoming presidential election.⁵⁷ Was the new governor planning to enter the 2020 presidential race so soon after taking office? Such an action would have had a precedent; Jerry Brown, when he first took office in 1975, made a presidential bid in 1976.⁵⁸

A Newsom spokesperson quickly denied there was any such plan (at least for 2020). And about a month later, Newsom endorsed California Senator Kamala Harris for president and became a co-chair of her campaign. But the episode, like the rail statement, was another diversion from the governor’s California legislative agenda. And the purpose of the Facebook ads, if they weren’t for a possible national campaign, remained unclear.

How the Sausage Was Made: Getting to the May Revise

“What is the governor of California’s top priority? I don’t know. And I suspect that neither does he. I wasn’t a fan of Jerry Brown’s very limited and budget-focused governorship. The state has let so many problems fester that any smart successor was going to have a big and broad agenda, as Newsom does. But even with a big agenda, there need to be priorities. And Newsom moves so fast over so much territory, it’s hard to see where he’s focusing.”

Joe Mathews, Editor, Zócalo Public Square⁵⁹

⁵⁵You can see the TV ad at <https://archive.org/details/whetheryoulikeitornotnewsom>.

⁵⁶Jonathan Lloyd, “Whether He Likes It or Not, Prop 8 ‘Humbled’ Newsom,” *NBC Los Angeles*, July 16, 2009. Available at <https://www.nbclosangeles.com/news/politics/Whether-You-Like-It-or-Not-Newsom-Says-Hes-Changed.html>.

⁵⁷Phil Willon, “Gov. Gavin Newsom’s Facebook ads in swing states stir 2020 speculation,” *Los Angeles Times*, January 19, 2019. Available at <https://www.latimes.com/politics/la-pol-ca-governor-gavin-newsom-facebook-ads-presidential-campaign-20190119-story.html>.

⁵⁸Brown also ran in 1980 and 1992.

⁵⁹Joe Mathews, “What is Newsom’s Top Priority?” *Fox and Hounds*, April 2, 2019. Available at <http://www.foxandhoundsdaily.com/2019/04/what-is-newsoms-top-priority/>.

Mathews' critique above was not the only one of that type that was made in the early months of Newsom's term. One element to which Mathews may have been alluding with his invocation of Jerry Brown was that Brown was not especially focused on the managerial aspect of governing, as opposed to policy. Part of the governor's role as chief executive is simply making sure that the state's bureaucracy is effectively putting into operation the policy programs which the legislature, the governor, and – in some cases through direct democracy – the voters, have tasked officials to carry out.

Brown did not have an interest in such routine functions. But Brown did like to venture on to the national and even international stage, e.g., talking about climate change at the U.N. and at the Vatican. Similarly, Governor Newsom flew off to El Salvador in mid-April 2019 – with the May Revise budget due in less than a month – to explore the refugee crisis (and received the foreseeable criticism). As one columnist noted, you didn't have to go to El Salvador to understand why people there might be fleeing poverty and violence.⁶⁰

Administration Deficiencies

You don't have to look far to see signs of managerial lapses in the state government Newsom inherited. Problems at the DMV didn't suddenly arise with the obligation to produce real ID drivers' licenses. The federal real ID requirement simply exacerbated an existing deficiency. Similarly, various state entities have wrestled ineffectively with big computer projects, the latest of which is a system known as FISCAL that is supposed to handle state receipts and purchases.⁶¹ There have been scandals in agencies ranging from parks to industrial relations.⁶² The Franchise Tax Board reported in April 2019 that it had issued about 23,500 tax refunds improperly due to a "system error."⁶³

Old infrastructure – notably the Oroville Dam's failed spillway – has not always been properly maintained.⁶⁴ New infrastructure, such as the replacement for a segment of the Bay Bridge, has

⁶⁰George Skelton, "Forget the trip to El Salvador, Newsom needs to focus on California's problems," *Los Angeles Times*, April 1, 2019. Available at <https://www.latimes.com/politics/la-pol-sac-skelton-gavin-newsom-el-salvador-20190401-story.html>.

⁶¹Wes Venteicher, "California controller 'gravely concerned' about state's \$1 billion accounting program," *State Worker of Sacramento Bee*, March 27, 2019. Available at <https://www.sacbee.com/news/politics-government/the-state-worker/article228458249.html>.

⁶²Ben Adler, "Independent Commission Calls for Big Changes in State Parks Department," *Capitol Public Radio*, January 29, 2015. Available at <http://www.capradio.org/articles/2015/01/29/independent-commission-calls-for-big-changes-in-state-parks-department/>; Kathleen Pender, "Major California labor official accused of 'gross misconduct' in nepotism probe," *San Francisco Chronicle*, March 30, 2019. Available at <https://www.sfchronicle.com/business/networth/article/Major-California-labor-official-accused-of-13728257.php>.

⁶³Bryan Anderson, "Double-check your state tax refund: California is reviewing 23,500 it paid too soon," *Capitol Alert of Sacramento Bee*, April 17, 2019. Available at <https://www.sacbee.com/news/politics-government/capitol-alert/article229340184.html>.

⁶⁴Ralph Vartabedian, "Human error played a role in Oroville Dam spillway failure, report finds," *Los Angeles Times*, January 5, 2018. Available at <https://www.latimes.com/local/california/la-me-oroville-investigation-report-20180105-story.html>.

sometimes been improperly constructed.⁶⁵ Even Brown's favored infrastructure project, the high-speed rail, had been hit with cost overruns and costly consulting contracts.⁶⁶ So, Newsom, upon taking office, defaulted into a clean-up job, whether he wanted it or not.

Too Many Objectives

Apart from time-consuming managerial duties, there were fears that too many objectives could lead to failures. For example, Newsom indicated special concern about adding to the state's housing stock, and he was suing cities which didn't meet state requirements. There was general public anxiety about the rising cost of housing which was seen as driving people away from the state and hindering growth. And, indeed, Department of Finance estimates indicated that California's population was growing very slowly.⁶⁷ A bill in the legislature by state senator Scott Wiener of San Francisco was supposed to ease local zoning restrictions that were said to be blocking new housing. The bill was controversial. But regardless of the merits or demerits of the bill, it appeared to be legislation favored by the governor, at least in concept. Yet it was suddenly killed in the legislature, after which the governor expressed regret as to its demise.⁶⁸ The death of SB 50 seemed to catch the governor unawares.

Words Matter – Part 2

Soon after the Wiener bill failed, the governor oddly did spend time intervening with regard to a bill in the legislature aimed at halting frivolous child vaccination exemptions which can be dangerous to public health. He succeeded in limiting the bill's scope to the cheers of misguided anti-vaccination enthusiasts and to the consternation of those seeking to remedy the state's falling vaccination rate.⁶⁹ It was unclear why the governor wanted to water down the vaccine bill or if he really did. Had he thought through the implications of the governor being applauded by anti-vaxxers?

Newsom cited concerns about bureaucracy when questioned. But after Newsom's intervention became controversial, the governor clarified that he supported vaccination of children. The episode seemed to be a repeat of the careless use of words that occurred earlier with regard to high-speed rail (and even earlier with regard to gay marriage).

⁶⁵Jaxon Van Derbeken, "Bay Bridge's troubles: How a landmark became a debacle," *SFGATE*, January 29, 2015. Available at <https://www.sfgate.com/bayarea/article/Bay-Bridge-s-troubles-How-a-landmark-became-a-6021955.php>.

⁶⁶Ralph Vartabedian, "How California's faltering high-speed rail project was 'captured' by costly consultants," *Los Angeles Times*, April 26, 2019. Available at <https://www.latimes.com/local/california/la-me-california-high-speed-rail-consultants-20190426-story.html>.

⁶⁷The population grew only 0.5% during 2018, according to Department of Finance estimates. See http://www.dof.ca.gov/Forecasting/Demographics/Estimates/E-1/documents/E-1_2019_InternetVersion.xls.

⁶⁸Bryan Anderson and Hannah Wiley, "High-profile California housing bill dies without a vote: 'I'm deeply disappointed,'" *Capitol Alert of Sacramento Bee*, May 16, 2019. Available at <https://www.sacbee.com/news/politics-government/capitol-alert/article230481529.html>.

⁶⁹Melody Gutierrez, "Gov. Newsom criticized the new vaccine bill. Anti-vaccine activists are celebrating," *Los Angeles Times*, June 4, 2019. Available at <https://www.latimes.com/politics/la-pol-ca-gavin-newsom-raises-bureaucracy-concern-with-exemption-bill-20190604-story.html>.

Legislative Developments

While the governor starts the state's budgetary conversation with his January proposal, the action then moves to the legislature. To assist the legislature, the Legislative Analyst's Office cranks out numerous budget-related publications, some on its own initiative and some at the request of particular legislative committees. LAO representatives also testify at legislative hearings, as do representatives of interest groups and the public. Legislators file bills that have budgetary implications, some of which catch public attention.

Two proposals, both of which had histories that predated the Newsom governorship, attracted considerable interest. The state sales tax is the second largest source of revenue (behind the personal income tax). One bill proposed exempting diapers from the sales tax. Another proposed exempting tampons and related products.

Ultimately, whether such bills would come into force – even if passed by the legislature – was largely a function of the governor's attitude, given his veto authority. In the past, Jerry Brown had been averse to exempting favored products from the sales tax. So, the question was whether Newsom would include a diaper/tampon exemption in the May Revise or would sign or veto the bills if they came to him separately.

Death Penalty

Brown had always opposed the death penalty in California, and his opposition was public knowledge. But he didn't lead a campaign against it and was not active in a campaign for a 2016 initiative that would have abolished it – but was rejected by voters. The voters in 2016, in fact, supported another initiative aimed at *speeding up* the death penalty.

Despite this seeming public support for the penalty, Newsom issued an executive order in March 2019 which effectively halted any executions. Given the 2016 votes, the move was seen as gutsy and perhaps risky. However, apart from moral issues, Newsom cited the budgetary costs of maintaining a death row with over 700 inmates.⁷⁰ Brown had gotten voters to go along with ballot propositions that reduced certain criminal sentences (but not the death penalty) by emphasizing costs. Whether Newsom will at some point use the cost rationale with regard to abolition of the death penalty is unknown.

Judicial Developments

When the state experiences a budget crisis, there is pressure to take actions of uncertain legality – and worry about the consequences later, when the crisis is over. A court ruling in 2018 affected the judiciary itself involving back pay increases to judges which should have been paid during the budget crisis of the Great Recession but weren't. There were also tax refunds due under a court decision to certain businesses that had been issued IOUs in 2009 when the state ran out of cash. Now that the state was

⁷⁰Paige Austin, "All California Death Sentences Blocked by Gov. Newsom," *Patch*, March 13, 2019. Available at <https://patch.com/california/sacramento/all-california-death-sentences-blocked-gov-newsom>.

enjoying Good Times, the May Revise budget could include a final cleanup of problems left over from the earlier crisis.

At around the time of the issuance of the May Revise, the state reached another judicial milestone. By one count, it had filed fifty lawsuits against the Trump administration. The 50th involved an attempt by the Trump administration to narrow certain authority of the state to make Medi-Cal expenditures. (Medi-Cal is the California name for the federal Medicaid program.)

How the Sausage Was Made: From May Revise to the Enacted Budget

“From diapers to childcare, raising kids is expensive wherever you live. But when you factor in the cost of living here in California, it is close to impossible.”

Governor Gavin Newsom unveiling the May Revise⁷¹

Table 7 shows that in the early months of calendar 2019, state revenues were falling below projections that were made when the 2018-19 budget was enacted. But by April 2019, revenues had pulled ahead of projections. April, of course, is a big revenue month because it contains the due date for the personal income tax. Thereafter, revenues remained ahead of the earlier forecast. So, the fiscal atmosphere around the formulation of the May Revise and the eventual final enacted budget remained positive.

The governor released his revised budget proposal on May 9, 2019. That step set in motion a process of specific budget making – as opposed to hearings on this or that aspect of the budget – in the two houses of the legislature. There was more revenue than predicted in January, according to Newsom, and higher estimate of the General Fund reserve, so he had added new spending of close to \$3 billion. (Table 2.) The eventual budget plans produced separately by the assembly and the senate assumed a notably higher General Fund reserve and somewhat more spending than Newsom’s revised proposal. (Table 8.)

Although it’s not possible to know for sure why the two houses chose to make estimates of the starting General Fund reserve that were notably higher than what the governor and the LAO were forecasting, it appeared to be because they were assuming less revenue and needed an offset. But it was unclear why they would have assumed less revenue than the governor and the LAO were predicting. In the final deal, the governor stuck with his May Revise revenue estimate, but adopted the senate’s spending level. He “paid” for the added spending with an assumed higher starting General Fund reserve and a somewhat lower ending level of total reserves. The governor made minor line-item vetoes, too small to make any difference at the macro level.⁷² Of course, the *actual* numbers – as opposed to the June 2019 estimates - will be whatever they turn out to be. What is put on paper a year ahead doesn’t control the final results.

The end product, signed on June 27, 2019, must be viewed as a prosperity budget. The state’s EITC program to aid the working poor was enhanced. Its family leave program was also enhanced. Coverage under Medi-Cal for undocumented persons was raised to age 26. Added money was found for improving water quality in rural areas. Diapers and tampons were excluded from the sales tax. Full-time students

⁷¹Marisa Lagos, “Newsom Proposes Scrapping State Taxes on Tampons, Diapers,” *KQED News*, May 7, 2019. Available at <https://www.kqed.org/news/11745618/newsom-proposes-scrapping-taxes-on-tampons-diapers>.

⁷²A new courthouse was deleted along with some extra funding for the Public Employment Relations Board.

were given a second year of community college free of tuition. State capacity to fight wildfires was expanded. Various allocations were made available to localities for dealing with homelessness issues. School districts were given partial relief from having to pay into their underfunded pension plans. In short, in Sacramento, the good times rolled.

As the 2018-19 fiscal year came to an end, many of the same issues remained under Gavin Newsom that existed under Jerry Brown. In addition, there were uncertainties about the economy and uncertainties about the outcome of the 2020 election and its implication for California. Apart from the national side of that election, the state ballot would contain the split roll proposal for property taxes. If enacted, the new system would represent the first major change in Prop 13 since its 1978 debut. Additionally, a Prop 13 rule restricting local (non-property) tax increases for specific purposes to be passed by a two-thirds vote also seemed to have acquired a loophole, thanks to a state supreme court decision.⁷³ Gavin Newsom apparently had some ambitions to bring the interest groups together and substitute some alternative overhaul of the state and local tax systems. Whether such a deal could be brokered was an open question.⁷⁴ The end of a budget year doesn't mean all issues are resolved.

Final Thoughts on Good Times Budgeting

*“Hey everybody
Let's have some fun
You only live but once
And when you're dead, you're done
So, let the good times roll...”*

Lyrics: Louis Jourdan's version of “*Let the Good Times Roll*”⁷⁵

Many members of the legislature in 2018-19, thanks to term limits, had little direct knowledge of the contrast between the atmosphere surrounding the formulation of the 2019-20 budget and the tense climate that surrounded budget making a decade before in the aftermath of the Great Recession. Term limits don't contribute to long-term perspectives. If another such economic downturn developed, the state is clearly better prepared than it was back then, thanks to the reserve accumulation that occurred under Jerry Brown. But even with its reserves, the outcome of an economic reversal would depend on the speed with which the governor and legislature responded. Particularly under California's *de facto* one-party regime of governance, the governor would have to provide guidance.

The shift from the old guy (Jerry Brown) to the young guy (Gavin Newsom) cited at the beginning of this chapter was bound to produce some hiccups. The young guy wanted to move beyond the old guy's

⁷³The court's ruling distinguished tax increases proposed by governments from those put on the ballot through the initiative process. The latter, it seemed to indicate, needed only a simple majority. See Ben Christopher, “California's Supreme Court has thrown cities – and citizens – into chaos over local taxes,” *Capital Public Radio*, February 14, 2019. Available at <http://www.capradio.org/articles/2019/02/17/californias-supreme-court-has-thrown-citiesand-citizensinto-chaos-over-local-taxes/>.

⁷⁴If a deal were brokered, the split role proposal would remain on the ballot. But it would become an “orphan” proposition without support and presumably be rejected.

⁷⁵Complete Louis Jourdan version of the song at <https://genius.com/Louis-jordan-let-the-good-times-roll-lyrics> and <https://www.youtube.com/watch?v=YdQJ3Q0uhYE>.

budget-focused policies. That is, he wanted to move from a state budget that was structured to accumulate reserves prudently to avoid some future fiscal meltdown, to one that dealt with a variety of California's challenges differently from what came before. But having too many goals can mean a loss of focus. In a period of Good Times, money is around, everything can be done, and focus isn't crucial. In leaner times, however, priorities will matter. Moreover, careless gubernatorial language and actions – whether on high-speed rail, vaccinations, or anything else – can have unintended consequences. The old guy knew these things. Much in the future will depend on what the young guy has learned.

Table 1: Brown's Last General Fund (GF) Budget, 2018-19 (\$ Millions)

	Brown July 2018	LAO Nov. 2018	Newsom Jan. 2019	Newsom May 2019	LAO Estimate May 2019	Newsom June 2019
GF reserve 7-1-2018	\$8,483	\$10,076	\$12,377	\$11,419	\$11,213	\$11,419
Revenue & Transfers	133,332	137,514	136,945	138,046	138,388	138,047
Expenditures	138,688	137,310	144,082	143,241	143,039	142,694
GF Surplus/ Deficit	-5,356	+204	-7,137	-5,195	-4,651	-4,647
GF reserve 6-30-2019	3,127	10,218	5,240	6,224	6,561	6,772
BSA*						
6-30-2019	13,768	13,768	13,535	14,358	na	14,358
Safety net reserve						
6-30-2019	200	200	900**	900**	na	900
Prop 98 Reserve						
6-30-2019	-	-	-	-	-	-
Total Reserves***	17,095	24,249	19,675	21,482	na	\$22,030

*BSA = Budget Stabilization Account (rainy day fund)

**The January 2019 budget proposal included an increase in the safety net reserve in 2018-19 to \$900 million from \$200 million. The May revise left the safety net reserve off the official table. LAO did not publish its BSA and safety net reserve estimates for 2018-19 in May 2019.

***Sum of GF reserve, BSA, safety net reserve, and Prop 98 reserve.

Note: The LAO did not provide BSA or safety net reserve estimates in May 2019.

Source: California Department of Finance:

<http://www.ebudget.ca.gov/2018-19/pdf/Enacted/BudgetSummary/SummaryCharts.pdf>;

<http://www.ebudget.ca.gov/2019-20/pdf/BudgetSummary/SummaryCharts.pdf>;

<http://www.ebudget.ca.gov/2019-20/pdf/Revised/BudgetSummary/SummaryCharts.pdf>;

<http://www.ebudget.ca.gov/2019-20/pdf/Enacted/BudgetSummary/SummaryCharts.pdf>.

Legislative Analyst's Office:

<https://lao.ca.gov/reports/2018/3896/fiscal-outlook-111418.pdf>;

<https://lao.ca.gov/Publications/Report/3669>.

Table 2: Newsom’s First General Fund (GF) Budget, 2019-20 (\$ Millions)

	LAO Workload Nov. 2018		Newsom Jan. 2019	Newsom May 2019	LAO Estimate May 2019	Enacted Newsom June 2019
GF reserve 7-1-2019	\$10,281		\$5,240	\$6,224	\$6,561	\$6,772
Revenue & Transfers	145,065		142,618	143,839	144,478	143,805
Expenditures	139,373		144,191	147,033	147,048	147,781
GF Surplus/ Deficit	+5,692		-1,573	-3,194	-2,570	-3,976
GF reserve 6-30-2020	15,973		3,667	3,030	3,991	2,796
BSA* 6-30-2020	14,513		15,302	16,515	16,372	16,516
Safety net Reserve 6-30-2020	200		900	900	900	900
Prop 98 Reserve 6-30-2020	-		-	389	313	377
Total Reserves**	30,686		19,869	20,834	21,576	20,589

*BSA = Budget Stabilization Account (rainy day fund)

**Sum of GF reserve, BSA, safety net reserve, and Prop 98 reserve.

Source: California Department of Finance:

<http://www.ebudget.ca.gov/2019-20/pdf/BudgetSummary/SummaryCharts.pdf>;

<http://www.ebudget.ca.gov/2019-20/pdf/Revised/BudgetSummary/SummaryCharts.pdf>;

<http://www.ebudget.ca.gov/2019-20/pdf/Enacted/BudgetSummary/SummaryCharts.pdf>.

Legislative Analyst’s Office:

<https://lao.ca.gov/reports/2018/3896/fiscal-outlook-111418.pdf>;

<https://lao.ca.gov/Publications/Report/3669>.

Table 3: Flow Analysis: Surpluses and Deficits, 2018-19 and 2019-20
(\$ Millions)

	Brown Final Budget 2018-19	Newsom First Budget 2019-20
GF Reserve		
-Beginning of Year July 1	\$11,419	\$6,772
-End of Year June 30	6,772	2,796
-Surplus/Deficit	-4,647	-3,976
BSA		
-Beginning of Year July 1	11,002*	14,358
-End of Year June 30	14,358	16,516
-Surplus/Deficit	+3,356	+2,158
Safety Net		
-Beginning of Year July 1	0	900
-End of Year June 30	900	900
-Surplus/Deficit	+900	0
Prop 98 Reserve		
-Beginning of Year July 1	-	0
-End of Year June 30	-	377
-Surplus/Deficit	-	+377
Total Reserves		
-Beginning of Year July 1	22,421	22,030
-End of Year June 30	22,030	20,589
-Surplus/Deficit	-391	-1,441

*From LAO estimate of workload budget, November 2018:

<https://lao.ca.gov/reports/2018/3896/fiscal-outlook-111418.pdf>.

Source: See tables 1 and 2.

Table 4: Seasonal Internal Borrowing, Fiscal Year 2018-19 (\$ Millions)

	Internal Borrowing	Unused Borrowable Reserves
June 2018	\$0	\$39,925
July	0	42,269
August	0	40,849
September	4,935	43,790
October	12,067	34,718
November	12,004	34,569
December	13,661	34,327
January 2019	7,055	42,244
February	11,679	38,650
March	14,449	36,273
April	2,596	46,278
May	2,480	46,262
June 2019	0	51,108

Note: No short-term external borrowing was needed in fiscal year 2018-19.

Source: Monthly Financial Statements of state controller. Available at

https://sco.ca.gov/ard_state_cash.html.

**Table 5: Unused Borrowable Reserves Relative to Disbursements
(\$ Millions)**

End of June	Unused Borrowable Reserves	Disbursements	Ratio (Percent)
Schwarzenegger budgets			
2009	\$7,130	\$98,231	7.2%
2010	8,758	86,669	10.1
2011	10,029	93,779	10.7
Brown budgets			
2012	11,231	89,198	12.6
2013	18,780	96,266	19.5
2014	23,762	99,610	23.9
2015	28,291	115,778	24.4
2016	35,219	123,593	28.5
2017	36,983	126,801	29.1
2018	39,925	126,352	31.6
2019	51,108	145,755	35.1

Source: June cash statements of state controller. Available at https://sco.ca.gov/ard_state_cash.html.

Table 6: Propositions on the November 2018 Ballot

-
- Prop 1: \$4 billion bond measure for housing. PASSED
- Prop 2: Allows counties to use money from Proposition 63's "millionaire's tax" on permanent housing for the homeless that includes a direct connection to social services. Prop 63 was originally passed in 2004. PASSED
- Prop 3: \$8.9 billion bond that would fund projects aimed at improving water quality, fixing dams and protecting habitats, among other things. FAILED
- Prop 4: Authorizes \$1.5 billion in bonds to build, expand, renovate and equip children's hospitals. PASSED
- Prop 5: Gives a property tax break to homeowners over age 55 buying a home. FAILED
- Prop 6: Repeals a \$5 billion-a-year gasoline tax and fee increase the Democratic-controlled Legislature and Gov. Jerry Brown approved last year to repair California's roads. FAILED
- Prop 7: Overturns a 1949 voter-approved initiative called the Daylight Savings Time Act, which established Standard Pacific Time in California. If voters approve the ballot measure, the Legislature would then decide how the state's time should be set. PASSED
- Prop 8: Limits how much private outpatient kidney dialysis clinics could charge patients and requires them to report financial information to the state. FAILED
- Prop 9: Divides California into three states. REMOVED FROM BALLOT BY STATE SUPREME COURT.*
- Prop 10: Allows cities and counties to enact much more comprehensive rent control laws. FAILED
- Prop 11: Requires workers at private emergency ambulance companies to remain on call during work breaks. PASSED
- Prop 12: Establishes specific animal confinement/cage-free standards for egg-laying hens, breeding pigs and calves raised for veal. PASSED

Source: California Secretary of State at <https://elections.cdn.sos.ca.gov/sov/2018-general/sov/2018-complete-sov.pdf>. Description of propositions (with minor modifications) from Bryan Anderson, "Time to memorize the initiative numbers on your November ballot," *Sacramento Bee*, July 3, 2019. Available at <https://www.sacbee.com/news/politics-government/capitol-alert/article214194519.html>.

Table 7: Cumulative Actual Revenue Minus Brown Forecast of Revenue, 2018-19 (\$ Billion)

Month	Total Revenue	Personal Income Tax Only
July	-0.3	+0.2
Aug.	+0.8	+0.7
Sept.	+1.4	+1.0
Oct.	+1.0	+0.5
Nov.	+2.3	+1.6
Dec.	-2.5	-1.9
Jan.	-1.3	-1.4
Feb.	-3.3	-3.5
Mar.	-4.0	-4.3
Apr.	+1.0	-0.1
May	+3.4	+2.9
June	+3.4	+3.3

Source: State Controller, monthly cash reports. Available at https://sco.ca.gov/ard_state_cash_fy1819.html.

Table 8: Newsom’s First General Fund (GF) Budget, 2019-20 (\$ Millions)

	Newsom May 2019	Senate June 2019	Assembly June 2019	Enacted June 2019
GF reserve 7-1-2019	\$6,224	\$9,719	\$10,248	\$6,772
Revenue & Transfers	143,839	141,125	142,165	143,805
Expenditures	147,033	147,781	147,379	147,781
GF Surplus/ Deficit	-3,194	-6,656	-5,214	-3,976
GF reserve 6-30-2020	3,030	3,064	5,034	2,796
BSA*				
6-30-2020	16,515	16,500**	16,500**	16,516
Safety net Reserve				
6-30-2020	900	1,500	900	900
Prop 98 Reserve				
6-30-2020	389	100	0	377
Total Reserves***	20,834	21,200**	22,400**	20,589

*BSA = Budget Stabilization Account (rainy day fund).

**Legislative Analyst’s Office rounds to nearest tenth of a billion.

***Sum of GF reserve, BSA, safety net reserve, and Prop 98 reserve.

Source: Table 2 and Legislative Analyst’s Office, “Conference Committee Overview,” May 2019. Available at https://lao.ca.gov/handouts/Conf_Comm/2019/Conference-Committee-Overview-053019.pdf.

Chapter 2

The California Economic Outlook: Fact Versus Fiction

Robert Kleinhenz

Robert Kleinhenz is Economist and Executive Director of Research, Beacon Economics

This chapter includes information available as of mid-October 2019.

While still savoring the fact that the U.S. economy is the midst of a record-breaking expansion, the public's attention has suddenly shifted to questions about when the next U.S. recession will begin. There are a number of mounting concerns at this writing: U.S. trade conflicts with China and other countries, weaker global economic conditions more generally, and Brexit – the separation of Britain from the European Union. In addition, at the national level, there has been what is referred to as an inverted yield curve. Normally, the yields on long-term bonds exceed the yields on short-term securities. The reversal of that norm is often seen as a sign of an impending recession.

Should a national recession occur, California will not escape the consequences. Still, despite the uncertainty that has fueled recessionary concerns, and despite some chronic homegrown problems with respect to the labor force and housing, California's economy has performed solidly in 2019, and is forecast to remain on track in 2020.

JUST THE FACTS, MA'AM

Looking beyond the rhetoric and headline-catching hyperbole, available data at this writing clearly show that both the U.S. and California economies are humming along. The U.S. unemployment rate hit a five-decade low of 3.5% in September 2019, while California has been skating along at or slightly above its record low of unemployment at 4.1% for over a year. Jobs grew statewide at a year-over-year rate of 1.8% in August 2019, comfortably above the long run growth rate (since 1991) of 1.2% and a just a hair behind 2018's 1.9% rate of expansion. And with a tight labor market and steady job growth, wages have continued to climb.

Industry Developments

California added 314,000 jobs year-over-year as of August. It accounted for 16% of job gains nationally through the first eight months of 2019, essentially unchanged from the previous five years. Health Care, Professional Scientific and Technical Services, Leisure and Hospitality, and Construction led the way in the private sector, accounting for just over 60% of the state's total job gains. The Government sector also contributed over 42,000 jobs in August. State and local government budgets benefit from a booming economy through increased tax revenue.

Each of these industries is driven by its own dynamic. Health Care has been on a sustained growth path for several years, while the advances in Professional Scientific and Technical Services show the strength of the state's tech sector. Meanwhile, gains in Leisure and Hospitality employment reflect spending from household and business discretionary income and tourism.

Construction, Professional Scientific and Technical Services, and Health Care were also leaders in percentage terms, along with Education Services. On the other hand, three of the state's 17 major industries contracted, losing a total of 13,900 jobs from August 2018 to August 2019, less than 0.1% of the state's total payroll employment. (Figure 1)

Figure 1 - California Growing Across Most Industries			
Industry	Aug. '19	YTY	YTY %
<i>Total Nonfarm</i>	<i>17,519,700</i>	<i>314,200</i>	<i>1.8%</i>
Health Care & Social Assistance	2,434,300	65,300	2.8%
Leisure & Hospitality	2,032,900	49,100	2.5%
Professional, Scientific & Technical Services	1,330,100	45,900	3.6%
Government	2,624,600	42,300	1.6%
Construction	900,500	34,300	4.0%
Administrative & Support & Waste Services	1,164,400	29,900	2.6%
Information	558,400	14,000	2.6%
Manufacturing	1,336,800	13,700	1.0%
Transportation, Warehousing & Utilities	680,700	12,900	1.9%
Educational Services	386,500	11,500	3.1%
Real Estate & Rental & Leasing	297,700	4,000	1.4%
Management of Companies & Enterprises	257,100	2,800	1.1%
Other Services	575,500	1,600	0.3%
Finance & Insurance	543,100	800	0.1%
Mining and Logging	22,900	-100	-0.4%
Wholesale Trade	697,700	-1,500	-0.2%
Retail Trade	1,676,500	-12,300	-0.7%

Source: California EDD, Analysis by Beacon Economics

YTY = Year-to-year change (August 2018 to August 2019; number of jobs or percent change)

Evidence of growth can also be seen in real gross state product, which was up 2.7% year-to-year in the first quarter, and in nominal personal income, which advanced by 3.1% over the same period, slightly off the national pace in both cases. When viewed alongside the 14% increase in statewide taxable sales over the first half of 2019, it appears that both household and business spending have the wherewithal to fuel continued spending.

Regional Perspective

Regionally, Los Angeles County led the state in job growth in August 2019 with an increase of 59,700 positions, equivalent to a 1.3% increase. The San Francisco Metropolitan Division, which has a much smaller job base, added the second largest number of jobs at 39,300 on the strength of a 3.4% increase, second only to Fresno (3.5%) among the major metro areas, although the Salinas MSA led all MSAs with a 4.6% increase. The San Jose MSA (+33,200 jobs) and the Inland Empire (+31,000) were also among metro areas with the largest job gains, as has been the case over the last several years. Across all metro areas, only two lost jobs in August.

While every region in California is on track to experience job growth for the year as a whole, performance varies across the state depending on underlying fundamentals and the leading industries in each region: steady tech growth in the Bay Area; the energy sector in Bakersfield; tourism, retail (despite internet competition), and professional services in Orange County; and logistics in the Inland Empire. (Figure 2)

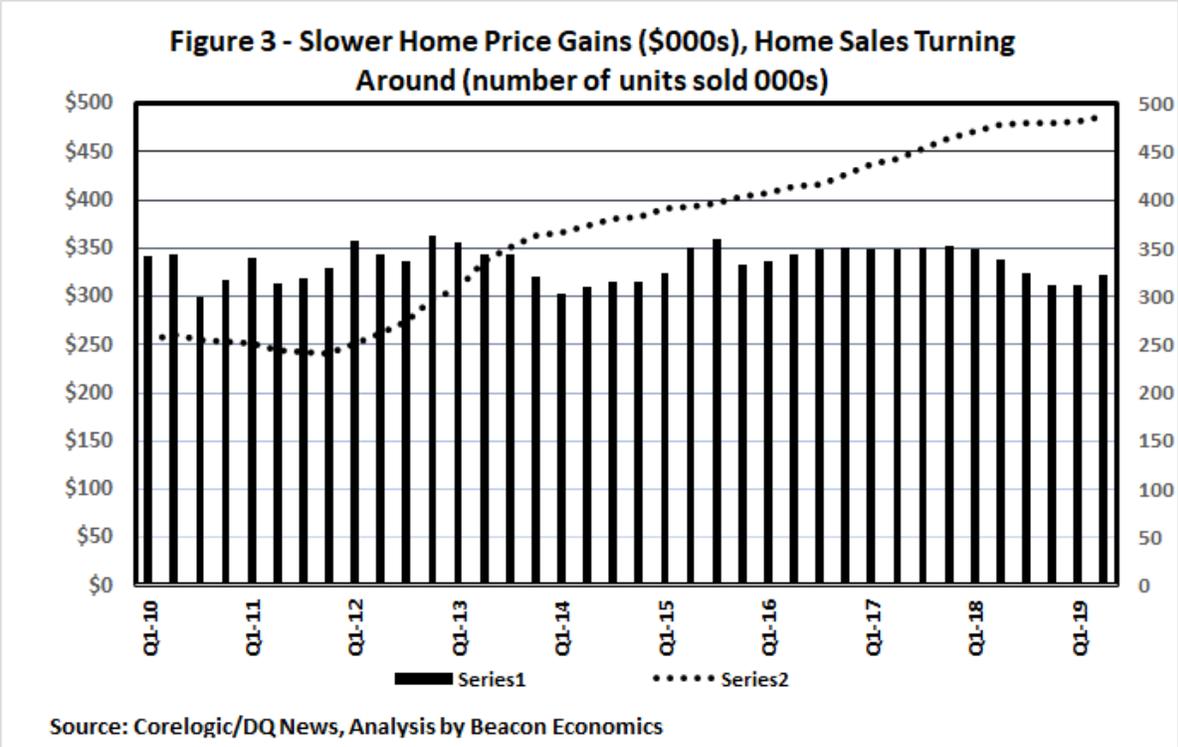
Figure 2 - California Regional Growth Continues			
Metro Area	Aug-19	YTY	YTY %
Los Angeles County	4,575,400	59,700	1.3%
San Francisco Metro Div	1,189,400	39,300	3.4%
San Jose MSA	1,161,200	33,200	2.9%
Inland Empire	1,542,500	31,000	2.1%
San Diego-Carlsbad MSA	1,515,000	26,100	1.8%
Oakland Metro Div	1,204,200	22,400	1.9%
Orange County	1,673,100	16,400	1.0%
Sacramento MSA	1,019,400	15,700	1.6%
Fresno MSA	366,000	12,400	3.5%
Bakersfield MSA	274,100	5,600	2.1%
Santa Rosa MSA	212,700	2,800	1.3%
Ventura County	310,200	600	0.2%
Stockton-Lodi MSA	241,300	-300	-0.1%
Source: California EDD, Analysis by Beacon Economics			

YTY = Year-to-year change (August 2018 to August 2019; number of jobs or percent change)

Challenges Facing the State: Retail and Housing

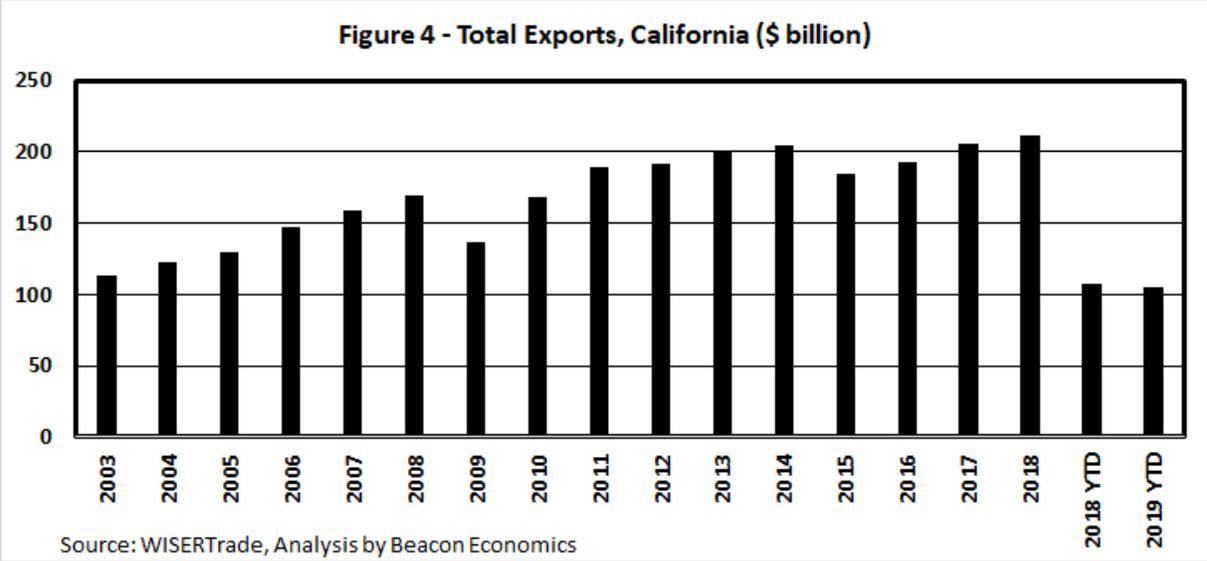
To be sure, California has economic problems. Retail Trade has been hemorrhaging jobs nationally and statewide, with 12,300 lost year-over-year in August. Sales via internet are increasingly substituting for sales from brick-and-mortar establishments. More generally, wage and job gains are stronger in some parts of the state than in others. Meanwhile, the housing market is struggling in many regions.

Median home prices are a mixed bag, up across most of the state but flat or decreasing in others. Home sales declined steadily in 2018 response to rising mortgage rates. However, with interest rates turning down since late 2018, sales improved modestly in the first half of 2019, and sales in the second half of the year at this writing are expected to improve over the first. Meanwhile, rents have continued to rise over the year against a backdrop of stable or declining vacancy rates, and statewide residential construction has declined compared to last year's levels, making an already chronic housing shortfall even worse. (Figure 3)



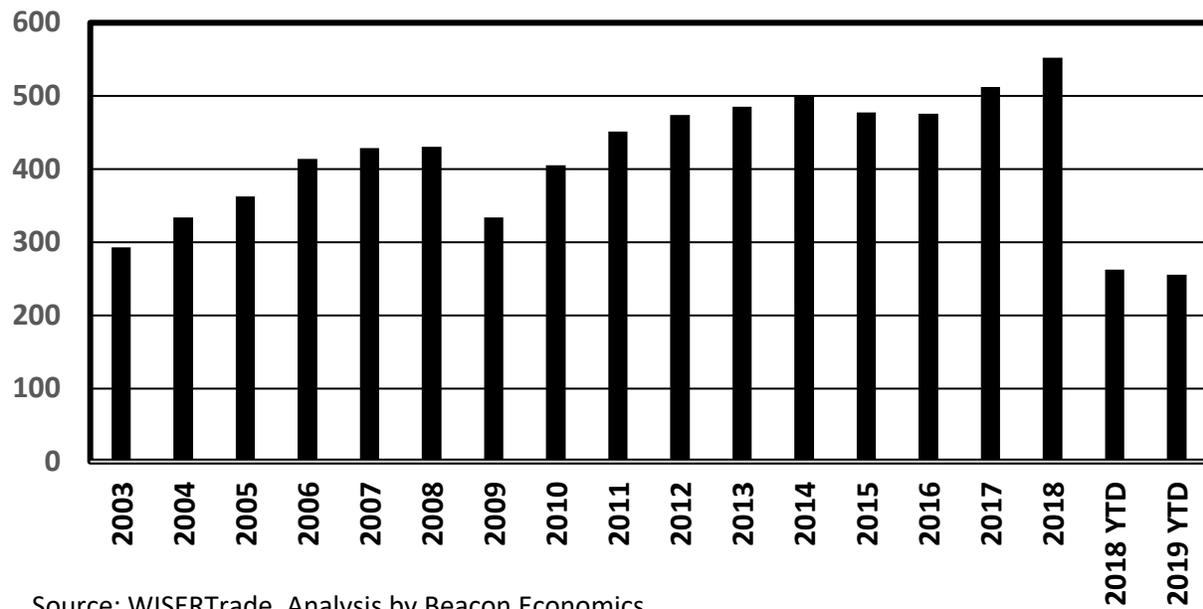
CALIFORNIA CONTINUES GROWING DESPITE INTERNATIONAL TRADE WARS

Beginning with the U.S. withdrawal from the Trans-Pacific Partnership soon after entering the White House, the Trump Administration has aggressively challenged U.S. trading partners and has sought to reshape U.S. international trade policy. As home to the largest port complex in the Western Hemisphere and significant cross-border and trans-Pacific trade activity, California’s trade-related and trade-dependent industries have a lot at stake.



YTD = Year-to-date (first half of year shown)

Figure 5 - Total Imports, California (\$ billion)



YTD = Year-to-date (first half of year shown)

Partly because of sustained strength in the economies of the United States and its trading partners, but also because of efforts to stay ahead of forthcoming tariffs and trade restrictions, California exports and imports advanced to new record high levels in 2017 and 2018 despite the Trump Administration’s uncertain trade policies. (Figures 4 and 5) Of course, some industries and commodities experienced declines over this period in contrast to the overall gains.

Shifting to the first half of 2019, both California exports and imports decreased in year-to-date terms. However, in light of the fact that the state labor market remains tight, that job gains continue on a sustained basis, and that many of the state’s key industries continue to advance, it is clear that the California economy has been bruised, but not broken, by ongoing trade conflicts.

Conclusion

Despite fears of a recession, the California economy continued to perform well in a cyclical sense. Unemployment remained low, and there was general job expansion, although with varied outcomes across regions and industries. Indeed, the steady performance of both the California economy and the U.S. economy imply a low chance of recession in 2020, even with the uncertainty caused by the trade situation and other ongoing concerns here and abroad.

Over the longer term, the rising cost of housing remains a structural impediment. Population growth in California has slowed and living costs – especially housing – remain a drag on in-migration and – for some – a compelling reason to seek jobs and residence in other states. The housing issue has been reflected in frictions between the state government and local

governments over zoning and related policies. The politics of rent control are resurfacing in the state as well. Although public attention will increasingly be drawn to the presidential race in 2020, the year may turn out to be pivotal at the state level in beginning to deal with structural impediments to long-term economic growth.

Chapter 3

Resources and Educational Equity: California's Effort to Remedy Inequality through School Funding

Joseph P. Bishop

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Across the nation, disparities in educational opportunities are evident in school funding and resource distribution, access to quality preschool, course offerings, assessment systems, educator licensing and capacity, language supports, learning conditions and how students are tracked by racial group (Carter and Welner, 2013).¹ While education policy in California has ostensibly been focused on reducing disparities in educational outcomes, relatively little attention has been paid to glaring gaps in educational opportunities such as these. Such omissions are particularly significant given the enormous challenges that remain in schools where students of color are concentrated (Orfield & Ee, 2014), Latinxs in particular. Latinxs now attend schools that are 84 percent nonwhite and attend schools in which three-quarters of the students are poor (Orfield & Ee, 2014).

Additionally, state policies that have focused on reducing disparities in student learning outcomes over the last several years have not included efforts to reduce segregation based on race and class (Orfield et al., 2016). They haven't responded to the effects of concentrated poverty in the communities where many poor children reside as racial diversity in California's public schools has increased segregation in its schools (Center for Teaching and Learning, Wested, 2018). Yet, a wide variety of academic indicators – graduation rates, test scores in reading and math, college enrollment, etc. - continue to show that race and socioeconomic status are strong predictors of student academic outcomes in California (Fensterwald, 2017; California Department of Education, 2017) and nationally (US Commission on Civil Rights, 2018). For example, 31 percent of African-Americans and 37 percent of Latino students met or exceeded standards for English language arts in 2016-17 in California. That compares with 76 percent of Asian and 64 percent of percent of White students.

Recent 2017 NAEP (National Assessment of Educational Progress) scores reveal that in California and several other states, strong achievement gaps by race continue. The nationwide gap between low-income students and their wealthier peers has remained wide and unchanged in 4th-grade reading since 2002-03 (Fensterwald, 2017; NAEP, 2018). In California, the 27-point gap in average 4th-grade reading scores between Whites and Hispanics in 2017 is among the

¹This chapter is based on Bishop, J. P., & Noguera, P. A. (2019). The Ecology of Educational Equity: Implications for Policy. *Peabody Journal of Education*, 94(2), 122-141.

biggest in the nation. However, California has made substantial jumps in NAEP rankings of average scores adjusted for poverty, language, diversity and special education (Urban Institute, 2018). The state has proportionally more low-income students and English Learners than any state, with more students who have historically scored low on the nation's report card (Fensterwald, 2017; NAEP, 2018).

To remedy growing needs resulting from poverty and unequal schools, the state has adopted a funding strategy, the Local Control Funding Formula (LCFF). LCFF directs targeted state funds to districts that serve a disproportionate share of the most disadvantaged students (Affeldt, 2015; California Department of Education, 2017). If the goals of LCFF are realized, this analysis suggests new ways that policies and strategies to achieve the states ambitious educational equity goals through a new school funding model.

Local Control Funding Formula Overview

LCFF was touted by former Governor Jerry Brown and members of the California State Board of Education as way to empower local actors with additional resources. With great fanfare, Brown announced that the law would bring sweeping changes to education in California:

We are bringing government closer to the people, to the classroom where real decisions are made and directing the money where the need and the challenge is greatest. This is a good day for California, it's a good day for school kids and it's a good day for our future (Governor Edmund G. Brown 2013).

Since 2013, California has made the pursuit of equity an explicit goal of education policy through LCFF. In keeping with the aim of the policy, local actors (i.e., school districts) are charged with the responsibility of determining how best to utilize resources. In California, low-income students constitute 58 percent of students in the state (California Department of Education, 2018). The state is comprised of predominantly Latinx students as well, representing 54 percent of the school population (California Department of Education, 2017). A majority of Latinx students come from low-income families (Crosnoe, 2009), furthering the argument that policies like LCFF should benefit the majority of children in the state.

LCFF replaces the previous K-12 finance system which relied upon an array of categorical funding streams to provide districts with targeted with additional revenue for high-needs students. Under the new law, districts are required to prioritize resources for disadvantaged students: those eligible for free or reduced-price meals (FRPM), foster youth, and English Learners (EL) (Hill & Ugo, 2015). But they also have greater flexibility in determining how supplemental funds are spent.

LCFF charges county offices of education (COEs) with oversight responsibility for reviewing and approving district spending plans, referred to as Local Control Accountability Plans (LCAPs) (California Department of Education, 2017). Districts are required to explain how their LCAPs will utilize LCFF resources to generate progress on a number of academic and whole school performance indicators aligned with the state accountability system, e.g., student attendance and student suspensions (California State Board of Education, 2014).

There is growing evidence that some districts are struggling to set clear priorities (Fuller & Tobben, 2014) and to demonstrate that with additional funding for high-need students, clear, measurable progress can be achieved. A recent study also shows that targeted increases in student funding in California made possible by the Local Control Funding Formula (LCFF) have contributed to a six percent increase in graduation rates for low-income students (Johnson and Tanner 2018). While this research is preliminary, it is encouraging.

Out-of-School Factors & Educational Equity

For some time now, there has been considerable evidence that a variety of “out-of-school” factors (OFSs) contribute to the persistence of academic disparities among students. For example, in his ground-breaking report on the factors that contributed to the under-performance of Black students, sociologist James Coleman (1966) and his colleagues found that approximately two thirds of the variation in student achievement could be explained by “out-of-school factors,” and approximately only one third to school quality. Subsequent studies have affirmed this finding (Jencks 1971; Rothstein 2003;) and in some cases attributed an even more important role to factors external to schools (Jencks et al., 1979; Johnson, 2014).

Research from a variety of sources has identified the ways in which OSFs that contribute to the persistence of unequal education outcomes. For example, Berliner (2009) examines six different OSFs and their individual effects on student achievement; 1) low birth-weight and non-genetic prenatal influences on children; (2) inadequate medical, dental, and vision care, often a result of inadequate or no medical insurance; (3) food insecurity; (4) environmental pollutants; (5) family relations and family stress; and (6) neighborhood characteristics. Similarly, Rothstein (2002), Author, Balfanz (2012) and numerous others have identified a variety of factors that are external to schools that impact the academic and life trajectories of students.

Recognition of the role of OSFs in influencing educational outcomes makes it possible to attempt to address the “family, peer and neighborhood ecologies (that) exert powerful influence on students’ educational opportunities and interests, as well as their aspirations for the future (p. 433, Lawson & Lawson, 2013).” Suarez-Orozco (2016), Adelman (2017), Raver (2013), and many others have documented the ways in which poverty, mental health, trauma and adverse childhood experiences (ACE) (Fox et al., 2015), interact and influence childhood academic and developmental outcomes. Scholarship clearly reinforces the idea that schools alone cannot address inequality. However, school funding can begin to address in-school factors (e.g., teacher capacity, school facilities, curriculum, access to school counselors) that can negatively affect student learning.

Money Matters & California Before LCFF

Whether or not money plays a role in whether schools can serve their students well has been debated for decades.² These debates have taken place in classrooms, courtrooms, and state capitals, with school funding lawsuits active in almost every state in the union.³ Most recently,

²Hanushek, E. (2003). The structure of analysis and argument in plaintiff expert reports for Williams v. State of California, p. 4. http://www.decentsschools.org/expert_reports/hanushek_report.pdf

³Baker, B., Farrie, D., Johnson, M., Luhm, T., & Sciarra, D. G. (2018). Is school funding fair? A national report card (7th edition). Newark, NJ: Education Law Center. http://www.edlawcenter.org/assets/files/pdfs/publications/Is_School_Funding_Fair_7th_Editi.pdf (accessed 12/29/18).

Bruce Baker's (2017) review of the research that explores the relationship between education investments and student academic outcomes finds:

- (1) on balance, in direct tests of the relationship between financial resources and student outcomes, money matters;
- (2) schooling resources that cost money are positively associated with student outcomes; and
- (3) sustained improvements to the level and distribution of funding across local public school districts lead to improvements in the level and distribution of student outcomes.⁴

While it is clear that money does matter as a means to making schools stronger to improve student academic outcomes, what is less clear is a policy path for funding schools more equitably. Like other states, California's climb towards better resourced schools has not been smooth. School funding lawsuits have shaped school funding reform, including more recently, *Williams vs. the State of California*. The case was filed in 2000, on grounds that "the state was failing to provide students from low-income families and students of color with basic needs required for an education." (Furger et al., 2018).⁵ While some question the impact of the *Williams* settlement in 2004, its role in California's policy path towards funding schools more equitably is undeniable. The case elevated the prevalence of patterns of unequal schools across the state, establishing a set of "basic necessities of educational opportunity: textbooks and instructional materials, clean and safe school facilities, and qualified teachers."⁶

Political support for greater funding for schools and for the Local Control Funding Formula (LCFF) was solidified with the passage of Proposition 30 in 2012 as the state was rebounding from years of Great Recession budget cuts. Proposition 30 – an increase in state

⁴Baker, B. D. (2017). *How money matters for schools*. Palo Alto, CA: Learning Policy Institute. This report can be found online at <https://learningpolicyinstitute.org/product/how-money-matters-report>

⁵Furger, R. C., Hernández, L. E., & Darling-Hammond, L. (2019). *The California Way: The Golden State's quest to build an equitable and excellent education system*. Palo Alto, CA: Learning Policy Institute.

⁶ACLU Foundation of Southern California, Public Advocates, Inc. (2007). *Williams v. California: The statewide impact of two years of implementation*. Los Angeles/San Francisco, CA: Authors. https://www.publicadvocates.org/wp-content/uploads/williamsreport2007_final_spread_reduced.pdf (accessed 07/20/18).

income and sales tax rates - guaranteed a higher base level of funding per student and weighted funding for districts serving high portions of low-income students, those learning English, taking into account local school funding sources. Proposition 30 was partially extended in 2016 until 2030 with the passage of Proposition 58, allowing for billions in new revenue from California's wealthiest voters to be directed toward schools.

Methods & Research Questions

This chapter summarizes interviews conducted with senior level county office of education officials to test our assumptions on the promise and the limitations of LCFF. We sought to ascertain how LCFF funds were being prioritized for high-need students to address disparities in educational opportunities among schools (e.g., the presence of teachers certified in content areas, advanced placement courses, lab science, pre-school, etc.). We also were curious about the emerging role of counties and their potential to help school district address factors that extend beyond the school setting. Building on earlier qualitative research (Koppich et al., 2015; Humphrey et al., 2017) which documented *what* districts were doing, we undertook this research to understand *how* counties were operationalizing their equity goals.

The over-arching research question that guided this inquiry was: *How is equity being defined and operationalized through the LCFF implementation process?* We also sought to know *who* was involved in setting budgetary priorities given, that one assumption in LCFF was that local actors would have greater insight into how to direct funds than state officials. We wanted to know as well if the inclusion of key stakeholders - parents, teachers, students - influenced LCFF spending priorities and local decision-making.

LCFF has identified disadvantaged student subgroups (low-income students, foster youth and English learners) as priorities for the new funding. However, the state has not established strong guidelines or best practices on how these funds should be used. For this reason, there is considerable variation in the way local plans are developed and implemented by school districts to prioritize funds. Some districts have chosen to invest in wrap-around supports, while others have applied funds to address professional capacity needed to implement effective educational interventions to vulnerable groups (e.g., English learners and

special education students), and to offer improved educational offerings to increase college readiness (e.g., Advanced Placement courses, lab science, pre-school, etc.).

Findings

1. There's a lack of state investment to implement LCFF effectively

There is growing recognition that if districts are expected to address in-school and out-of-school conditions that influence student achievement simultaneously, more resources (e.g. money, human capital, time) will need to be directed locally. The complexity of responding effectively on a large scale to such a high portion of students is an undertaking that also requires more than the commitment of people who work within the public school system. For example, more than 58 percent of students of the states 6.2 million students are eligible for Free and Reduced Price Lunches. Community stakeholders like parents and non-profit organizations can be key allies in forming strong partnerships outside of schools as successful LCFF implementation requires. As one stakeholder said:

I think people are really starting to understand on a much wider scale how complex the work is for districts and schools. And that understanding I think is beneficial not only to improving a process of working with stakeholders. It almost branches out of, you know, this idea of because we all went to school, we think we understand how school works. It's a lot more complex than that. And building that understanding on a grander basis, I think is beneficial for moving forward at a larger scale.

When asking what COE officials should change in the design and implementation of the law to improve its efficacy as a driver of equitable learning outcomes, a number of respondents expressed concerns about the state's lack of investment in the capacity of district leadership. COEs are expected to be the primary provider of technical support to districts. Therefore, resources must be put in place for COEs to work directly with districts to support academic progress for high-need students. One official explained it in this way:

If we're going to really be able to focus on the needs of the high need districts, we must have resources for that. Last year, for all the county offices, we received about \$20 million, which if you think of the 6.2 million kids in the state, that's not a lot of money.

2. County capacity to support districts and schools is uneven

County leaders acknowledge that funding differences across the counties can impair their ability to provide support to districts. As one county official explains: “There’s 58 counties in the state and they’re all at different levels of funds at the core in terms of what they can provide to their districts.” However, ideas of what county capacity is remains a much larger an issue than funding. Capacity can also be conceptualized in terms of human capital and staffing, professional knowledge (Schön, 2017) or “know how” of county leadership to respond appropriately to the technical and adaptive (Daly and Chrispeels, 2008) aspects of their job.

Stakeholder engagement is another mandated aspect of LCFF to meet the ambitious goals of the law. Many districts are looking to outside support from county offices to bolster their engagement efforts. Yet county offices may not have the expertise themselves to work with districts to improve engagement (e.g., meeting structures, timing of engagement, actors involved). County officials had a difficult time articulating specific ways they are expanding the ability of districts to engage effectively with community partners. Or in the case of the example below, the responses tended to be very generic, explaining engagement as “help them with that.”

One of the requests we've seen increase at the county office is technical assistance in helping our districts with parental engagement strategies as well as going out and doing focus groups and interviews with our parent community. They come to us as a resource to help them with that.

Capacity also recognizes geographic barriers that can make it difficult for counties to serve districts based on the vast amount of territory to cover within a large county. For example, some of the county offices we interviewed serve students and families distributed across thousands of square miles. In such a scenario, one could consider the benefits of serving

districts in smaller counties with less ground to cover for face-to-face conversations. One county official explains further:

Sometimes we work with a district on a day-to-day basis that might be west end, high desert, so you know, and so the whole width and breadth of how you actually support such a wide range of, not only environments, but for them being so far away. So, we're constantly looking at new ways and technologies and building those networks to support them. But it is a vast county and very different in each of the regions, which is something we have to always account for.

3. Changes in practices are difficult to achieve, even with targeted resources

In interviews with COE officials, there was recognition that simply having access to more funds was not enough for district officials to improve the academic or developmental outcomes of high need students. The ability of local district leaders to initiate reforms to support student learning can be limited in many communities and classrooms. Those capabilities can derive from a variety of experiences, social capital and training of staff at different levels within an education system, from the district office to the classroom (Datnow et al., 2005).

While many schools need more counseling, health and social services, recruiting talented professionals is a challenge. Developing structures to support them is difficult as well. Adult belief systems and biases towards students of color, and low-income students generally, present a strong barrier to operationalizing the intent of LCFF to address social, racial and linguistic disparities in student achievement.

This conclusion parallels the research literature showing that educators often have more positive expectations for White children than for students of color (Tanenbaum & Ruck 2007). Statewide, thirty five percent of educators in California's teaching force are people of color (California Department of Education, 2017). Therefore, it is possible that a mostly White teaching force in California might benefit from more tools and support to address racial bias in their instruction (Dee, 2004). Several COEs highlighted the role of adults in perpetuating learning gaps for students of color as something that will need to change in order for more targeted resources to result in improved learning outcomes. One county official put it this way:

“We've got to get out of this mode of thinking that some kids can and some kids can't... it's a change in belief system, how we go and educate children.”

4. Stronger cooperation and coordination to address OSFs is needed

Interviews with COE officials revealed a strong emphasis on the need for integrated student supports that research shows can be effective in supporting disadvantaged students (Oakes et al. 2017). Much of the needs stems from the growing number of cases of students who arrive to school profoundly affected by poverty, trauma and adverse child experiences (Fox et al., 2015).

There's the re-emergence and acknowledgement that students come to school who have suffered trauma...there's a large number of those students, or kids who are behaving in certain ways. There are things that the system can do to respond to those students and proactively in a way that will actually have an impact on those students learning.

Being responsive to factors that are sensitive to various aspects of a child's healthy development requires creative strategies. One county leader interviewed offered unique insight as a former district superintendent on how schools are prioritizing dollars for more whole-child, comprehensive strategies. Such a strategy recognizes that student who don't feel safe or healthy cannot do their best work.

We used LCFF money to hire social workers, to hire new people to get families paired up with those sources that they didn't know existed. We did whatever it took to support kids, but the needs exceed the resources available. We don't look at this as just an academic issue. We look at every single aspect of what the children need to address gaps...we built stronger partnerships with some of our health agencies and made some grants and we have a community health center.

Other COE officials spoke to district LCFF investments in mental health specialists, homeless youth services, and new district-county-nonprofit interagency partnerships. As vital

as these services are, districts are often barely able to keep pace with the steady, unrelenting demand in poor communities. Another COE official described some of the positive change the county has seen as a result of LCFF:

We're working more now with county agencies like First 5 [the preschool agency] and the Department of Public Health and Children and Family Services. We've always been partners with them as with the sheriff's office, but now, they're concrete partnerships that the county has been able to enter into to serve districts... but there are vastly increased demands for services that we can't keep up with as poverty and homelessness increases. We have deepened the dialogue about what the districts are saying that they want but we aren't always able to meet the demand with LCFF resources.

5. Local autonomy can work under the right conditions

The idea of key education decisions resting primarily in the hands of local actors takes us back to origins of public education in the United States (Ravitch, 2001). Local control or “autonomy” foundational to LCFF is a value that made Governor Brown’s proposal for support of the law compelling to California locals fatigued from the federal demands of the No Child Left Behind (NCLB) Act of 2001. A county official reflected this sentiment.

Giving people an invitation to try to figure out how to solve things in their local context, network with other people, that's a huge, when we talked about the gates falling down, I think, that's a piece where I see. And I also see in my experience some superintendents starting to embrace sort of what does innovation look and sound like. And going to open education resources as opposed to adopting textbooks, or you know, doing one to one computing things with real intentionality in terms of how those are used with our students.

Prioritizing resources for districts based on need was a politically palatable message from Governor Brown for a state reeling from Great Recession cuts and the unfunded mandates of NCLB. Datnow et al. (2005) would suggest that implementation processes can reinforce struggles for schools and districts still unclear about how to improve outcomes for

their most vulnerable children. This dynamic surfaced repeatedly in interviews. For example, counties were most comfortable articulating improved processes (e.g., budgeting, collaborative decision-making, stakeholder engagement) not outcomes for districts that could be attributed to the law. In this case, a county administrator discusses implementation processes centered on the success of long-term English Learners:

A focus is now really been placed on why do we have so many long-term English learners in the county, and what are we doing that's making them be long-term English learners if technically they've been in our system since kindergarten? So that's one of the growth areas we've seen is a focus on targeting those students and actually reclassifying them. And once they're reclassified, their core [achievement] sail. They outperform every group, every year. And so that's been one of the target areas that I've seen growth in the county for sure. I think it's been attributed to LCFF because we've had to really target on looking at our English learner population, and the way that the dashboard is reporting our English learners and having that long-term English learners is now a factor in that, I think it's created a bigger emphasis on the disservice we've been doing to those students.

Conclusion

Policy efforts like LCFF signify a promising path forward for school funding strategies that are carefully designed to better serve young people that require more resources to be properly educated. Findings from interviews also underscore that new iterations of the law that are less fragmented in nature and that reflect the academic, social, emotional and health needs of children could make California a more promising model for other states. Absent from connections to other social policies, LCFF will likely yield a valuable but limited impact as a driver of outcomes for low-income students, foster youth and English learners (Cappella et al. 2008). This is because education and social policies must extend beyond the traditional confines of the classroom.

LCFF has only been in place for six years. It is perhaps still too early to determine whether or not it will dramatically expand access to quality learning opportunities, let alone

result in desired changes in educational outcomes and school performance (Humphrey et al. 2014). The education field embraces the spirit of the law in the same way we heard from this county official, “It takes more to educate students who are underserved. It does help close the equity gap by providing opportunities for those students to have access to more resources.”

However, as this paper reinforces, LCFF will not reach its full potential as a profound driver for educational equity without stronger connections to existing structures and policy efforts in health (including mental health), child welfare and juvenile justice that serve students and families. LCFF and other social policies suggests it is one investment in vulnerable children who require a larger, broader array of supports to mitigate the effects of adverse conditions in their homes, neighborhoods, schools and communities.

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Chapter 4

The Impact of ZEV Adoption on California Transportation Revenue

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Former California Governor Jerry Brown set an ambitious target for the state to reach five million zero-emission vehicles (ZEVs) by 2030. The policy is intended to reduce greenhouse gases and other pollutant emissions. But, for one hundred years, the largest source of revenue for the California highway and transit funding programs has been taxes levied on motor fuels including both gasoline and diesel fuel. Progress toward environmental sustainability will necessarily reduce fossil fuel consumption and thus will also affect future state-generated transportation revenues collected from vehicle owners and operators. In 2017, California enacted SB1, which raised the fuel tax rates and increased several other transportation taxes and fees in response to falling fuel tax revenue, but the future flow of transportation revenue will be a central concern of policymakers as the state shifts from petroleum based fuels and moves toward “clean” vehicles powered by electricity and hydrogen.

We used a simple spreadsheet model to project future transportation revenue in California from light duty vehicles through 2040 under two scenarios. The first scenario assumes that ZEV ownership continues at its historical rate of net increase, approximately 26,000 vehicles per year (the “low-adoption scenario”). The second scenario assumes that California reaches its goal of five million ZEVs by 2030 (the “high-adoption scenario”). The projections are for light duty vehicles and do not address the possibility that heavy trucks may over time also adopt alternative fuels. The emphasis in current policy is on the much larger fleet of light duty vehicles.

METHODS

We projected revenues from taxes and fees collected by the State of California that meet three criteria: they are collected from vehicle owners and users; the state dedicates the proceeds to transportation programs; and the amount of revenue collected depends at least in part on the vehicle’s fuel source—whether it is powered by an internal combustion engine (ICE) or is a zero emission vehicle (ZEV). The relevant taxes are gasoline excise taxes, diesel excise taxes, diesel sales taxes, the state’s Transportation Improvement Fee (TIF), and the state’s Road Improvement Fee (RIF) charged annually on ZEVs.¹ Table 1 shows the rate for each tax or fee as a result of the implementation of SB1.

The projections were made using a spreadsheet model that estimates annual a widely used set of national projections of transportation energy prepared by the US Energy Information Administration revenue by applying tax and fee rates to projected fuel sales and numbers of vehicles of particular types. Key independent variables include state population size, the number of vehicles and vehicle miles traveled (VMT), gasoline and diesel fuel prices, and adoption rates for ICE vehicles and ZEVs. The projections use inputs derived from authoritative sources, such as (EIA) of the US Department of Energy.² Complete methodological details are available in a companion report to this chapter.³ Results are reported in constant or inflated 2019 dollars.

For each scenario we estimated an upper bound, a lower bound, and a mean between them which we consider the most like future value. The range between the upper and lower bounds

represents a set of plausible outcomes under different economic conditions. The high and low estimates result from numerous assumptions about reasonable ranges of the independent variables.

The estimates result from combinations of various factors that cannot individually be associated with probabilities of occurrence, such as vehicle fleet fuel efficiency, the market price of gasoline, and the amount of driving. For that reason, the bands do not indicate a particular level of statistical significance.

As with any projections, these rely on numerous assumptions about future trends—gasoline prices, inflation rates, fleet changes, and so on. With the horizon year of 2040 over 20 years away, many unforeseen changes in conditions can—and undoubtedly will—intervene. For example, if population were to drop markedly due to some unanticipated economic change, actual revenues could fall below the projection bands. Of particular relevance to this analysis is the price for ZEVs in the future. If purchase prices fall much faster than assumed, then tax and fee revenues for transportation programs may fall outside the values projected in this report.

Table 1: State of California Transportation Taxes and Fees Projected for This Study

Tax/Fee	Rate ^a
Gasoline taxes	
Base excise tax	30¢ per gallon
Swap ^b excise tax	17.3¢ per gallon (effective 7/1/2019)
Diesel taxes	
Excise tax	36¢ per gallon
Swap ^b sales tax	5.75% on purchase price
Vehicle fees	
Transportation Improvement Fee	\$25 to \$175 per vehicle annually, with rate depending on the vehicle's value
Road Improvement Fee	\$100 per ZEV, annually (effective 7/1/2020)

Source: Adapted from California Legislative Analyst’s Office, *Overview of 2017 Transportation Funding Package (2017)*, <http://www.lao.ca.gov/Publications/Report/3688> (accessed July 25, 2018).

^a Rates will be adjusted for inflation starting July 1, 2020 for the gasoline and diesel excise taxes, January 1, 2020 for the Transportation Improvement Fee, and January 1, 2021 for the Road Improvement Fee on ZEVs. The diesel sales taxes are not adjusted for inflation.

^b For details about the gas tax swap, including tax and fee rates prior to the swap, see Anne Brown, Mark Garrett, and Martin Wachs, “Assessing the California Fuel Tax Swap of 2010,” *Transportation Research Record: The Journal of the Transportation Research Board*, no. 2670 (2017), pp. 16–23.

TOTAL PROJECTED TRANSPORTATION REVENUES

Figure 1 shows projected total state revenues for the two scenarios. In both, annual revenue will start at around \$8 billion in 2018 and increase to a maximum of \$11 billion by 2020. After 2020, revenues fall under both scenarios, but the projections begin to diverge. By 2040, as the scenarios diverge, we project revenue to be approximately \$9 billion if the low-adoption scenario were to occur and \$11 billion should California experience the high-adoption scenario.

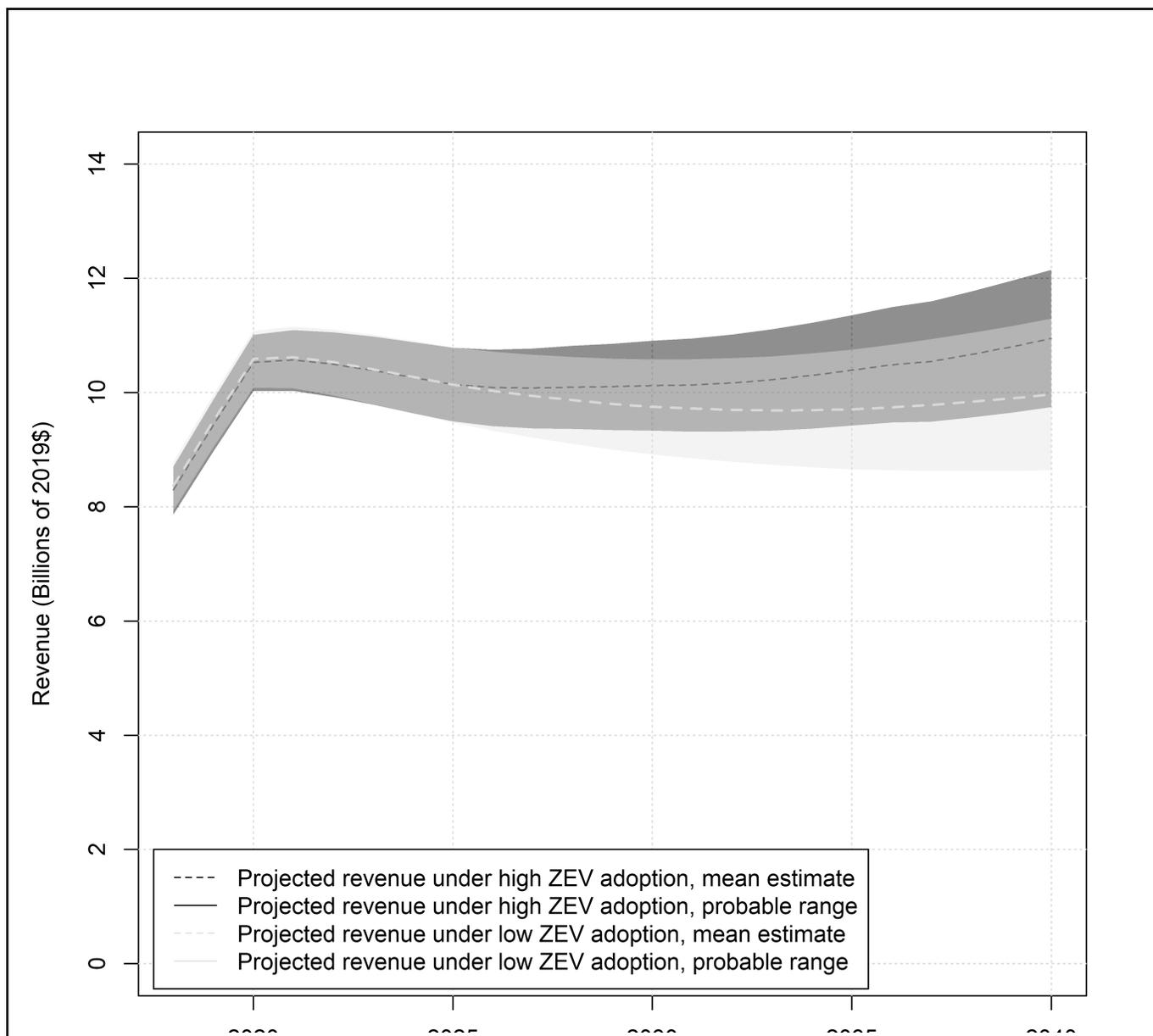


Figure 1: Total State Revenue under Both Scenarios, 2018–2040

The finding that revenues are *higher in* the high-adoption scenario will surprise some readers, as the public discourse in California has focused on EVs being a threat to transportation funding because ZEVs pay no fuel tax. And indeed, gasoline excise, diesel excise, and diesel sales tax revenues will all be greater should the low-adoption scenario occur. However, TIF and RIF revenues are higher under the high-adoption scenario and more than replace lost fuel tax proceeds. TIF revenue will be higher under the high-adoption scenario because TIF fees are calculated based on vehicle value, and ZEVs tend to have higher values because their purchase prices are higher than ICE vehicles. Vehicle values also decline with their age, and ZEVs will for several decades be on average newer than ICE vehicles.

Figure 2 shows how the composition of revenues will change over time given each scenario. In the low ZEV adoption scenario shown in the left panel of Figure 2, the share of all revenue from the gasoline excise tax will increase until 2021 and then decline. Nevertheless, the share of all revenue coming from gasoline excise receipts will remain over 50 percent of total state revenue through 2040. The share of total state revenue coming from diesel sales and excise taxes will stay constant over time. Finally, the share of all revenue coming from TIF and RIF receipts will generally increase. However, TIF revenue will remain a larger portion of all revenue (around 20 percent) than will RIF revenue.

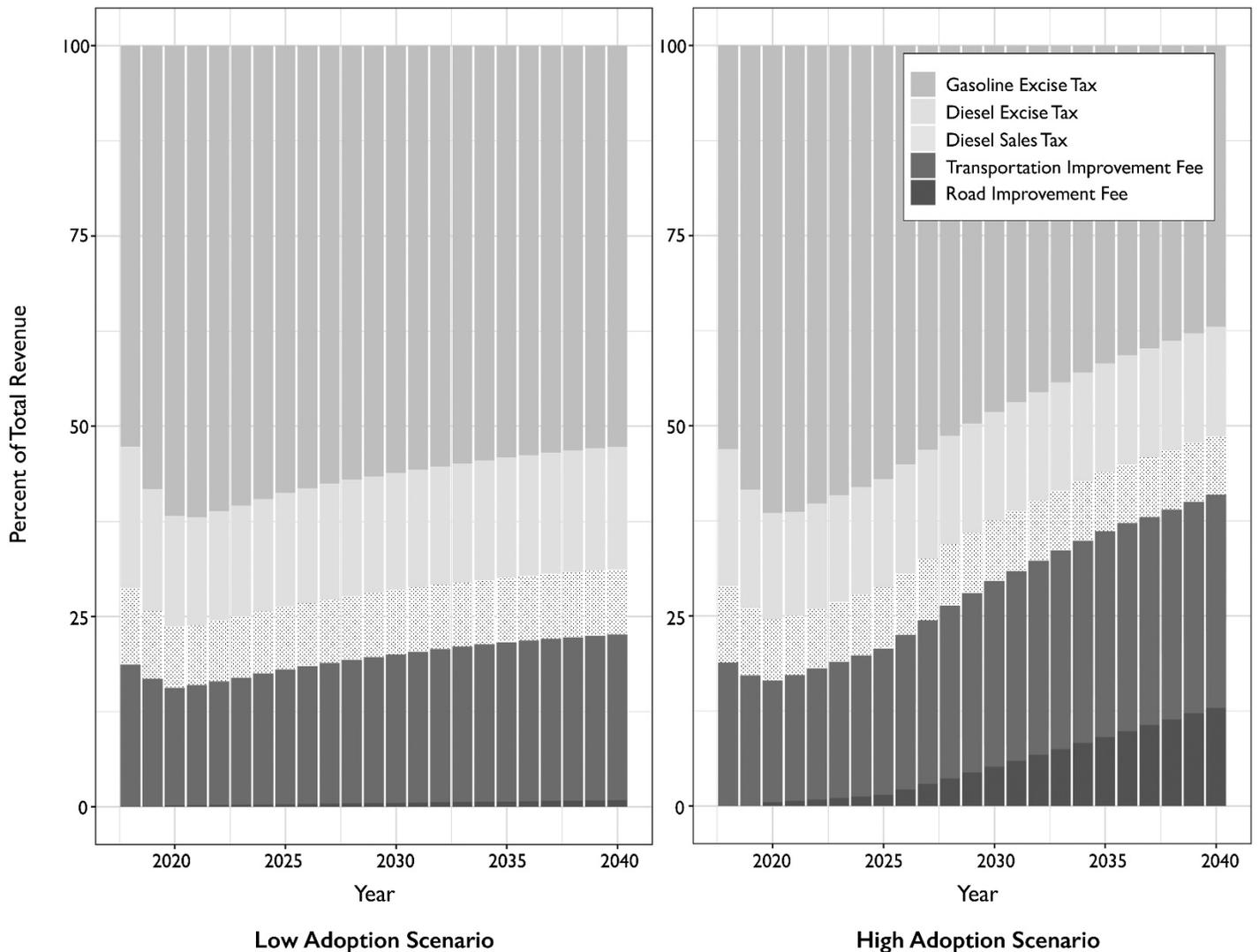


Figure 2: Revenue by Source under the Low Adoption (left) and High Adoption Scenarios (right), 2018–2040

For the high-adoption scenario shown in the right panel of Figure 2, the same general trends hold, but the magnitude of those trends is larger. Gasoline excise revenue will constitute a growing portion of all revenues for the next few years but then will decline. By 2040, gasoline excise revenues will constitute less than 45 percent of all revenues. Also, the share of total revenue coming from diesel fuel sales to light duty vehicles and excise receipts will stay flat across the projection period, and TIF and RIF revenue under high ZEV adoption will over time become an increasingly large share of all revenue. Notably, though, under high ZEV adoption, RIF revenues will constitute a significant portion (10 percent) of all revenues by 2040.

Because TIF revenue varies with the market value of vehicles, which in turn reflects their initial purchase price and their age, readers should note that the TIF revenue estimates assume no major fall in the purchase price of new ZEVs. Should new ZEVs become comparatively much cheaper than they are today, TIF revenues—and overall state revenues—could fall below the bands projected in this report.

PROJECTED TRANSPORTATION REVENUES BY TAX/FEE

This section compares projections for each tax and fee type under the two scenarios.

Gasoline Excise Tax Revenue

Figure 3 shows that under both scenarios, gasoline excise revenue will increase until 2021 and decline afterward, with the decline being more significant under high ZEV adoption because a larger percentage of the fleet will no longer need to purchase gasoline.

Foregone gasoline excise revenue under the high ZEV adoption scenario is proportional to the percent of the vehicle fleet composed of ZEVs.

Diesel Excise Tax Revenue

The low ZEV adoption scenario assumes that no light-duty diesel vehicles will be replaced with ZEVs, while the high ZEV adoption scenario assumes that all light-duty diesel vehicles are replaced with ZEVs. Under both scenarios, Figure 4 shows that diesel excise tax revenues from light duty vehicles will decline over time, although the rate of decline may level off or even reverse close to 2040. Diesel excise tax revenue under high ZEV adoption will be slightly lower than diesel excise tax revenue under low ZEV adoption for the entire projection period.

The overall impact to the state of foregone diesel excise tax revenue under the high ZEV adoption scenario is small, however, because fewer than five percent of California's light-duty vehicles run on diesel fuel.

Diesel Sales Tax Revenue

Again, the low ZEV adoption scenario assumes that no light-duty diesel vehicles will be replaced with ZEVs, while the high ZEV adoption scenario assumes that all light-duty diesel vehicles are replaced with ZEVs. Under both scenarios, diesel sales tax revenues, shown in Figure 5, will decline modestly over time. Diesel sales tax revenue under high ZEV adoption will be slightly lower than diesel excise tax revenue under low ZEV adoption for the entire projection period. Foregone diesel sales tax revenue under the high ZEV adoption scenario is proportional to the small percentage—less than five percent—of light-duty vehicles that run on diesel fuel.

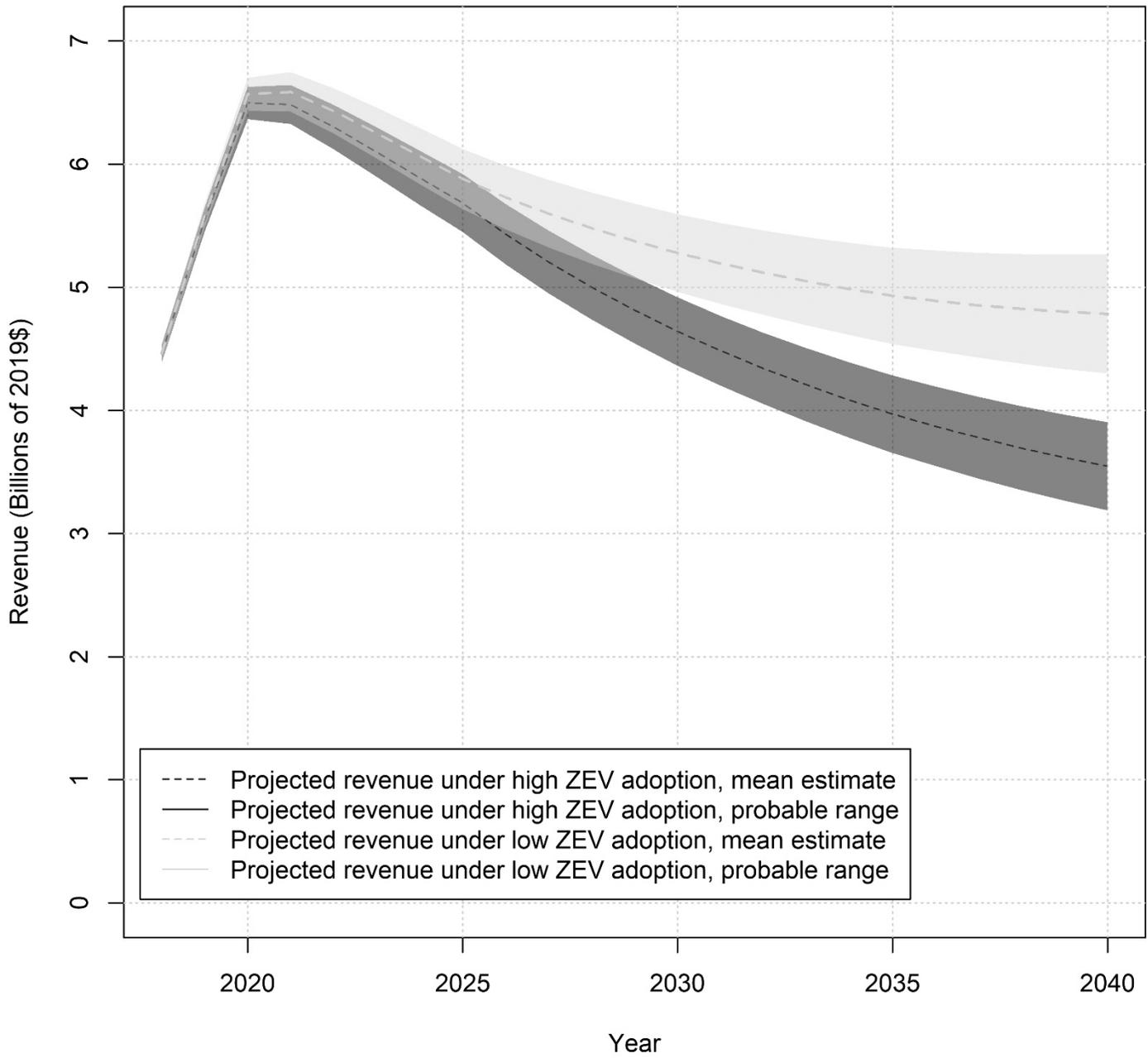


Figure 3: Gasoline Excise Tax Revenue under Both Scenarios, 2018–2040

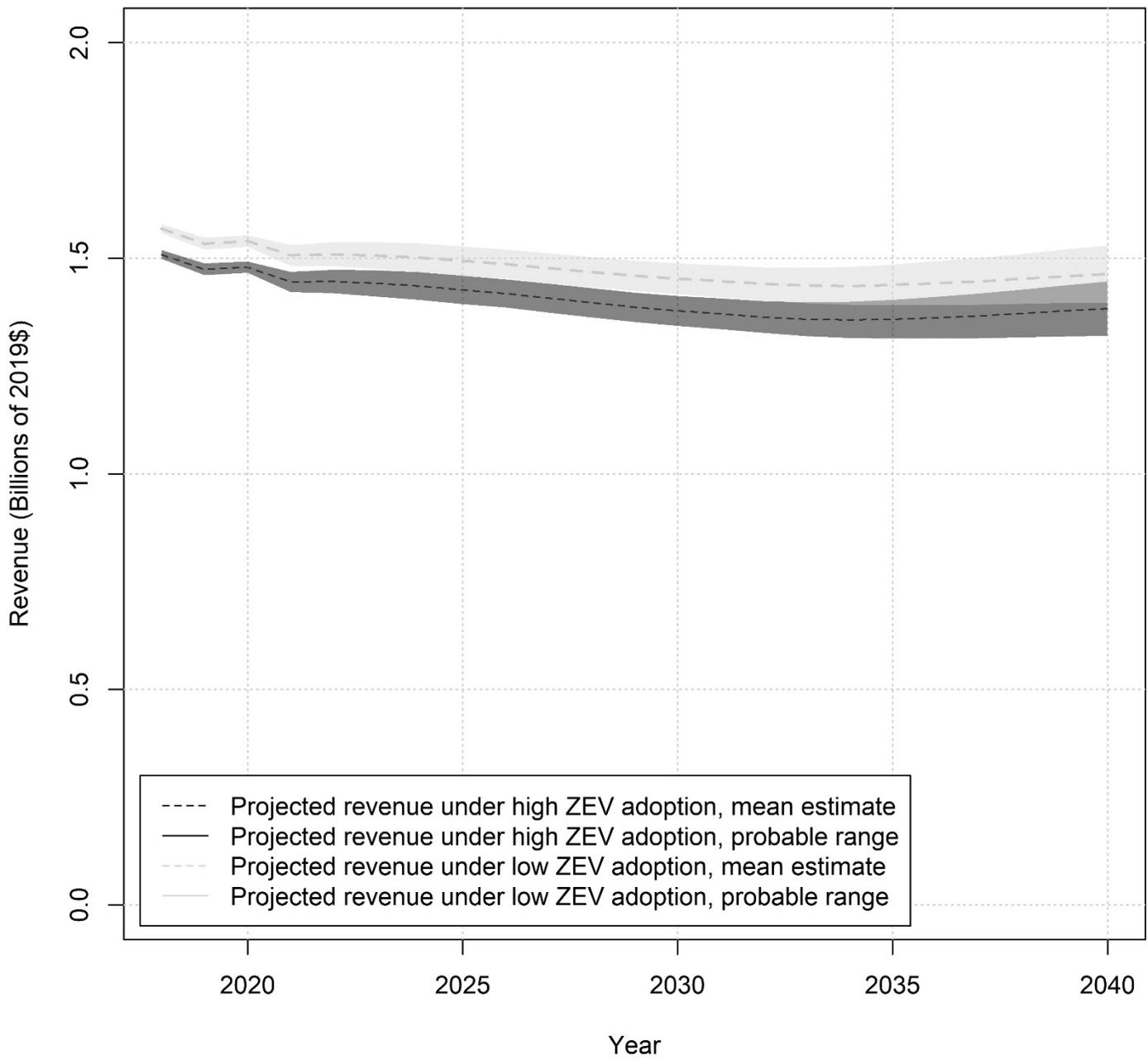


Figure 4: Diesel Excise Tax Revenue under Both Scenarios, 2018–2040

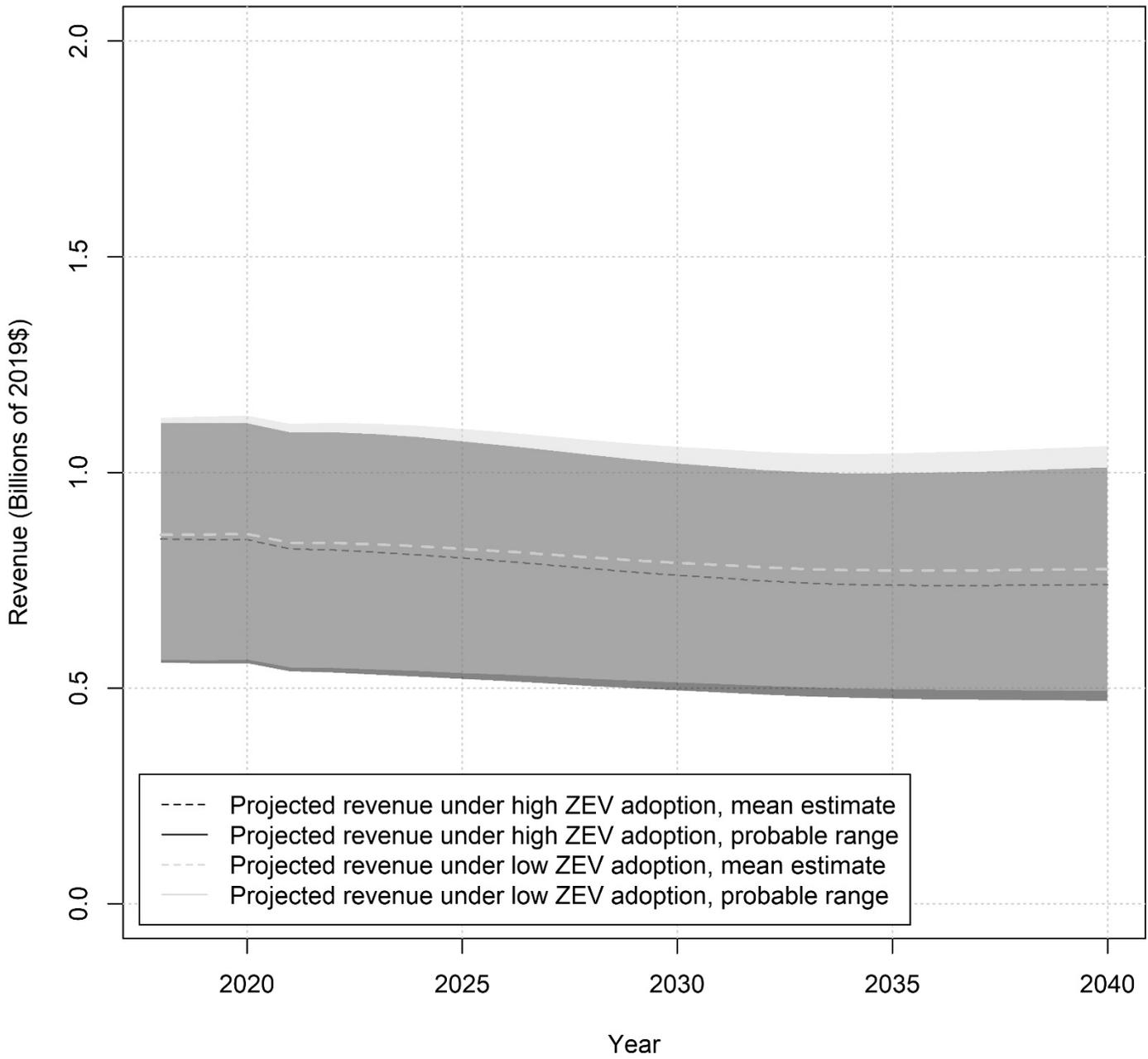


Figure 5: Diesel Sales Tax Revenue under Both Scenarios, 2018–2040

TIF Revenue

As Figure 6 shows, TIF revenue will increase over time under both scenarios. Under low ZEV adoption, TIF revenue will increase from around \$1.5 billion in 2018 to around \$2 billion in 2040.

Under high ZEV adoption, TIF revenue will increase from around \$1.5 billion in 2018 to around \$2.5 billion in 2040. TIF revenue will be higher under the high ZEV adoption scenario because TIF fees are calculated based on vehicle value, and ZEVs generally have higher values than ICE vehicles. The TIF projections are highly dependent on vehicle values. Should ZEV purchase prices drop faster than expected, TIF revenues could fall outside the band projected here. (The text box below presents details on how we estimated TIF revenues.)

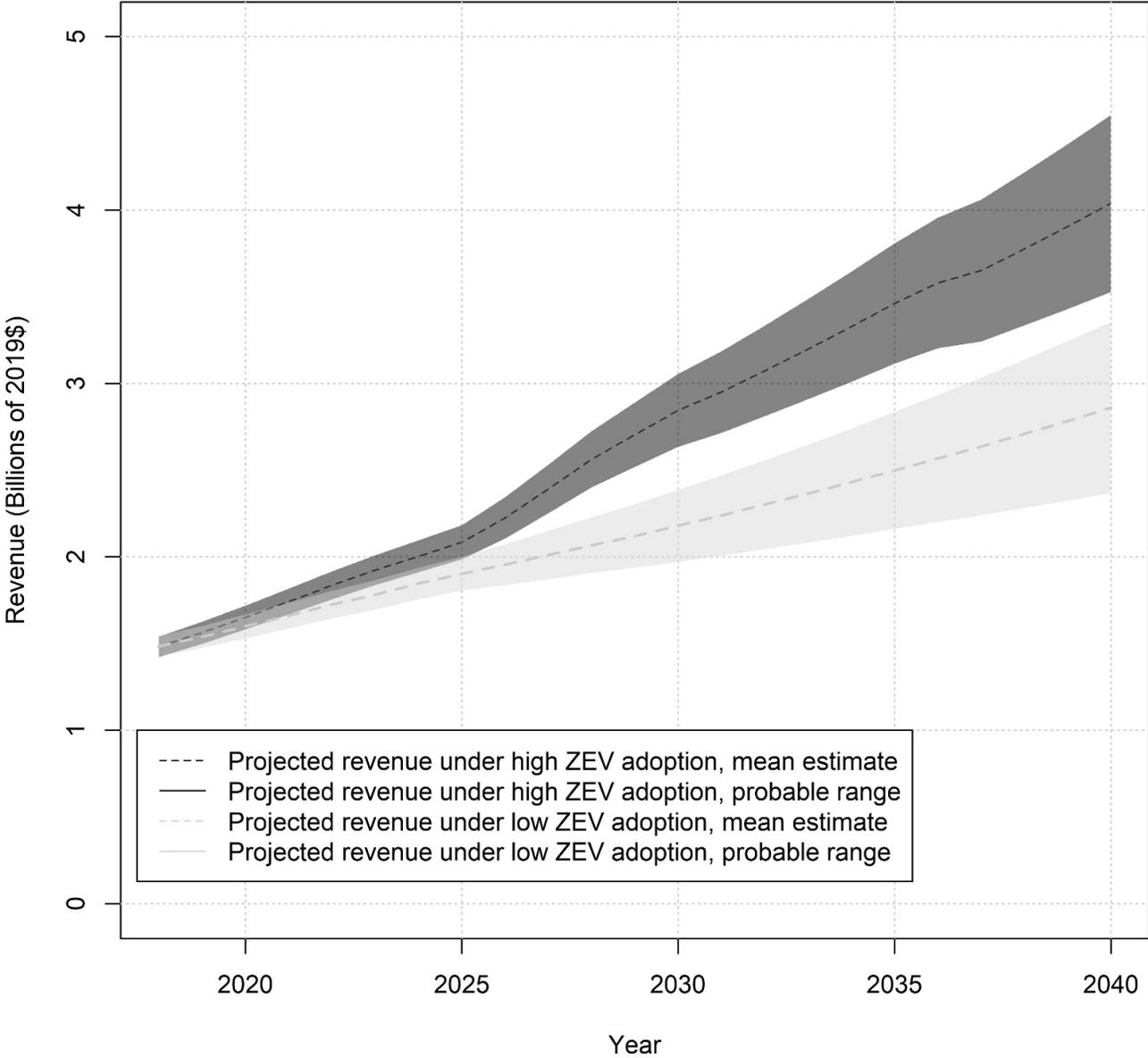


Figure 6: Transportation Improvement Fee (TIF) Revenue under Both Scenarios, 2018–2040

Key Assumptions Used to Project TIF Revenues

The models used to project TIF revenue incorporate the following assumptions about vehicle depreciation, purchasing, and turnover:

- Vehicle values depreciate in a straight line over 11 years, and after 11 years the value is \$0 (no salvage value).
- All ZEVs are bought new, and the real purchase price (2019\$) of a new ZEV declines over time. In other words, over time ZEVs become cheaper to buy new. This assumption is significant for our analysis because the TIF assessed on ZEV owners is sensitive to the value of the ZEV. All else being equal, less expensive ZEVs may translate into less TIF revenue per vehicle.
- The age of ICE vehicles in the fleet remains constant: 17% of ICE vehicles are less than 2 years old; 38% of ICE vehicles are 3 to 9 years; and 45% of ICE vehicles are older than 9 years.
 - To keep the fleet composition of ICE vehicles constant, the model assumes that older vehicles are retired at the same rate that new vehicles are purchased.
 - TIF revenues were calculated by projecting the average purchase price of a new ICE vehicle for each year through 2040. The EIA projects that average ICE vehicle purchase prices will increase slightly in real terms, with values ranging from \$34,050 to \$34,590 (in 2019\$).
 - The value of each vehicle was depreciated each year over 11 years, from 2018 to 2040. In other words, vehicles were assumed to lose one-eleventh (approximately 9%) of their value each year. We assume that all vehicles depreciate to a value of \$0 (i.e., that vehicles have no salvage value).
 - ICE vehicles that were already in the vehicle fleet prior to 2018 were depreciated over a total of 11 years, *accounting for the vehicle's age as of 2018*. Thus, an ICE vehicle that was 5 years old in 2018 was depreciated a further 6 years to a value of \$0.
 - We used the California Department of Motor Vehicles' fee schedule to assign TIF rates to the "average" ICE and "average" ZEV vehicle in each year. TIF rates are assigned categorically rather than absolutely, so the same TIF rate is applied to all vehicles whose value falls within certain ranges.
 - Vehicle age categories were constructed so that for each year, vehicles in each age range pay a constant rate. For example, a new car in 2018 is going to pay the same rate (in 2019\$) as a new car in 2040.
- The projected number of ICE vehicles and TIF rate were multiplied to calculate TIF revenue from ICE vehicles.

RIF Revenue

RIF revenue, shown in Figure 7, will increase over time as the number of ZEVs increases. The range of possible RIF revenues each year will widen as the range of possible ZEV adoption rates increases. Note that because RIF revenue is smaller, in Figure 7 the scale is in millions of dollars while earlier figures were expressed in billions.

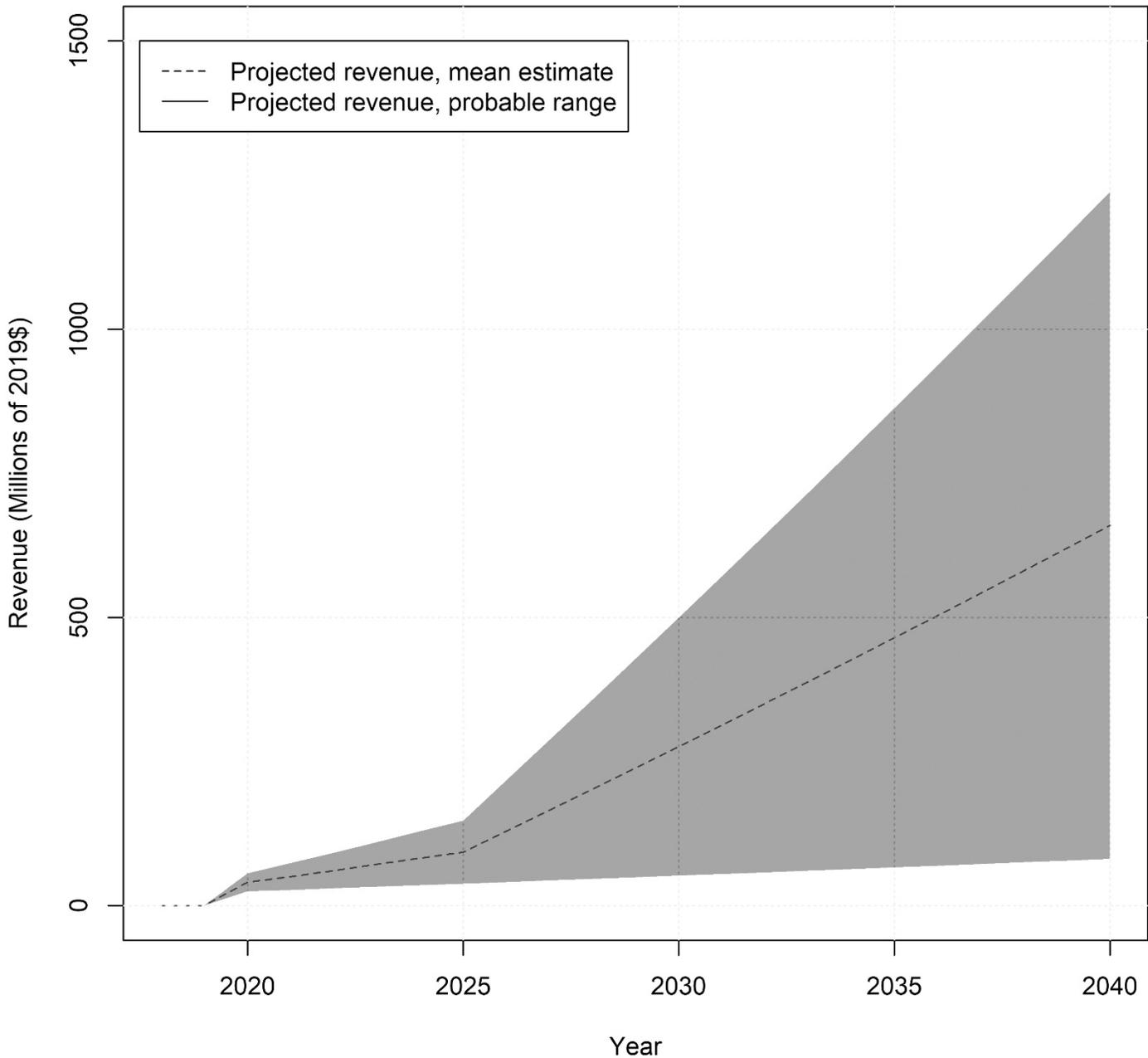


Figure 7: Roadway Improvement Fee (RIF) Revenue under Both Scenarios, 2018–2040

IMPLICATIONS FOR POLICY MAKERS

It has been widely recognized that widespread adoption of electric and hydrogen powered vehicles will have important revenue consequences for California's transportation programs because a large proportion of the state's transportation revenue is produced by user fees in the form of motor fuel taxes. Using common projection methods and widely-used sources of data, this analysis showed that the user fees levied on EVs under the provisions of SB1 can replace and potentially even exceed the revenue to the state that will be lost because of declining gasoline sales tax revenue. However, these estimates assume that ZEV purchase prices remain higher than purchase prices for comparable ICE vehicles. Should ZEV purchase prices fall considerably, then TIF revenue—and overall state revenues—could fall considerably below the values projected in this report. The relationship between vehicle price, ZEV adoption rate, and transportation revenue presents California with a major policy dilemma. If ZEV vehicles continue to be priced at the high end of the range of new light duty vehicles their adoption may well occur too slowly to meet the state's ambitious greenhouse gas reduction targets. On the other hand, if lower prices are achieved by vehicle manufacturers and sales of ZEVs increase, revenue needed for transportation programs could decline below the projections presented in this paper. Shifts to alternative revenue options for transportation, including electronic road pricing, carbon taxes, or surcharges on electric power used for transportation purposes, must all be explored as part of the state's continuing effort to develop a greener transportation system.

ENDNOTES

1. Revenues from the state's base vehicle registration fee and vehicle license fee are not projected because the proceeds are not dedicated to transportation programs.
2. US Energy Information Administration, *Alternative Fuel Infrastructure Expansion: Costs, Resources, Production Capacity, and Retail Availability for Low-Carbon Scenarios*, <https://www.nrel.gov/docs/fy13osti/55640.pdf> (accessed September 30, 2018).
3. Martin Wachs, Hannah King, and Asha Weinstein Agrawal, *The Future of California Transportation Revenue* (San Jose: Mineta Transportation Institute, October 2018).

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Chapter 5

Water Affordability in California: Challenges and Policy Solutions

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Drinking water is one of the most essential aspects of human survival, and safe, accessible drinking water remains a major human rights concern around the world. Even in California, several hundred thousand people lack access to safe drinking water. Moreover, many low-income households across the state that struggle to pay their water bills and maintain sufficient access to drinking water for their health and well-being. These concerns prompted the passage of California Assembly Bill 685 in 2012. This landmark legislation is the first, and only, state-level commitment to a Human Right to Water (HRW) and recognizes that, “every human being has the right to safe, clean, affordable, and accessible water” (State Water Policy, 2012). Since then, California has further enacted numerous laws to help realize this right for all.¹ However, water affordability remains a major obstacle to implementing the Human Right to Water (HRW) statewide.

This chapter will begin with a review of the existing landscape of drinking water systems in California and the water affordability challenges faced by low-income households in the state. We then review existing and proposed policy options to address this issue and make the case for a state-level approach to water affordability. Finally, we provide an introduction to the issue of water affordability in the state and the options policymakers and planners can consider implementing to improve HRW outcomes.

Drinking Water Systems in California

The central building blocks of drinking water provision in the state are community water systems (CWS). There are nearly 3,000 CWS in the state, which are public water systems that serve at least 15 service connections used by year-round residents or regularly serve at least 25 year-round residents (SWRCB, 2018a). These systems receive, treat, and distribute water to customers while ensuring sufficient water quality, maintaining supply reliability, and setting water rates to balance system reliability and affordability (Pierce et al., 2019a).

Around 98% of California’s population is served by a CWS, making these systems the central focus of affordability analysis and policy interventions (SWRCB, 2019). Indeed, when low-income households struggle to afford water it usually means an inability to pay water bills from a CWS or effectively to pay for water as part of their rent when living as a renter in multi-family housing. Other types of water systems that do not qualify as CWS include non-community water systems (NC)—such as campsites and national park—and non-transient non-community water systems (NTNC) which are public water systems serving at least 25 of the same non-resident people for more than six months per year (SWRCB, 2018a). Additionally, some people rely on private domestic wells for drinking water and are therefore not connected to a water system. However, the majority of Californians rely on CWS and therefore experience affordability challenges through CWS rates.

¹ Including but not limited to SB88 (2015), AB401 (2015), AB1577 (2018), SB998 (2018) and SB200 (2019).

Size of Water Systems (Small versus Large)

Even among CWS extensive variation exists in systems based on their size (e.g. the number of connections or total population served). CWS can range from small mobile home parks serving fewer than 100 people to the Los Angeles Department of Water & Power which serves roughly four million people across the City of Los Angeles (Pierce et al., 2015). Smaller systems often face more challenges in water provision than larger systems because of their lower technical, managerial, and financial (TMF) resources (Pierce et al., 2019b). The result can be challenges in water reliability, water quality, and adequate treatment and distribution as well as financial difficulties from a lower resource base and fewer economies of scale in water provision (Pierce et al. 2019b). Mobile home parks, in particular, often suffer from water quality issues and reduced water access and reliability (Pierce & Gonzalez, 2017).

Types of Systems- Regulations and Oversight

Beyond distinction as a CWS and whether a system is small or large, water systems also differ based on their governance and regulatory structure. Public community water systems can be municipal (city) or county operated or their own separate government entities (e.g. special districts and irrigation districts). Private CWS include companies known as Investor Owned Utilities (IOUs) and other small private systems such as mobile home parks (Pierce et al., 2015). Mutual water systems are non-profit associations formed as cooperatives among shareholders who all purchase water from the system they own shares in (Pierce et al., 2015). Table 1 shows the different governing bodies of law for each of these different types of systems. Combined with the differing regulatory bodies for these systems, a fragmented and variable landscape of drinking water policy and provision emerges across California.

Table 1. Governing Bodies of Law for CWS in California

Water System Types	Regulating Law
Special Districts (e.g. irrigation districts, county water and waterworks districts)	California Water Code
Community Services Districts	California Government Code
Public and Private Utility Districts	California Public Utilities Code
Municipal Water Systems	Local Municipal Codes
Mutual Water Companies	California Corporations Code

Source: Pierce et al. 2015

All CWS are subject to regulation for water quality under the Safe Drinking Water Act (SDWA). Passed in 1974, this federal act established standards for the levels of bacteria and chemical substances allowable in drinking water to ensure quality and public safety (Pierce et al., 2015). These standards, known as Maximum Contaminant Levels (MCLs), are enforced by the State Water Resources Control Board (SWRCB) for all CWS. While quality regulation applies to all CWS, the enforcement of affordability through water rates occurs differently depending on system type.

The California Public Utilities Commission (CPUC) is in charge of regulating water rates for private IOUs, which are separated into classes depending on the number of connections (CPUC, 2019). The largest IOUs (Class A - more than 10,000 service connections) must go through an especially complex rate-making process every two to three years in which they create a 'rate case' with proposed rates that the CPUC subsequently approves after public hearings and review (CPUC 2019). Smaller IOUs, meanwhile, submit rate cases but are not subject to the same process of public hearings and review; they must simply provide adequate advance notice to their customers of rate changes (CPUC 2019).

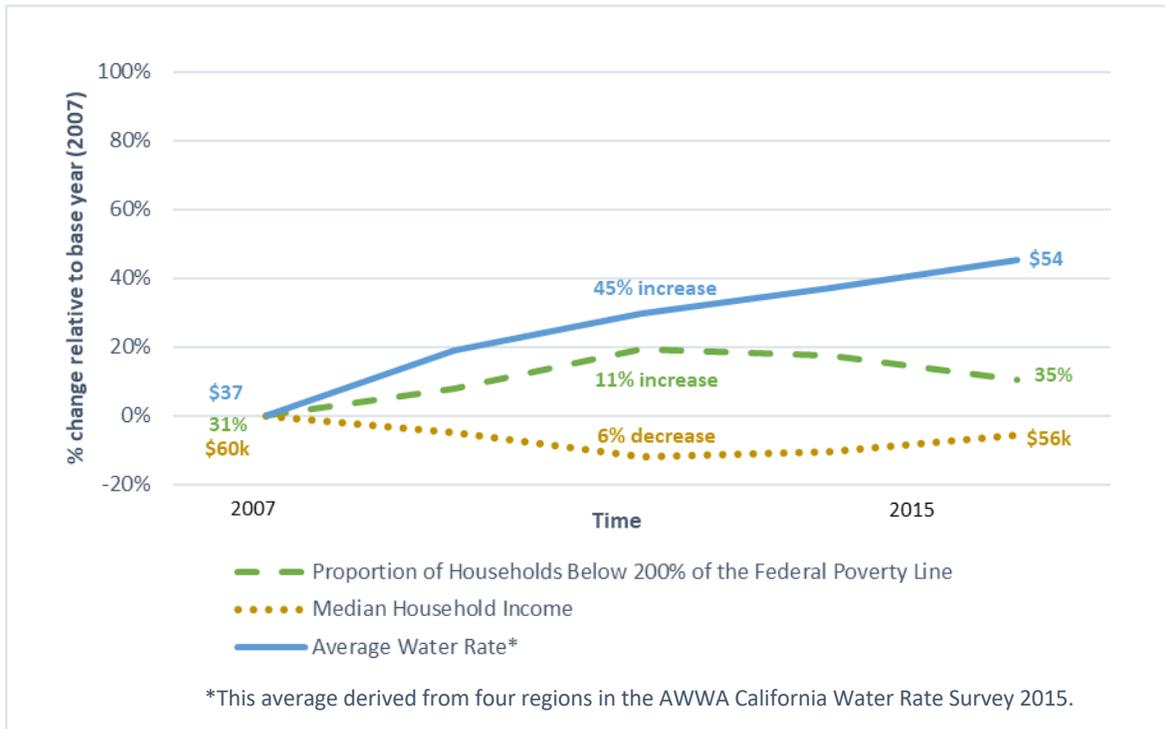
Public CWS, however, must set their water rates based on the requirements of Proposition 218, passed by California voters in 1996 (Mukherjee et al., 2016). Proposition 218 requires voter approval to implement new fees and taxes and also requires that rates be set at the cost of providing service (see Mukherjee et al., 2016). Prop 218 will be discussed later in this chapter. It imposes a limitation on existing affordability policies for public CWS.

Drinking Water Affordability Challenges in California

Water rates have risen dramatically over the last decade, and are predicted to continue to do so in the future. After adjusting for inflation, the average household's monthly drinking water cost rose 45% from 2007 to 2015 (SWRCB 2019a). As highlighted in Figure 1, reproduced from the State Water Resources Control Board, this cost increase occurred alongside a 6% decrease in real median household income, and an 11% increase in the proportion of households below 200% of the Federal Poverty Level, during the same period (SWRCB 2019a). Thus, the cost of water continues to increase but is outpacing income and the ability to pay for essential services.

For example, water rates in the City of San Francisco have risen 127% over the last seven years and residents in the City of Fontana will experience rate increases of 30.7% over the next three years (SWRCB 2019a). Residents in Cantua Creek in Fresno County and Lucerne in Lake County already pay about \$174 and \$350 per month respectively for water (SWRCB 2019a). Many low-income households in California already struggle to afford housing and other vital goods and services while cost of living continues to rise, indicating that water affordability is a major concern requiring policy attention.

Figure 1. Changes to California Water Rates, Income, and Poverty Levels 2007-2015



Graphic Source: Reproduced from State Water Resources Control Board 2019

Reasons for Rising Water Costs

Several factors help explain the trend of rising water costs in California. Water has been historically underpriced which led to years of deferred maintenance due to insufficient revenues (SWRCB 2019a). Water systems now face the challenge of upgrading aging infrastructure while also implementing climate change adaptation measures for future reliability (SWRCB 2019a). Costs of imported water supplies are also rising, the cost of which is typically passed through to the customers of systems which rely on purchased water sources (Pierce et al., 2019a). As concerns for water scarcity and supply reliability increase with climate change and population growth, more systems are seeking to diversify water supply sources. Diversification can also increase water costs.

For example, San Diego’s recently constructed desalination plant incurred construction and operation costs which were passed through to customers via the individual rates of CWS that receive water from the project (Pierce et al. 2019a). Additionally, new and stricter water quality, treatment technique, and staff training requirements increase costs which ultimately lead to higher rates. Figure 2 graphically depicts the multiple concurrent factors that contribute to rising water costs in California.

Figure 2. Reasons for Rising Water Costs at the System Level in California



Source: Based on analysis of Board rate data and a review of academic literature on water rates

Graphic Source: State Water Resources Control Board 2019

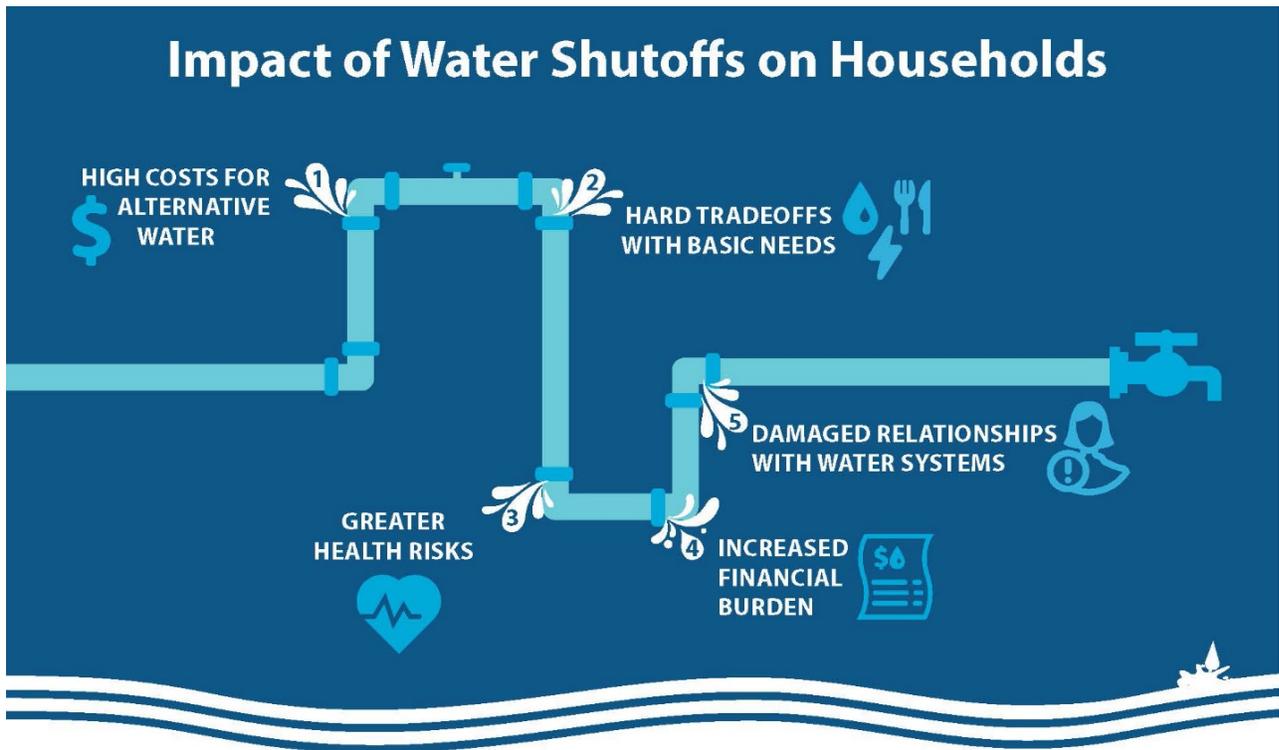
Consequences of Water Affordability: Shutoffs

Drinking water affordability challenges can have direct and serious consequences for the health and well-being of low-income Californians. Many households must make difficult decisions about allocating limited income to essential expenses such as housing, health care, food, and utilities. Households may have to make tradeoffs such as consuming less water or other services, which can have severe negative consequences. At its most extreme, households unable to pay their water bills may experience a shutoff of water service which creates public health concerns.

The City of Detroit made headlines for the extensive number of water shutoffs that have occurred due to households' inability to pay. A recent study by the Henry Ford Hospital found

water shutoffs were linked to water-borne illnesses in that city (Plum et al., 2017). Experts called for a moratorium on water shutoffs due to the public health consequences and the City of Pittsburgh recently stopped drinking water shutoffs during the winter for similar reasons (Chambers, 2017; Pittsburgh Water & Sewer Authority, 2017). Figure 3 summarizes the severe consequences of water shutoffs on households.

Figure 3. Consequences of Household Water Shutoffs



While shutoffs have not received the same media attention in California as in Detroit, they are a significant concern in the state for their serious public health and human right to water implications. Preliminary data collected from 508 large water systems by the State Board suggest that 144,142 occupied residential connections experienced shutoffs in 2018 (SWRCB, 2018b). SB 998 was passed in 2018 and will require systems to report shutoffs and develop standard procedures, improving our understanding of and response to system shutoffs statewide (Discontinuation of Residential Water Service, 2018). As a result, the state will have a better idea of the extent of water shutoffs due to the challenge of water affordability.

Current Policies to Address Drinking Water Affordability

Some policy options do exist to address the major challenge of drinking water affordability. This section reviews four main policies currently in place in California that can help low-income households directly or indirectly reduce their water costs.

System Level Low-Income Rate Assistance Programs

Low-income rate assistance programs (LIRAs) offer discounts on utility bills for low-income customers and can provide direct or indirect benefits to eligible households. LIRAs exist for multiple utilities such as electricity and natural gas and some CWS do offer their own LIRAs (SWRCB, 2019a). The CPUC, which regulates private IOUs, mandates that large Class A private water systems operate LIRA programs, but even their enrollment rates are low. Some other public CWS, typically larger systems such as LADWP, also operate LIRAs. A total of 22% of the 731 large CWS in California have reported that they offer some type of rate assistance (SWRCB 2019a). However, only 46% of California's population is currently served by a CWS that offers some form of a LIRA (SWRCB 2019a). We will discuss the potential for expanding LIRAs for water statewide later in this chapter.

Progressive Rate Structures

Another way to provide affordability assistance to low-income customers is through water rate restructuring indirectly. Water rates can be structured in one of two ways: fixed rates, which charge a flat rate regardless of water consumed, and variable rates, which charge a given rate multiplied by the amount of water consumed. Many water systems employ 'mixed rates' which combine some fixed charges such as meter fees and some variable charges based on water consumption (Pierce et al., 2019a). Additionally, tiered rates charge a different variable rate for customers based on how much water they consume (higher rates would be assessed for customers that fall in higher 'tiers' of monthly consumption). Rates are termed "progressive" when they put more emphasis on the variable components of the bill rather than the fixed portions (Pierce et al., 2019a). Such variable rates give households more control over their costs; customers can reduce their bill to the extent that they can lower water consumption.

While progressive rate structures do not apply specifically to low-income customers, they can provide households with some ability to lower their water bills as compared to rates with only fixed components. Lifeline rates are an extension of progressive rate structures; with multi-tier rates, the lowest tier can be set to provide the initial minimum amount of water needed for a household's health and well-being at a much lower price, with discretionary water at higher tiers priced higher (Beecher, 1994).

Rate Stabilization Funds (RSFs)

Rate Stabilization Funds (RSFs) are reserves maintained by some water systems to mitigate the short-term impact of revenue shortfalls on ratepayers. They can be used both to smooth out rate increases over time (to prevent sharp increases during fiscal emergencies) and to cover unanticipated utility costs like legal fees or variable bond rates when revenues are unexpectedly low (Pacific Institute, 2013). These funds can provide some affordability assistance by protecting customers from the full extent of rate increases in certain years. For instance, the San Diego County Water Authority drew on its existing Rate Stabilization Fund for the past several years to mitigate some of the wholesale rate increases that resulted from rising water supply costs. These increases included the start of desalinated water delivery from a newly constructed plant (Pierce et al., 2019a).

System Consolidation

Another indirect way to potentially improve drinking water affordability involves improving system operations by consolidating smaller, poorer performing systems with other nearby better performing systems. In some cases, consolidation can improve outcomes by harnessing economies of scale to reduce costs in water provision (Pierce et al., 2019b). Smaller systems are often less economically efficient in water treatment and distribution due to their typically lower technical, managerial, and financial capacities. Smaller systems also often have less diversification of water supply sources and thus lower levels of service reliability (Pierce et al., 2019b). Recently, the State Water Board has pursued consolidation largely to target failing systems and improve water quality and management outcomes, but consolidation may provide indirect affordability benefits by lowering system-wide costs (SWRCB, 2019b). The results of consolidation, however, are context-specific and it may not be an effective affordability policy in all situations.

The Case for State-Level Affordability Policy

The current policy actions described above all occur at the water system level. However, statewide action may in fact be the most effective next step to improve water access. Given the fragmented landscape of thousands of CWS across the state, state policy that applies to all eligible low-income households in the state might ensure the widest application of affordability benefits. The legislature and State Water Board recognize the potential of this option; in 2015 the passage of AB 401 directed the State Board to develop a plan for a statewide LIRA for drinking water (Low-Income Water Rate Assistance Program, 2015). In our view, state-level policy represents the best course of action given the current landscape of drinking water service provision across the state.

Precedent of Existing State Programs for Other Utilities

The existence of state-level programs for low-income affordability assistance of other utilities provides an argument for the necessity of state-level programs for water. Existing programs for the electricity and natural gas sectors include the California Alternate Rates for Energy (CARE) program and the Low Income Home Energy Assistance Program (LIHEAP) (CPUC, 2019; CSD, 2019). LifeLine provides discounts for telephone service while SNAP and WIC give food benefits to qualifying low-income households (CPUC, 2017).

Water is inarguably equally, if not more, vital to households, making it easy to justify the value of providing state-level affordability assistance for drinking water in a similar fashion. In fact, the CARE and LIHEAP for energy benefits provide the model for aspects of the proposed water LIRA currently available in the State Water Board's draft report as part of AB 401 (SWRCB, 2019a). Figure 4 shows the funding for rate assistance programs for other necessities versus water, highlighting the strong precedent that exists for the establishment of a state funded low-income water rate assistance program and the current low relative spending on water assistance, despite its vital importance.

Figure 4. Expenditure on Rate Assistance Programs by Utility²

STATE AND FEDERAL ASSISTANCE FOR THE AFFORDABILITY OF HOUSEHOLD BASIC NEEDS IN CALIFORNIA



Graphic Source: State Water Resources Control Board 2019

Inadequacy of Other Existing Policy Options

Another justification for new statewide water affordability policy results from the shortcomings of existing system-level policies for affordability. This section reviews each of the four policies outlined earlier and outlines inadequacies of these approaches for providing sufficient affordability assistance to support low-income households statewide to improve HRW outcomes.

Rate Restructuring

One of the primary disadvantages to rate restructuring as a means of affordability assistance is the difficulty in standardizing progressive rate structures given the large variation in rate structures employed by CWS across the state. Rate structures that are only mildly progressive

² Calculated using publicly available program expenditure data from 2015-2016. Income support shown here is based on expenditure for the calWORKS program, which provides cash aid and services to eligible needy families. Housing support shown here is based on all forms of federal rental assistance in California. Energy support shown here is based on energy efficiency and rate assistance programs in California. Phone support shown here is based on federal assistance to ensure access to communication services in California.

may not provide enough relief to be considered sufficient affordability assistance (Pierce et al., 2019a). Additionally, difficulties arise in identifying the right proportion of variable charges to balance competing priorities for water rates.

Systems often prefer to emphasize non-progressive fixed charges because they provide revenue stability; even in times of lower consumption such as droughts, fixed charges will ensure steadier operating revenues than variable rates (Pierce et al., 2019a). Restructuring rates to be more progressive may also result in pushback from wealthier ratepayers who consume higher amounts of water (Pierce et al., 2019a). In addition, the cost of service requirement in Proposition 218 may prevent innovative rate designs, such as lower lifeline variable rates that are subsidized by higher rates in higher consumption tiers.

Rate Stabilization Funds

The main issue with RSFs lies in the short-term nature of possible assistance. Since they are funded by rate revenue, RSFs can only provide a limited amount of funding temporarily to prevent certain rate increases. In the case of sustained increases in water costs, RSFs will eventually prove inadequate to provide lasting rate assistance to low-income households in the face of rising water rates (Pierce et al., 2019a). These funds are better suited to smoothing out rate increases over time to avoid sharp jumps during fiscal emergencies.

System Consolidation

As noted earlier, the benefits of consolidation (and whether such a policy will even be effective) are highly dependent on system contexts. There is no guarantee that consolidation will result in reduced water costs that will be passed on to water customers. Consolidation also only applies in select cases where smaller water systems are spatially proximate and where combining operations would improve service and HRW outcomes. For the many low-income households already served by large, well-performing or spatially isolated systems, consolidation would not be a potential solution to affordability challenges.

System-Level LIRAs

Perhaps the most promising existing framework for water affordability is the existing LIRAs operated by some water systems such as Class A IOUs. Continuing to operate these programs, and encouraging their expansion to other systems that do not currently have LIRAs, could provide a substantial affordability benefit to low-income households. Expansion would be necessary as, at present, less than 20% of the state's low-income population currently receives benefits from a water LIRA (SWRCB, 2019a). However, system operated programs have several disadvantages which suggest a broader state-operated program may be more appropriate.

Most notably, existing system-level LIRAs currently have enrollment and funding levels too low to provide sufficient affordability assistance as envisioned in AB 401 without additional support or program changes (SWRCB, 2019a). Beyond finances and enrollment, ensuring equitable benefits to achieve the HRW across independently run LIRAs will also be difficult as it will still

require the engagement of state-level actors for cross-verification. On the other hand, there is fair concern that a state-level program, especially if relying on annual data, would not be agile enough to adequately capture rate changes and provide benefits, resulting inadequately supported households.

Challenges for a System Level LIRA Approach

Three main limitations of system-level LIRAs suggest the value of a statewide LIRA or other state-level policy approach, rather than relying on the roughly 3,000 CWS across the state to operate affordability programs independently.

Cross-Subsidy Burden for System Program Funding

If each of the nearly 3,000 CWS needed to operate their own standalone LIRAs, issues would result from the differing resource bases of each system. In particular, certain systems would have very high proportions of their customers eligible for benefits, which would need to be financed from the ineligible customers. This cross-subsidization, where higher-income customers fund the benefits for lower-income customers, can be infeasible in such systems. While smaller systems seem most likely to struggle with inadequate resource bases to fund LIRAs, larger systems may also suffer from high cross-subsidy burdens due to high proportions of eligible customers (SWRCB, 2019a).

Given an eligibility threshold set at 200% of the federal poverty level (which is currently proposed by the State Water Board and matches other existing state benefit programs) some large systems would have more than 75% of their customer population eligible for a LIRA. For example, the Cutler Public Utility District in Tulare County would have 87% of its customers eligible. Yuba City in Sutter County would have 81%. The City of Adelanto in San Bernardino would have 80% of its population eligible (SWRCB, 2019a).

Proposition 218 Funding Concerns

Even if systems had enough ineligible customers to establish a resource base for operation of a LIRA effectively, they may be unable to undertake such efforts due to Proposition 218 restrictions. Unlike IOUs, which are private systems regulated by the CPUC (and in some cases mandated to provide LIRAs), publicly-owned water systems are subject to Prop 218 which limits their ability to use water fees and charges for certain purposes. Prop 218 also requires fees be proportional to the cost of providing service to each property (SWRCB, 2019a). At present, publicly-owned water systems which operate LIRAs do so via non-rate revenues to avoid Prop 218 compliance issues (SWRCB, 2019a). This approach in effect limits public CWS LIRAs to large systems with enough non-rate revenue to afford program operation. Ensuring adequate benefits to all eligible low-income households in California would necessitate a state-level funded LIRA rather than reliance on individual, and highly variable, system-level LIRAs.

Benefits for Master-Metered and Non-CWS Low-Income Households

A final downside of reliance on system-operated affordability policies relates to the extension of benefits to low-income households who are not directly billed for water. Many low-income households are renters who do not directly pay a water bill to a CWS but instead pay for water as part of rent to a landlord. Multi-family dwellings which have a single water meter, and thus receive a single water bill paid by a landlord or co-op association, are known as master-metered dwellings.

Low-income households in master-metered buildings often still struggle with water affordability and thus would benefit from water affordability programs (SWRCB, 2019a). However, system-level operated LIRAs would not reach these customers by virtue of the fact that they do not pay a bill for which they can receive discounts. A state-level affordability program could extend benefits to customers who do not pay a water bill. Table 2 shows that an estimated 44% of California households report that they do not pay a water bill—a much higher percentage than for other utilities (SWRCB, 2019a). This fact suggests the value of a state-level affordability policy that could also assist these households. Along these same lines, a state-level policy could also be designed to extend benefits to low-income households not served by CWS (e.g., on private wells or non-CWS systems) that may also need water affordability assistance.

Table 2. Percentage of California Households that Report Not Paying a Direct Utility Bill

Bill/Service Type	Prevalence
Water	44%
Natural Gas	13%
Electricity	5%

Table reproduced from State Water Resources Control Board, 2019

Future LIRA Options and Considerations

Having established the need for new water affordability policy, and the benefits of a state-level approach, we will now review some of the options for such a policy. In particular, a state operated LIRA represents a feasible option that would deliver maximum benefits to low-income Californians. Such a policy could take several forms, many of which are reviewed or proposed in the State Water Board’s draft report for AB 401 (SWRCB, 2019a).

First, the state could establish its own LIRA program operated by a government agency, or it could mandate system-level LIRAs with set standards and additional funding to ensure adequate programs. Additionally, the actual function of the program may differ based on the type of populations it would reach. Low-income households whom directly pay water bills to a CWS can benefit from a traditional LIRA with on-bill discounts. However, renters or master-metered households would require a different benefit delivery mechanism. The State Water Board draft report suggests the option of an annual tax credit administered similar to the existing Renters’ Credit or providing eligible households with monetary benefits via an

Electronic Benefit Transfer (EBT) card, much like the existing SNAP program (food stamps) (SWRCB, 2019a).

Another potential inclusion into a LIRA program, which would take a different format than monthly bill discounts, involves assistance for households immediately experiencing water service shutoffs due to inability to pay or past due water bills. Some non-profits currently operate small scale programs which directly work with low-income households and the water systems which serve them to prevent shutoffs (United Way, 2019). Such assistance would likely take the form of annual benefit maximums for instances of pending shutoffs rather than regularly disbursed monthly benefits. Both regular LIRA benefits for long-term affordability and shorter-term assistance to deal with more extreme instances of need in the face of pending shutoffs can be important to ensure adequate affordability assistance.

In addition to the types of benefits available, consideration must be given to other elements of program design such as eligibility thresholds, benefit levels, and administrative operation. These decisions can significantly alter the expected cost, reach, and outcomes of a state-level affordability program. Regardless of ultimate program design, a state-level LIRA would need to identify a stable funding source. The identified revenue source would need to be progressive to ensure funding the LIRA does not introduce an additional burden on the low-income households the program aims to benefit. Progressive sources include income and property taxes or sales tax on luxury goods that are discretionary or have substitutes (SWRCB, 2019a). The draft report for AB 401 identifies a combination of personal income tax and sales tax on bottled water as likely to provide sufficient revenue to operate a statewide LIRA (SWRCB, 2019a).

Conclusion

This chapter provided an introduction to the challenge of water affordability in California. Rising water costs and stagnating incomes mean that many low-income Californians struggle to afford water bills. Since the passage of AB 685 in 2012, the state has committed to ensuring a Human Right to Water for all Californians. Creating state-level affordability policy, particularly in the form of a multi-component low-income rate assistance program (LIRA), will be an important next step to implementing the vision of a HRW for all households in the state. A state-level program also would address the limitations seen in existing system-level approaches to water affordability.

A robust state-level LIRA in concert with other tools such as rate restructuring, RSFs, and system consolidations could provide the most affordability benefits. Policymakers, water system managers, and state agencies must work to create a viable and long-term affordability program to ensure low-income households receive necessary relief to help pay for this vital service. Affordability is an essential component of the state's commitment to ensure "safe, clean, affordable, and accessible water" for all Californians. While the current fragmented landscape

of drinking water systems and major public health consequences of unaffordable water create a major issue in urgent need of action, potential policy options do exist that can have a major impact on low-income Californians' access to drinking water.

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Chapter 6

Charging Infrastructure Strategies: Maximizing the Deployment of Electric Drayage Trucks in Southern California

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The ports of Los Angeles and Long Beach, also known as the San Pedro Bay Ports, are the largest container shipping ports in the nation and account for 1 in 9 jobs in the region. (San Pedro Bay Ports, 2017) Approximately 13,000 heavy-duty diesel trucks, also known as drayage trucks, work out of these ports, moving the majority of cargo that passes through them. Unfortunately, the emissions produced by drayage trucks have significant negative impacts on regional air quality — especially within nearby disadvantaged communities (DACs) - and on global climate change. (EPA, n.d.)

The ports have made concerted efforts over the past decade to reduce emissions from port related operations significantly, while acknowledging that more must be done to continue to reduce pollution. As globalization and international trading activity increase, the challenge to reduce emissions at the ports will only increase. Meaningful coordination between the ports, government agencies, the community, and the private sector is required to address this issue.

One solution to address the negative impacts of drayage truck emissions is to transition to electric-powered vehicles. Battery-electric trucks emit *no* tailpipe emissions, a 100% local emission reduction compared to diesel trucks. (EPA, n.d.) While the authors of this report are not aware of electric truck emission estimates that take electricity generation into account, a proxy is transit buses. The Union of Concerned Scientists estimates that battery-electric buses emit approximately 70% less NOx on a per-mile basis compared to diesel buses, when powered by California's 2016 electricity mix (approximately 50% natural gas, 25% renewable, 10% nuclear, 8% hydropower, and 7% coal). Since 2016, the electricity grid has become cleaner and will continue to do so to meet increasingly stringent state law.

Electric drayage trucks could offer the comparable cargo-carrying capacity to conventional drayage vehicles. However, a significant requirement of the electric alternative is fueling infrastructure. Unlike the convenient and established market of readily-available diesel stations, the heavy-duty electric vehicle charging station market is still in the early stages of development. Accordingly, the convenient availability of electric truck charging stations will be of paramount importance if drayage trucks are to make the switch from diesel to electric.

Southern California Edison

Southern California Edison (SCE) has a service territory of approximately 50,000 square miles that covers many of the cities in central, coastal, and Southern California. In June 2018, SCE received approval from the California Public Utilities Commission (CPUC) for a program to invest over \$300 million on medium- and heavy-duty electric vehicle charging infrastructure. (CPUC, 2018) This investment program, known as “Charge Ready Transport,” is designed to help broaden California’s electric transportation market over five years, from 2019 to 2024. The Charge Ready Transport program will dedicate 25% of its budget to vehicles operating out of the Long Beach and Los Angeles ports and warehouses.

Policy Goal

This chapter is focused on two primary factors: 1) the drayage industry’s outsized contribution to harmful emissions in the region; and 2) the burgeoning interest in, and support for, electric vehicles as a solution to support a cleaner environment. The potential for electric vehicles to reduce emissions at the ports is, however, contingent upon the private decision to convert, which will be affected by charging infrastructure investments and siting. Thus, there is a need to develop a strategy for rolling out electric vehicle charging stations in the Southern California Edison (SCE) service area that supports the transition to electric drayage trucks for the San Pedro Bay Ports.

To achieve this goal, we have developed an algorithm that optimizes the placement of electric truck charging stations to best support the drayage industry and its travel patterns. In addition, we provide complementary business outreach strategies to address local community and drayage industry concerns. These strategies will increase the likelihood that the supply of charging stations will be met by sufficient demand via the uptake of electric trucks.

Background

The San Pedro Bay Port complex (Ports of Los Angeles and of Long Beach) is the single largest fixed source of air pollution in Southern California. (South Coast Air Quality Management District, 2013) Freight movement accounts for about 42% of NOx emissions in this

region, and drayage trucks that service the ports are the single largest source within that category. (South Coast Air Quality Management District, 2015) Drayage trucks account for 0.1% of vehicles in the South Coast but 5% of NOx emissions from the transportation sector, emitting approximately 4,000 tons of NOx per year in the region. (California Air Resources Board, 2017)

Specific to the Ports' inventory, heavy-duty trucks are responsible for 23% of NOx emissions. Much of these emissions come from diesel combustion, which emits carbon dioxide (CO₂), a greenhouse gas (GHG) that traps heat in the atmosphere and is the primary contributor to anthropogenic climate change. Without moving away from fossil fuel combustion, CO₂ emissions are projected to increase as trade volumes increase in the future. (CARB EMFAC Model)

Public Health and Disadvantaged Communities

The compromised air quality due to freight operations, including drayage truck activities, contributes tremendously to local health risks. According to the Environmental Protection Agency (EPA) (EPA, n.d.), air pollution can negatively affect public health, both in the short and long term. Its negative effects can include aggravated respiratory and cardiovascular disease, decreased lung function, increased risk of cancer, and premature death.

Health risk increases closer to the source of pollution. As a result, communities closest to the ports and trucking corridors experience greater exposure and negative health impacts than those further away. These communities are classified as "disadvantaged communities" or DACs under SB 535. (De Leon, Statutes, 2012) The population closer to freeways tends to be poorer and more nonwhite than areas not in close proximity to freeways.

Heavy Duty Electric Trucks and Market

Heavy-duty electric trucks are defined as those whose gross weight exceeds 33,000 pounds and have three or more axles. (EPA, 2019) Heavy-duty electric trucks are characterized by their power source, an onboard battery pack. Battery pack recharging is accomplished by plugging into the electric power grid or other off-grid electric power sources to recharge the battery pack while the truck is not operating.

The earliest iterations of these vehicles have ranges from 120 to 200 miles on a single full charge and weigh around 15,000 pounds. (Clevenger, 2018) All of the major original equipment manufacturers (OEMs) are investing in electric vehicle technology to compete in this emerging segment of the truck market. These OEMs include Daimler Trucks North America (DTNA), Volvo, Peterbilt Motor Co., and Navistar, Inc. However, as of early 2019, only BYD, a Chinese vehicle manufacturer, offers a commercially available heavy-duty electric truck model, with a range of 125 to 220 miles per full battery charge. (Tetra Tech, 2018)

Experts agree that the widespread deployment of heavy-duty electric vehicles (HDEVs) is years away. In the near-term, electric trucks will be limited to specific applications that are well-suited to their technology. These applications include short-haul trips, such as urban pick-up and delivery, refuse trucks, and the topic of our policy report— port drayage.

Freight and delivery companies are beginning to partner with OEMs on pilot projects to test the earliest iteration of medium- and heavy-duty electric trucks. (Adler, 2019) The ports are also actively involved with numerous demonstrations of zero emission trucks in drayage duty, which could accelerate sustainable commercialization and wide deployment. Current demonstrations involve approximately 65 battery electric tractors. (Tetra Tech, 2018)

Truck Owner Concerns

Electric drayage truck adoption rates play a significant role in charger demand and placement. Because electric trucks represent new technology that will affect industry operations and fueling patterns, operators have concerns that make them reluctant to switch to electric trucks. One source of reluctance was past experience with the 2008 natural gas truck conversion program carried out by the San Pedro Bay Ports. Unfortunately, the natural gas trucks did not perform as needed and some operators were left with expensive stranded assets. (Clark, 2012 and Nero, 2018) Further Interviews with several trucking companies specified the following concerns. (V. LaRosa, personal communication, June 18, 2018, and K. Pruitt, personal communication, January 31, 2019)

- *Range and charging ability:* Since drayage industry revenue depends on transporting cargo to customer locations throughout Southern California and beyond, having enough range to carry out current routes is particularly important to operators. (Husing,

Brightbill, & Crosby, 2007) Trucks will need to be charged in convenient locations during dwell times.

- *Truck and infrastructure cost:* Electric truck capital costs are higher than their diesel counterpart. (Chandler, Espino, O’Dea, 2017) Companies are wary of the extra cost early technology adopters face and are concerned with having stranded assets if electric trucks do not perform correctly.
- *Vehicle weight:* according to the California Department of Transportation, heavy-duty trucks have a weight limit of 80,000 pounds on California roads. (Caltrans, n.d.) This limit presents a trade-off: utilize a heavier battery that increases range and power but decreases cargo weight or use a lighter battery which allows for more onboard freight, but with possibly reduced range.

Heavy Duty Vehicle Electric Chargers and Market

Electric charging stations for heavy-duty trucks are evolving. In general, these stations can utilize one of three types of chargers, which are defined by their rate of charge in kilowatts (kW). The higher the kW, the faster the charger can recharge a battery.

Chargers utilizing alternating current (AC) are the least expensive type available for charging rates of 20 kW or less and require both an on- and off-board charger. (EV Safe Charge Inc., n.d.) At present, AC charger models take about 20 hours to charge a heavy-duty vehicle fully and cost on average \$2,000. *Direct current (DC)* chargers are used for speeds of 20 kW or more and do not require an onboard charging component. (EV Safe Charge Inc., n.d.) Existing models of DC chargers range widely in charge rate and cost. The less expensive models cost around \$25,000 and take 14 hours to charge a heavy-duty truck. The most expensive model costs over \$100,000 but can complete a full charge in one hour.¹ Finally, *Fast-Charging (FC) units* have the quickest time to charge, as the name suggests, but have significant drawbacks, including expense (both the hardware and the utility costs) and battery deterioration. Most industry experts do not recommend using fast charging units if trucking routes allow alternative options.

¹Another key component of the charging station is the connector. The main charging station connector used by most OEMs is the J1772. However, some manufacturers require custom or proprietary connectors.

Heavy duty electric trucks are still in a demonstration and early commercialization phase. Thus, there is not yet a substantial market for charging stations. However, some trucking fleets are preparing for the eventual mass production of heavy-duty electric trucks by evaluating existing power capabilities and charging station needs at their terminal locations. (Long, 2018)

Key Findings

Case study reviews, interviews with key stakeholders² and data collection led to the following key findings that were used to create 1) the parameters and constraints applied to our constraint-optimization algorithm and 2) business strategies for electric truck adoption and community concerns.

SCAG, SCE and Port of Long Beach Data

In order to designate the optimal placement for charging infrastructure, origin and destination data were obtained from the SCAG Travel Demand Model. (SCAG, 2012) This model describes heavy-duty truck travel patterns in the SCAG (Southern California Association of Governments) region. Information was used from the model's 2020 travel pattern projections. The Origin-Destination (OD) matrix contains information on the number of trips taken between each of the transportation analysis zones (TAZ). It was developed based on TIGER Census Blocks and released by SCAG.³

Specific area of each TAZ can be found on SCAG GIS & DATA services. Using spatial information including distances from OpenStreetMap data (Geofabrik, 2018), we were able to calculate the vehicle miles traveled (VMT) per day by drayage trucks as well as identify areas within the SCAG region that have the highest VMT. Areas with the highest VMT have the heaviest truck traffic and, therefore, the highest demand for chargers.

²Stakeholders interviewed include utility companies, trucking companies and associations, technology manufacturers (trucks and batteries), Ports of Los Angeles and Long Beach, real estate agents and property owners, local government, and local environmental justice organizations.

³TIGER stands for the Topologically Integrated Geographic Encoding and Referencing database maintained by the U.S. Bureau of the Census. See https://tigerweb.geo.census.gov/tigerwebmain/TIGERweb_main.html.

Since port drayage is an industry with a defined number of vehicles that carry out trucking operations, we needed information on trucking companies serving the ports and the size of each company. Outside of the ports, there is no list or inventory of companies with drayage operations in the region. But the Port of Long Beach Drayage Truck Registry (POLB, personal communication, 2018) provides a list of trucking companies that are registered and allowed to enter the port property. This list includes the companies' addresses which are used to locate their truck yards. It also provided data on the number of trucks allowed to enter the ports per company as well as the number of trips or moves made to the ports per year for each company. That information was used to calculate the number of trucks that actively serve the San Pedro Bay Ports. It therefore provided an estimate of the number of trucks which the charging infrastructure will need to support after conversion to electric operation.

Southern California Edison territory and DAC region spatial data was also obtained from SCE (2019) and from the California Environmental Protection Agency (2018). These data were used to establish the spatial boundaries of our analysis. Finally, grid capacity data were obtained from Southern California Edison's Distribution Resources Plan External Portal (DEREP, 2019) to indicate where sufficient power supply was located.

Drayage Industry Structure

The drayage industry is not well documented. However, important aspects of the industry that were necessary to meet requirements for effective charging station siting and electric truck adoption strategies are described below.

1) Drayage Industry Business Models

According to drayage industry labor expert Melissa Infusino, the current drayage industry business model is mixed and controversial, with several ongoing lawsuits (M. Infusino, personal communication, October 12, 2018). In the predominant model, trucking companies contract with Independent Owner Operators (IOO) who own or lease their trucks.⁴ Within this model, drivers also tend to "buddy up" - two drivers tradeoff the use of one truck for each shift.

⁴State legislation was passed in 2019 that may inhibit use of independent contractors. Exactly what the impact may be on the trucking industry is unclear at this writing.

In the second model, companies own trucks and drivers employed by the companies are paid hourly wages and are covered by workers compensation insurance. The final model is mixed, where companies have employees as well as contracted operators. IOOs make money by the load, while company drivers are paid by the hour. Regardless of the model used, company revenue depends on delivering cargo to customers. (Husing, Brightbill & Crosby, 2007 and M. Infusino, personal communication, October 12, 2018)

2) Duty Cycles and Travel Patterns

The typical daily travel of a drayage truck in Southern California follows a pattern. In the early morning, trucks leave company truck yards or individual rented parking and head to either the ports or other distribution warehouses to pick up cargo. Throughout the day, drayage trucks pick up cargo at the ports and drop off at customer warehouses, other third party logistics companies (3PL), and intermodal rail yards. According to Kurt Pruitt (personal communication, January 31, 2019), Vice President of Strategy & Business Development for Pacifica Trucks LLC, beneficial cargo owning customers may own the warehouses, but not the trucking companies. Operators often travel to and from the ports for their first and second shift and then do distribution work when the ports are closed. (M. Infusino, personal communication, October 12, 2018) After finishing a shift, trucks from larger fleets go back to their company truck yards while small fleets and IOOs park their vehicles in lots or other locations.

Although drayage operations usually refer to short-haul trips, there are several types of operations based on trip distance, as shown in Figure 1. (TIAX, 2011 and W. LaBar, personal communication, October 22, 2018)

Operation Type	Distance (Miles)⁵	Number of Turns⁶
Near Dock	2-6	3-5 turns per day
Local	6-20	2-3 turns per day
Regional	20-150	2 days/turn

⁵ Source: TIAX 2011

⁶ Source: Weston LaBar, personal communication, December 19, 2018

Figure 1: Drayage Operation.⁷

According to the Feasibility Assessment for Drayage Trucks commissioned by the ports, the average drayage truck drives approximately 238 miles per day. (Tetra Tech, 2018) However, the true average is likely to be less because infrequent long trips can skew the distribution because less than 5% of one-way trips are greater than 200 miles. (CGR Management Consultants LLC, 2007) Given the industry duty cycle and down times described above, operators require sufficient range to cover industry travel patterns. Charging infrastructure must be placed in a way that does not require operators to stray too far from routes or require long charging times outside of break times.

3) Where Trucks Dwell at Night

An important question to answer in our analysis where trucks “dwell” at night. Company employees can park their trucks overnight on company yards, while IOOs park in rented spaces or on surface streets such as in front of their homes. (M. Infusino, personal communication, October 12, 2018) For all three ownership models discussed above, company yards and IOOs parking are typically located close to the ports along the 710 Freeway Corridor. Trucks typically do not dwell at distribution warehouses and depots. (Pruitt, personal communication, January 31, 2019)

Overnight and Opportunity Charging

Due to the drayage business model under which many operators are paid by the load, any extra time spent charging or not driving results in lost revenue. Therefore, the best times to charge are during breaks. The longest break occurs at night when the ports are closed. (Pruitt, personal communication, January 31, 2019) According to Tetra Tech, the average truck begins the day at 6:00 am and finishes at 9:00 pm, therefore, the optimal charge window is during nighttime for nine hours. (Tetra Tech, 2018)

Overnight charging would provide most of an electric truck’s charging needs. But if daily mileage is higher than the electric truck range, trucks will also need to do opportunity charging during the day. Opportunity charging should take place in a location that minimizes

⁷ A “turn” is one complete activity cycle. In this case it is a round trip to and from the ports or unloading site. (National Cooperative Freight Research Program 2011).

deviation from a drayage truck's daily route. In the early stages of electric drayage truck adoption when there will be only a few electric trucks in the fleet, there will not be many charging stations placed at warehouses.

Since operators will not want to limit their routes before there are more charging stations available, charging infrastructure can be placed close to the ports where trucks will travel to and from on a regular basis in the near term. Opportunity charging can occur in larger company facilities that are close to the ports (where overnight charging also takes place). IOOs and small companies can also use charging stations close to the ports in the near-term. However, they will still have to contend with a lack of private property to use.

Charging Station Business Models: Private, Public, and Shared

There are three different charger placement models to consider. (Weston LaBar, CEO of the Harbor Trucking Association, personal communication, December 19, 2018)

- *Private model:* Chargers are placed in company-owned facilities. Companies favor this approach in order to avoid waiting in line and competing against other operators for access to chargers. (Vic LaRosa, personal communication, June 18, 2018) This model is also preferred by SCE because of its simplicity. Trucks and truck yard property are owned by the same entity.
- *Companies lease their truck yard locations:* This approach has the benefit of companies not having to compete for access. However, it might not be clear who is responsible for charging station costs, the property owners or the trucking companies. It will also be more difficult for a Vehicle Acquisition Plan (VAP)⁸ to be completed as vehicle ownership must be established. A property owner leasing space to trucking companies would not outright own the electric trucks and a trucking company may not be able to ensure that it will be leasing the space ten years into the future.
- *Public charging infrastructure/charging lot model:* In this model, local government helps create charging stations that are available to truck operators. This model would give small scale

⁸ Vehicle Acquisition Plans (VAP) are required to participate in SCE's Charge Ready Transport Program and establish vehicle ownership and projected number of vehicles a company will own in the next ten years.

operators access to overnight and opportunity charging. However, challenges include identifying a funding source and what charger type would be used since lack of universal technology is currently an issue for heavy-duty chargers. The SCE Charge Ready Transport program application process precludes this type of gas station model due to property and truck ownership complexities.

Economies of Scale

When considering the number of charging stations to place at a given site, we will need to confront the inherent tradeoffs that economies of scale can present. It might be most cost-effective to place many charging stations at one site if economies of scale exist. However, this might limit the program's ability to include all interested trucking company applicants, due to the limited number of charging stations that can be placed at different sites within a constrained budget.

For charging stations, economies of scale exist because the fixed capital expenditures necessary to build charging infrastructure - permits, grid connection, equipment, construction, installation and project management - are very expensive, costing tens of thousands of dollars. (Lee and Clark, 2018) The more cost-effective option is to build many stations at one site with one high capital expenditure budget. The alternative is to build few stations at separate sites which all require separate capital expenditures that, when aggregated, greatly exceed the cost of the first option. Furthermore, operational expenditures for technical maintenance are only slightly higher for sites with more stations. Energy capacity thus rises faster than costs do. Therefore, the cost per kWh can decrease.

Short and Long Term Strategy

We found there are crucial aspects of the drayage industry and electrification that vary over time. Therefore, we used a short- and long-term approach in our analysis to take temporal changes into account. These factors included:

- *Electric truck fleet size*: The number of electric drayage trucks varies because we predict higher adoption of this new technology over time. As operator concerns are addressed,

adoption rates will increase. Electric drayage trucks costs will decrease, and capabilities such as range will increase over time. Truck range growth is estimated to be five percent per year, barring breakthroughs and advancements in battery chemistry. (A. Benzinger, personal communication, December 19, 2018)

- *Grid capacity:* According to SCE, expanding beyond current grid capacity is very expensive and has a lengthy permitting process that must be approved by the California Public Utilities Commission (CPUC). (SCE, personal communication, February 19, 2019) Therefore, going beyond the current grid capacity in the short-term is not feasible and is a constraint on infrastructure placement. However, SCE can plan to expand grid capacity for long-term energy needs.

Overall, in the short-term (the first five years), electric truck early adopters are expected to be mainly large trucking companies since they have more capability to invest in the new technologies and to comply with SCE's stringent guidelines. For example, trucking companies need to be able to complete Vehicle Acquisition Plan requirements (VAP) with SCE, which require information on vehicle ownership and the projected number of electric trucks a company will own in the next ten years. Larger companies are also motivated by advertising themselves as sustainable companies. (Vic La Rosa of TTSI, personal communication, June 18, 2018)

In the long-term, the majority of truck companies, including small-sized firms, will convert to electric to meet the ports' 2035 zero-emissions goal and related policies. At this time, trucks still conduct overnight charging at truck yards. However, daytime charging can take place at warehouses for the following three reasons: 1) the mutual convenience of location, 2) available land capacity, and 3) an overall increase in charging station demand.

Policy Recommendation 1: Constraint-Optimization Algorithm

Our first recommendation is use of an algorithm for siting the optimal locations for charging infrastructure in SCE territory in the short and long term, based on the key findings discussed above, constraints, and assumptions. Below are three constraints:

1) DAC Coverage

According to the California Public Utilities Commission, at least 40% of SCE's investments under the Charge Ready Transport Program must be in disadvantaged communities (DACs) in order to improve air quality and health outcomes for those most affected by heavy duty vehicle activity. (CPUC 2018) Therefore, our proposed algorithm prioritizes charging station locations that are within DACs.

2) SCE Budget

SCE's Charge Ready Transport program includes over \$340 million for medium- and heavy-duty charging infrastructure. However, only a portion of this budget, \$35 million, is allocated for drayage trucks at the San Pedro Bay Ports. The budget includes both the cost of the charging stations, of which SCE will be paying up to 50%, as well as the costs to build out the stations. SCE is paying 100% of the buildout expenditures, which include permitting, labor, and trenching. Our algorithm maximizes that the greatest number of trucks that can be supported via charging stations within the \$35 million budget.

3) Power Grid Capacity

Charging heavy-duty all-electric drayage trucks with large battery packs will require a tremendous amount of power and support from local utilities. Existing locations have a set capacity for how much electricity is available via the existing electricity grid. Drayage truck facilities may need to make significant upgrades to their electrical panels and the power lines from the poles. Also, unlike the economies of scale for fueling diesel vehicles, costs increase as company fleets add scale to their electric infrastructure. Grid power is a significant issue when charging larger vehicles due to the demand of each vehicle. According to one electric truck company CEO, an existing grid could require the construction of an entirely new power plant just to charge 50-100 trucks. (Long, 2018)

However, given the short-term scope of our recommendations, we limit our focus to the current electrical grid capacity. Therefore, another defining constraint in our considerations was whether a given site has the electrical grid capacity to support the electricity needs of drayage truck charging. Those sites that do not have capacity were

eliminated from consideration, while those that do remained options for charging site placement but were subject to the additional constraints outlined.

Key Assumptions

To evaluate potential charging station placement scenarios, we used various assumptions deemed most realistic from a technological and logistical standpoint. Assumptions were based on the research and interviews discussed above and the most recent data from primary sources wherever possible.

Electric Truck Specifications

This analysis uses Daimler’s Freightliner eCascadia class 8 heavy-duty truck specifications. (Daimler, n.d.) Daimler developed its fully-electric truck in 2018, which is expected to be commercially available in 2021. (Wilde, 2018) Figure 2 lists the electric truck’s specifications.

Battery Capacity	550 kWh
Range	Up to 400 km (~250 miles) at 550 kWh
Electric Truck Efficiency	0.45 miles/kWh → 250 miles/ 550 kWh

Figure 2: Daimler Freightliner eCascadia key specifications (Daimler, n.d.)

Drayage Truck Duty Cycle

We assume electric trucks need 275.5 miles of range per day. It is calculated as follows:

$$\begin{aligned}
 \text{Battery range needed per day} &= \text{Average daily miles traveled} + \text{Safety margin} \\
 &= 238 \text{ miles}^9 + 15\% \text{ of electric truck range} \\
 &= 238 \text{ miles} + 15\% \times 250 \text{ miles} \\
 &= \mathbf{275.5 \text{ miles of range needed}}
 \end{aligned}$$

⁹ Tetra Tech, 2018.

This calculation uses the eCascadia heavy-duty truck range, including an additional 15% margin of safety to account for potential upward deviations in daily mileage. We also assume that trucks begin their shift at the truck yard, drive to the ports, pick up cargo, and then drive to warehouses and other destinations. Trucks then return to the ports for additional trips. In other words, we do not assume trucks carry out direct warehouse-to-warehouse travel. This assumption is based on the limited available data on all trucking routes. After finishing a shift, trucks from larger fleets return to their company truck yards, while small-fleet and IOOs park their vehicles in lots or other locations

Charger Type

Since we assume the overnight charging window is only nine hours, high-capacity chargers are needed to charge as many trucks as possible. Therefore, we assume trucking companies will use DC fast chargers, as opposed to the slower-to-charge AC chargers. One possible model is BTCPower L4M200. (BTCPower, n.d.) This charger has a capacity of 200 kW and costs \$44,200. With this charger, heavy-duty trucks can get a full charge in a minimum of one hour and 45 minutes. As stated above, trucking companies will want to minimize the amount of time spent charging and will, therefore, want this type of faster charger.

Overnight and Opportunity Charging

We assumed the optimal charging time for the average truck is 9 pm to 6 am, as the longest break occurs at night when ports are closed. Since we assume one DC fast charger can charge four trucks overnight in the nine-hour charge window, one truck can occupy a charger for 2 hours and 15 minutes. With the 2 hours and 15 minutes of charging, electric trucks can drive up to 202.5 miles according to the following calculation:

$$2.25 \text{ hour charging} = 200 \text{ kW} \times 2.25 \text{ hour} \times 0.45 \text{ miles/kWh} = \mathbf{202.5 \text{ miles}}$$

For trucking companies to utilize this efficient four-truck-per-night charging model, they will need to utilize current employees or new hires for overnight attendance at the charging stations. Once the first “shift” of two trucks completes their charging cycle, an attendant will need to replace this first shift with the second shift of two trucks to charge.

Since the average range needed by electric trucks per day is 275.5 miles, trucks would run out of battery during their daily routes without additional charging during the day. Therefore, opportunity charging must be considered when placing charging infrastructure.

Short and Long Term Charging Station Ownership and Locations

In the short-term, we assumed early adopters in the first five year of the Charge Ready Transport program will be larger companies that have the resources to invest in the new technologies and comply with SCE guidelines. On the other hand, owners of warehouses could utilize shared chargers for short, opportunity charging. Smaller companies and IOOs will electrify in the longer term. While our recommendations for opportunity charging in the long term also apply to small companies, optimal overnight infrastructure siting for smaller operators is beyond the scope of this analysis.

We assume that large companies will place chargers in their privately owned truck yards for overnight charging to avoid competition and also use them for opportunity charging during daytime if they are close to ports. As discussed above, opportunity charging at warehouses is not expected in the short-term. In the long-term (the year 2035), we assume that the majority of large and small trucking firms will convert to electric power to meet the port's 2035 zero emission goal and associated policies/incentives. At that time, opportunity charging may take place in warehouses, intermodal facilities, and other non-yard locations. Finally, we assume that the grid capacity will expand to meet this greater demand in the long-run.

Chargers are not permitted on the port property due to technical and spatial constraints. (R. Moilanen, personal communication, November 5, 2018) We did not consider a public shared model, e.g., a conventional gas station model. This type – as noted earlier - is precluded by the conditions set out in SCE's Charge Ready Transport program application.

Installation Costs and Economies of Scale

We estimated the installation cost and economies of scale based on existing literature in the state's "Electric Vehicle Supply Equipment Guidance Document" and our interview with SCE staff. (California Department of General Services, 2014; personal communication, February

24, 2019) We assumed that the installation cost, which includes a site development cost separate from the actual equipment, is \$150,000 to \$250,000. Since the diseconomy of scale caused by energy consumption greatly differs between each site, we assume that there will be economies of scale for the installation cost, but the installment cost per charger is stable if the number of chargers per site is more than five.

Number of Chargers per Site	Installment Cost per Charger (excluding charging equipment)
1	\$250,000
2	\$225,000
3	\$200,000
4	\$175,000
5 or more	\$150,000

Figure 3: Estimated Installment Costs (California Department of General Services, 2014 and SCE, personal communication, February 24, 2019).

Short Term Placement Algorithm for SCE Territory

Figure 4 shows steps that are needed to identify optimal charging station locations in the short term as well as the algorithm's application in SCE territory

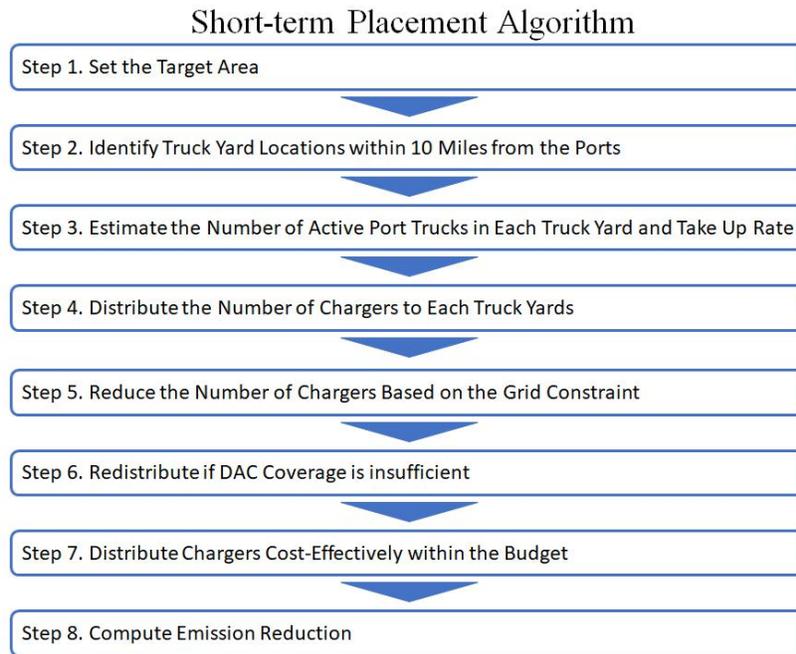


Figure 4: The Short-Term Algorithm

Step 1: Set the Target Area

Our project target area is within 100 miles of the ports. We considered three factors in choosing this range: 1) electric truck battery capacity and range, 2) truck travel behavior, and 3) DAC coverage. Our model drayage truck drives 202.5 miles, which means about 100 miles per one-way trip. The majority of drayage trucks (88%) have one-way trips of under 100 miles away from the ports. (CGR Management Consultants LLC, 2007) Lastly, the 100-mile radius area covers a large number of DACs in which SCE is required to invest at least 40% of its total program funding for deployment. (CPUC, 2018)

Step 2: Identify Truck Stop Locations within 10 miles from Ports

Truck yard locations were identified using POLB's drayage company registry which included the addresses of all of the companies registered at the ports. Company addresses were geocoded and converted into geographic coordinates by researcher James Di Filippo from the UCLA Luskin

Center for Innovation. We then visually verified truck yard coordinates using Google satellite images.

ESRI's ArcGIS spatial analysis software was utilized to import coordinate points and map truck yard locations. Further analysis was conducted using these points. Truck yard locations were identified using existing data. However, if SCE were able to acquire comprehensive truck yard data after consulting with individual customers, truck yard locations and the algorithm output would be more accurate.

There are limited data on all of the truck routes and the warehouses to which drayage trucks travel. Moreover, these locations are constantly changing. Therefore, we cannot identify specific warehouses for opportunity charging. In the short-term, any opportunity charging will likely have to take place at a company's truck yard. To limit the extra distance trucks have to travel to go back to their yards for opportunity charging, chargers should be placed in yards that are close to the ports (within 10 miles), the most common and consistent destination for drayage trucks.

Step 3: Estimate Number of Active Port Trucks and Take-Up Rate

The ports' dataset on vehicles registered to enter the ports includes infrequent visitors. Therefore, the actual number of trucks per truck yard that regularly visit the ports daily is lower than the registry estimate. Based on an existing report (CGR Management Consultants LLC, 2007) and our interview with the Harbor Trucking Association (W. LaBar, personal communication, October 22, 2018), we took the weighted average of the number of trips per day for the trucks departing from the ports. As a result, we assumed each truck takes two trips per day. The number of active port trucks per yard is calculated by dividing the total number of trips by the number of daily trips per truck. If there is a truck yard where the number of active port trucks is larger than that specific yard's registered number of active trucks, we used the number of trucks registered to the POLB instead.

Miles	Weight ¹⁰	Number of trips ¹¹	Sum
10	0.11	4	0.44
11-25	0.26	3	0.78
26-50	0.23	2	0.46
51-100	0.28	1	0.28
101-200	0.08	0.5	0.04
200-	0.04	0.5	0.02
Total	1	-	2.02

Figure 5: Weighted Average of Daily Trips per Truck

Next, to calculate the overall truck moves for both ports, we added the number of truck moves to the Port of Los Angeles, which is 50% greater than Long Beach. The difference between the two ports was estimated using the SCAG Travel Demand OD Matrix. (SCAG, 2012) Lastly, we assumed 25% of active port trucks will convert to electric in the short term since we projected that even the larger companies will not convert their entire fleet in the first five years.

$$\text{Total \# of active port trucks} = [\text{Total POLB truck moves}] / 2 \text{ (daily trips)} \times 1.5 \text{ (total POLA truck moves)} \times (\text{conversion rate})$$

Step 4. Distribute the Number of Chargers to Each Truck Yard

As stated above, we assumed that the time window for overnight charging is nine hours, which allows for almost fully charging four trucks. Thus, the number of chargers needed in each truck yard was calculated by dividing the number of active trucks in each truck yards by four. Then, we distributed chargers to yards based on highest demand for chargers.¹² In this

¹⁰Source: CGR Management Consultants LLC, 2007.

¹¹Source: W. LaBar, personal communication, October 22, 2018.

¹²For the number of chargers in each yard, decimals are rounded down so that the chargers are fully used by four trucks overnight.

process, we eliminated those yards with less than four active trucks to omit small companies and to make sure that all chargers are fully used overnight.

Step 5. Apply Power Grid Constraint

After calculating the number of chargers needed in each truck yard, we checked the grid capacity to make sure that the electricity demand of chargers did not exceed the capacity. The electricity demand of each truck yard was calculated as shown:

$$\text{Total truck yard electric demand} = [\text{Total number of chargers in each truck yard}] \times [200 \text{ kW}]$$

As for the grid capacity, we searched for the “Integration Capacity (Uniform Load)” of the circuit node closest to each truck yard by using Southern California Edison’s Distribution Resources Plan External Portal (DRPEP). The electricity demand and integration capacity are compared for each truck yard, and if the integration capacity is smaller than electricity demand, the number of chargers that could be placed there is reduced. It is important to note that integration capacity in DRPEP assumes uniform load. However, our model assumed electricity demand for chargers increases mainly during the night when overall demand for electricity is relatively low. Therefore, the grid capacity examined using this method is stricter than the actual grid constraint.

Step 6. Apply DAC Coverage Constraint

If the expenditure for chargers placed within DACs is less than 40% of the total expenditure for all chargers, the chargers placed outside of DACs were assumed to be redistributed to truck yards in DACs until the requirement is fulfilled.

Step 7. Apply Budget Constraint

Since we determined that economies of scale exist, it is more cost-effective to place chargers in truck yards with higher charger demand. Therefore, our algorithm assumed chargers are placed in high-demand truck yards until SCE’s Charge Ready Transport program budget (\$35.8 million) is reached (CPUC, 2018). The installation cost for each truck yard is

calculated using values introduced in Figure 3. To be conservative about costs that SCE could cover, our algorithm assumed that 100% of the installation cost and 50% of the charger’s cost is included.

When all constraints are applied, the modeled number of chargers placed and their location can be seen in Figures 6 and 7, respectively.

Total # of companies	Total # of chargers	Total # of trucks charged	Total cost
40	101	404	\$21,522,000

Figure 6: Summary of Estimated Short-Term Charger Placement after Considering Grid Capacity within a 10-mile Radius from the Ports

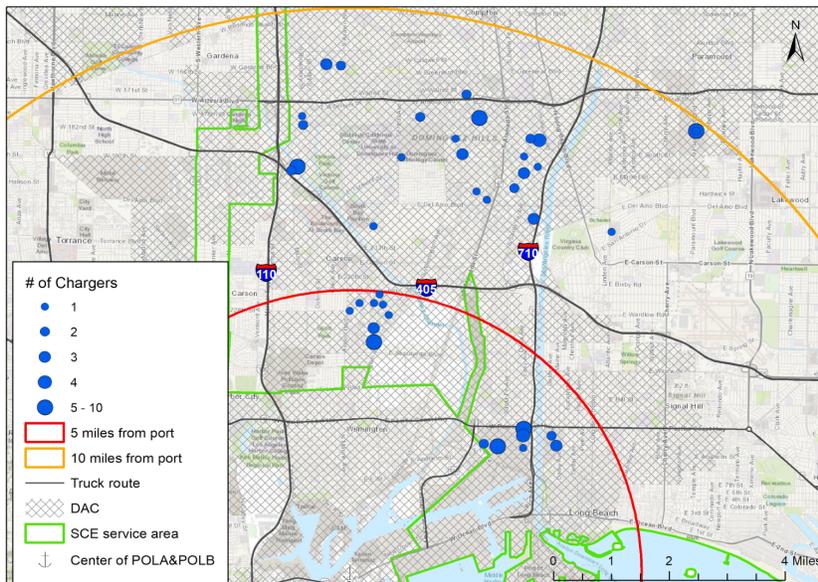


Figure 7: Final Modeled Distribution of Chargers in the Short-term After Considering Constraints

Step 8. Compute Emission Reductions

Replacing diesel and LNG trucks with electric trucks reduces emissions since electric drayage trucks have zero tailpipe emissions. While generating electricity for such vehicles emits pollutants, lifecycle emissions are beyond the scope of this analysis. Using the number of trucks replaced through this project, the estimated emission reductions would be as follows:

Emission Reduction (metric tons/year)	Short-term placement within 5 miles of ports	Short-term placement within 10 miles of ports	Short-term placement within 10 miles of ports (considering grid capacity)
CO ₂	23,332.12	71,826.33	46,206.75
NO _x	21.82	67.16	43.20
PM _{2.5}	0.11	0.32	0.21

Figure 8: Summary of short-term emission reductions (metric tons per year)

Long-Term Placement Algorithm for SCE Territory

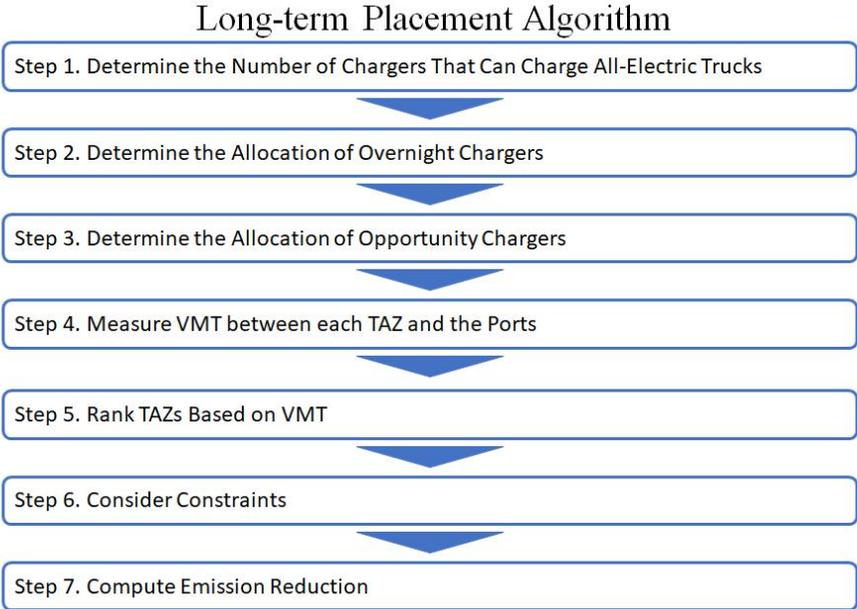


Figure 9: Long-Term Algorithm

Step 1. Determine Number of Charging Stations Fleet Wide

For the short-term, we assumed that only 25% of the trucks in each company convert to electric. For the long-term, we assumed that all trucks, except those owned by small truck companies and IOOs, convert to electric. The location and number of active trucks for each

truck yard are already calculated in the short-term application above. We used these data to calculate the number of stations that can charge such trucks by adding the necessary number of charging stations (total number of electric trucks divided by 4) in each truck yard. Decimals are rounded up so that all the electric truck are charged overnight.

Step 2. Allocation of Overnight Chargers

For truck companies that own more than four trucks, we continued to add overnight chargers to their yards with a new budget as mentioned in the previous step. For smaller trucking companies, their trucks’ overnight dwelling location must be identified in order to consider the placement of overnight chargers to cover their trucks.

We do not consider the grid constraint for long-term placement due to its uncertainty. However, there will be 262,600 kW of electricity demand (see Figure 10) and the majority of chargers will be aggregated within ten miles from the ports. It is highly likely that SCE will need to upgrade grid capacity if all drayage trucks are converted to electric in the future. The location of overnight chargers in the long term is seen in Figure 11.

Total # of companies	Total # of chargers	Total # of trucks charged	Total cost	Total Electricity Demand
211	1,313	4,941	\$245,208,000	262,600kW

Figure 10: Summary of Estimated Charger Placement in the Long-term within SCE Service Area

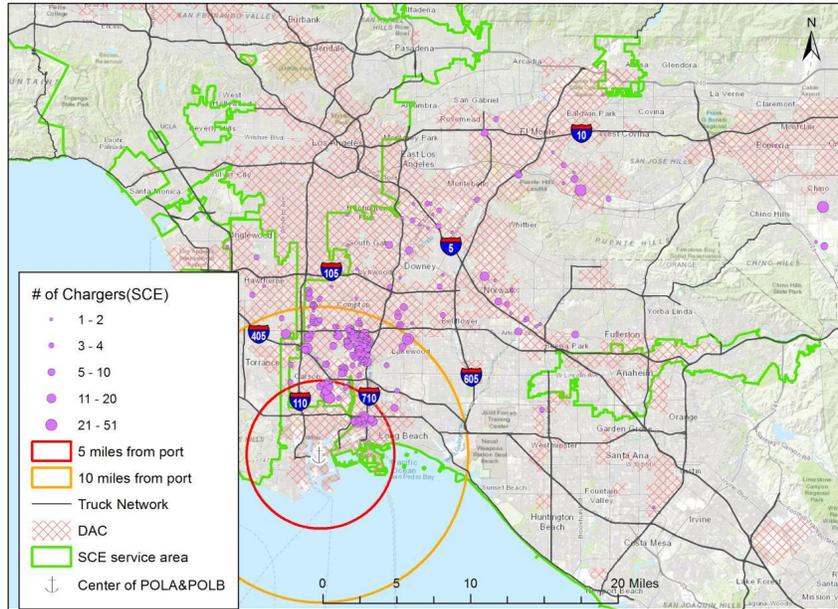


Figure 11: Modeled overnight charger placement in the long term (SCE territory).¹³

Step 3. Allocate Opportunity Charging Stations

After equipping all trucks with overnight chargers, we considered placing opportunity chargers in warehouses so that trucks can charge away from the ports. With this allocation, trucks with longer shifts exceeding the average mileage would be able to charge away from the port. Even though battery capacity is expected to increase in the long-term, opportunity charging will still be needed during the day because smaller companies. IOOs are likely to use second-hand electric trucks which can run up to 200 miles due to battery degradation and the use of old models. For determining allocation, we conducted VMT analysis by using OD matrix data.

Step 4. Measure VMT

To determine potential demand for opportunity chargers, we calculated total VMT between the ports and each TAZ.

$$VMT = (\text{number of trips}) \times (\text{distance})$$

¹³ Data Sources: POLB (2018), Caltrans (2018), CalEPA (2018), SCE (2019), SCAG (2012), ESRI base map.

The number of trips between the ports to each TAZ was obtained from SCAG's Origin-Destination Matrix model (SCAG, 2012), and the distance between the center of each zone (ports and TAZ) was calculated by conducting network analysis using ArcGIS. Instead of using the simple straight-line distance between two points, network analysis calculates distances based on the actual road network, prioritizing roads with higher classification (motorway, primary, etc.) on which trucks can actually travel.

Step 5. Rank TAZs

To determine the optimal allocation for opportunity chargers, we ranked zones by VMT from highest to lowest (which indicates highest to lowest charger demand). Within the future budget, SCE can allocate opportunity chargers at warehouses in TAZs with the highest VMT.

Clusters of zones with highest VMT are listed below:

- *The 710 corridor:* Neighborhoods surrounding the I-710 and I-5 have high drayage truck VMT. These include the City of Commerce, Compton and, Carson. These cities have a high number of truck yards as well as warehouses and other freight facilities.
- *The area surrounding the I-10/I-15 interchange:* the I-10 / I-15 interchange is the center of the high-VMT zones, includes the cities of Rancho Cucamonga, Ontario, and Fontana. The relatively close cities of Jurupa Valley, Chino, and Corona are also ranked high.
- *Other areas:* Pomona, Moreno Valley, Perris, Redlands, and Victorville.

Step 6. Consider Constraints

In the long term, SCE would not have to consider DAC coverage if this criterion is met in the short term. In addition, budgets will have changed in the future. Grid capacity constraints will have also changed as SCE would have time to upgrade grid systems to meet energy demands if necessary. Therefore, this step was not in our application. However, if SCE needs to consider these constraints, the methods introduced in the Short-Term Placement Algorithm could be applied.

Step 7. Compute Emission Reductions

We employed the same method as explained in Step 8 in the Short-Term Placement Algorithm to make long-term estimates. Using the number of trucks replaced through this project, the estimated emission reductions would be as follows:

Pollutant	Emission Reductions (metric tons/year)
CO ₂	565,117.66
NO _x	528.39
PM _{2.5}	2.55

Figure 4: Summary of Long-term Emission Reductions (metric tons per year).

Summary of Algorithm Results to Prioritize Charger Locations in SCE Territory

Based on our estimate from POLB truck data, our placement algorithm can cover 628 trucks in the short-term (404 trucks with grid capacity factored in) and 4,941 trucks in the long-term. However, more trucks are operating in the SCAG region. According to the CAAP, the total number of registered port trucks is about 17,500. Approximately 11,000 to 13,000 of these trucks are considered “active,” meaning they make multiple daily trips to the ports. (Tetra Tech, 2018)

Among the active trucks, we identified 4,941 trucks as our long-term target. These trucks are owned by companies that have four or more trucks, have truck yards located within 100 miles from the ports, and are within SCE territory. The remaining trucks would be owned by companies located outside the 100-mile radius from the ports, outside SCE territory, or owned by very small trucking companies. For these trucks, additional measures outlined in the next section should be considered.

Number of trucks		
Total number of port trucks	17,500	From CAAP ¹⁴
Total number of active port trucks	11,000 - 13,000	
Total estimated number of active port trucks	9,549	Our Estimate
Trucks owned by companies within 100 miles and with companies with 4 or more active port drayage trucks	8,876	
Long-Term Target: Trucks owned by companies within 100 miles of the ports, have 4 or more active drayage port trucks, and trucks yards located within SCE area	4,941	
Short-Term target: within 10 miles and other above criteria	628	
Short-Term target: within 10 miles and other above criteria (considering grid capacity)	404	
Short-Term target: within 5 miles	204	

Figure 5: Summary of the Number of Projected Trucks the SCE Charge Ready Transport Program Could Support.

Policy Recommendation 2: Business Strategies

Even with optimal locations for charger placement, the question of whether truck operators will buy electric trucks still remains. After discussions with trucking companies, the Harbor Trucking Association, industry experts, and local environmental justice organizations, we developed the following business strategies which SCE could employ to address adoption barriers to a shift to electric trucks and also community concerns.

Strategy 1: Proactive Education and Outreach to Specific Trucking Companies

As a first step, we recommend proactively reaching out to the drayage trucking companies with the largest fleets and greatest financial resources. Most of these companies are identified in our report's analysis. Instead of waiting for individual companies to apply for

¹⁴Source: The San Pedro Bay Ports, 2018.

SCE's charging station grants, reaching out early and often to the most likely candidates will not only encourage a quicker start to the program but also prove to these companies that SCE is a willing and enthusiastic partner.

We also recommend offering as much education to trucking companies throughout this process, but especially in the beginning. Trucking companies would benefit tremendously from SCE's knowledge of state and regional subsidies that can significantly reduce the cost of electric trucks; reliable charging infrastructure and electric truck companies. There are also opportunities and incentives offered by the ports to incentivize fleets' transition from diesel to electric.

Strategy 2: Address Needs and Concerns of Disadvantaged Communities

SCE can ensure a more impactful and credible program rollout through early and consistent engagement with affected communities. This type of engagement might include presentations at the neighborhood and city council meetings; dispersion of informational flyers or surveys to residents within DACs; or, invitations for site visits to potential charging station sites. Indeed, research shows that the most successful community health improvement programs are those that emphasize community participation, trust-building, and empowerment through education.

Angelo Logan, co-founder of the East Yard Communities for Environmental Justice, recommends the participation of environmental justice leaders in an advisory committee through which SCE can consult community leaders on where resources would be best allocated. (Personal communication, March 12, 2019) Potential advisory committee partners include the Moving Forward Network and THE Impact Project, a coalition of community leaders working towards 100% zero-emission freight and goods movement in Southern California.

A primary goal of SCE's program, and state and local efforts generally, would be to improve health outcomes for those most negatively affected by pollution and emissions in and around the ports. Without feedback, trust, and buy-in from the communities SCE is attempting to help, the program would likely fall short of its potential.

Strategy 3: Ports and Regulatory/Governmental Partnerships

We also recommend maintaining (or, in some cases, forming) relationships and consistent communication with relevant government entities during the life of this program. At the more local level, these groups include the San Pedro Bay Ports, the South Coast Air Quality Management District (SCAQMD), and the cities of Los Angeles and Long Beach. At the state and national levels, this list should include the California Air Resources Board, the California Energy Commission, and the U.S. Environmental Protection Agency.

SCE can partner with local, state, and national entities to secure additional funding for truck owners in this program who want to convert to zero-emission trucks. These agencies can provide SCE with information on opportunities to work with private companies in the electric vehicle and charging station manufacturing industries, as well as with current and ongoing local zero-emission truck demonstration projects. These efforts will ensure that SCE's program is not operating in a vacuum and that it can benefit from relevant regional efforts by private companies and government agencies alike.

Strategy 4: Collaboration with Trucking Associations

Our application of the algorithm above relies on the best available spatial data on company truck yard addresses. However, data limitations prevented us from identifying all trucking company sites, sites that have the necessary space to fit charging infrastructure, and the grid capacity therein. We were especially limited from identifying where smaller companies and IOOs dwell at night.

SCE would benefit from communication with trucking associations (such as the Harbor Trucking Association and the California Trucking Association) which have deeper relationships with trucking companies. Trucking associations would also be a way for SCE to communicate with smaller-scale operators and learn where their trucks dwell at night. Using this information, SCE could make optimal siting decisions to provide overnight charging for this segment of the drayage fleet.

Trucking companies are concerned about a lack of convenient and readily-available access to charging stations. Optimizing drayage truck routes will be paramount for companies to ensure that their trucks always have access to a charging station for opportunity charging at

their facilities. To that end, SCE can address this concern by informing companies of available route optimization systems on the market.

Conclusion

The San Pedro Bay Ports' goal for a zero-emission drayage fleet by 2035 presents a tremendous opportunity to reduce pollution in disadvantaged communities within SCE's service area. SCE's Charge Ready Transport program will play a critical role in achieving this goal, by helping trucking companies overcome the formidable charging/fueling challenge associated with converting from diesel to electric. We believe our two-pronged strategy, addressing both charging station placement and outreach to support electric truck and infrastructure adoption, suits the complexity of the issue: rapidly-changing electric technology coupled with a trucking industry unwilling to relive their initial experiences with natural gas trucks. We hope our recommendations, and the general findings from this report, will help SCE to make informed decisions in the rollout of its Charge Ready Transport program.

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Chapter 7

The Purple Threat: Beverly Hills vs. Metro

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On October 12th, 2018, over 1,500 demonstrators gathered at Will Rogers Memorial Park.¹ Beverly Hills Unified School District students “as young as 8,” their parents, and district employees convened to protest a planned expansion of the “Purple Line,” a heavy-rail subway line. They called upon U.S. President Donald Trump to intervene by withholding federal funding from the Los Angeles County Metropolitan Transportation Authority (Metro) in order to block further construction.

Why were children assembled in opposition to a planned expansion of public transportation? Why had this particular subway line become such a divisive issue? This chapter will explore the answer, which involves historical, political, and socio-economic factors within Beverly Hills. These factors explain why some city residents fought an expensive years-long war – especially weaponizing the school district – to prevent the subway’s arrival. The protracted fight between some in Beverly Hills and Metro should be understood as the result of a few property-owning individuals defending their perception of an exclusive “way of life.” Yet their city has always stood to gain dramatically from the subway’s arrival.

An Independent City

In 1923, Beverly Hills residents considered a ballot proposal to request annexation by Los Angeles.² Private wells were insufficient to meet the water demands of a growing population, and the city had grown desperate. Hoping to gain access to the “bounty of the fresh Owens Valley water provided by the Los Angeles Aqueduct,” pro-annexation advocates left jars around of noxious, sulfur-contaminated water. The jars were labeled, “This is a sample of the water which the Trustees of the City of Beverly Hills propose for our city. Drink sparingly, as it has laxative qualities.” The Rodeo Land and Water Company, a real estate speculation firm, had originally bought most of what is now considered Beverly Hills and owned and operated the

¹Nelson, Laura J. “Hundreds of Beverly Hills Students Demand Trump Move or Defund Metro's Westside Subway.” *Los Angeles Times*, October 12, 2018. Available at <https://www.latimes.com/local/lanow/la-me-ln-beverly-hills-metro-20181012-story.html>.

²Claire, Nancie. “The World's First Movie Stars Made Sure Beverly Hills Didn't Become Part of LA.” *Los Angeles Magazine*, August 21, 2018. Available at <http://www.lamag.com/mag-features/birth-of-beverly-hills/>.

existing wells. But, even it argued that the City of Los Angeles should be given the responsibility for water management.³

Yet, annexation did not come to pass. Mary Pickford, a famous silent movie actress nicknamed “America’s Sweetheart” and a Beverly Hills resident, set about organizing a coordinated opposition.⁴ As long as Beverly Hills remained an independent city, Pickford reasoned, it would continue to be dominated by big-screen luminaries. These movie stars would be able to exercise their influence to ensure that the police force “wasn’t in the habit of cracking down on celebrities or talking to the press.” After a full-court anti-annexation campaign by movie stars, who cleverly traded autographed photos for pledges to vote “no,” the referendum was defeated 507 to 337.⁵ Beverly Hills remains an independent city to this day.

The Beverly Brand Today

According to a 2014 report, Beverly Hills is an affluent city with an average annual household income of \$193,000 - with the richest fifth earning, on average, \$661,000.⁶ It is also fairly homogenous in racial makeup with 82.9% of its population consisting of white residents in 2018.⁷ As a wealthy enclave, the City of Beverly Hills has intentionally cultivated a regional identity linked to notions of glamour and exclusivity.

The City’s official website proclaims that Beverly Hills is now “one of the most glamorous places in the world to live, eat, play and, especially, shop” and has a “mystique [...] as a place of wealth and beauty.”⁸ Continuing, the website goes on to state that the area is a “prosperous and sought-after location [and] our fabled El Dorado.” The failed 1923 annexation

³Kirsch, Johnathan. “Battle for Beverly Hills’ Details Birth of Celebrity Politics.” *Jewish Journal*, August 3, 2018. Available at <https://jewishjournal.com/culture/books/236841/battle-beverly-hills-details-birth-celebrity-politics/>.

⁴“About Mary Pickford.” *Mary Pickford Foundation*. Online at <http://marypickford.org/about-mary/>.

⁵“Beverly Hills’ Thirst for Autonomy Saves the Day.” *Los Angeles Times*, January 30, 1994. Available at <https://www.latimes.com/archives/la-xpm-1994-01-30-we-16837-story.html>.

⁶Barragan, Bianca. “Being Poor in Beverly Hills, the Most Unequal City in California.” *Curbed LA*, March 6, 2014. Available at <https://la.curbed.com/2014/3/6/10135416/being-poor-in-beverly-hills-the-most-unequal-city-in-california>.

⁷U.S. Bureau of the Census estimate available at <https://www.census.gov/quickfacts/fact/table/beverlyhillscitycalifornia/PST045218>.

⁸“History of Beverly Hills.” *City of Beverly Hills*. Available at <http://www.beverlyhills.org/citymanager/aboutbeverlyhills/historyofbeverlyhills/>.

referendum is memorialized as a threat to the “very existence of Beverly Hills” which was only defeated by residents’ “new local identity.”

While some of this hyperbolic language can be reasonably attributed to routine salesmanship, there is something telling about the way Beverly Hills consciously markets itself, especially when that sense of regional identity is activated. At times, the desire of Beverly Hills residents and institutions to maintain the City’s exclusivity has been achieved through exclusionary policies. In one instance, the *Los Angeles Times* reported in 2016 that a “city-funded private patrol” known as the “greenshirts” had been accused of harassing the homeless in order to “clear the streets of undesirables.”⁹ Moreover, the *Times* found that although Beverly Hills spent \$800,000 a year to support homeless services *outside* its borders, there was absolutely no homeless housing *in* Beverly Hills itself.

Building a Westside Subway

Transit planners in Los Angeles County have long dreamed of a Westside subway, an underground rail line connecting the Westside and Downtown Los Angeles. In 1961, the Los Angeles Metropolitan Transit Authority, a predecessor of today’s Los Angeles County Metropolitan Transportation Authority, sought a federal loan to construct a “backbone transit line.” The proposed line would “tunnel westward under Wilshire Boulevard to the newly minted Century City, ...UCLA, and other points west.”¹⁰

Los Angeles is notorious for terrible traffic, the logical result of a sprawling county lacking viable public transportation alternatives.¹¹ Car culture has been an integral part of Los Angeles’s image dating back to the postwar period and the sudden suburbanization of Southern

⁹Holland, Gale. “Beverly Hills Accused of Driving out Homeless Man Befriended by Larry King, Others.” *Los Angeles Times*, July 5, 2016. Available at <https://www.latimes.com/local/lanow/la-me-ln-beverly-hills-homeless-20160705-snap-story.html>.

¹⁰Rubin, Carter. “What Makes This Westside Subway Proposal Different from All the Others?” *The Source*, Los Angeles County Metropolitan Transportation Authority, March 15, 2012. Available at <https://thesource.metro.net/2012/03/15/what-makes-this-westside-subway-proposal-different-from-all-the-others/>.

¹¹Feigenbaum, Baruch, and Rebeca Castaneda. “Los Angeles Has the World’s Worst Traffic Congestion - Again.” *Los Angeles Daily News*, April 19, 2018. Available at <https://www.dailynews.com/2018/04/19/los-angeles-has-the-worlds-worst-traffic-congestion-again/>.

California.¹² After World War II, the primacy of the automobile and the 1947 Collier-Burns Act spurred a wave of freeway construction.¹³ These new freeways, in turn, incentivized the development of much adjacent land, leading to a patchwork of spread-out communities. Once this decentralized sprawl was established, it became far more difficult to build a countywide transit system which could sufficiently service all developed areas while also keeping up with the pace of new sprawl.

According to Jody Litvak, director of local government and external affairs for Metro, the approximately 15-mile stretch along the Wilshire Corridor represents a jobs-rich “linear downtown” with the highest rate of bus ridership of any bus line in the entire Metro system.¹⁴ These buses already run at high frequency - sometimes less than five minutes apart during peak times - on some of the most congested streets in the entire LA area. Thus, any further increase in the number or frequency of buses would only worsen traffic and lengthen commutes. Litvak argues that the Purple Line would “provide a fast, reliable alternative along this busy corridor without adding to street congestion.”

Why Hasn't the Subway Already Been Built?

Opposition to a “Westside Subway” or “Subway to the Sea,” now branded as the Westside Extension to the Purple Line, has long stymied construction efforts. Following a 1985 methane gas explosion in a Fairfax Ross Dress for Less department store, U.S. Representative Henry Waxman attached a rider amendment to a House appropriations bill. The amendment banned the use of federal funding for further subway tunneling under Wilshire Boulevard.¹⁵ Waxman cited safety concerns but actually seized the opportunity to prevent a project he feared would cause gentrification and the displacement of older constituents in the Fairfax

¹²Romero, Dennis. “L.A. Is Still Car Crazy, and We Shouldn't Apologize for That.” *L.A. Weekly*, L.A. Weekly, June 2, 2014. Available at <https://www.laweekly.com/l-a-is-still-car-crazy-and-we-shouldnt-apologize-for-that/>.

¹³Carino, Meghan McCarty. “How California Car Culture Killed the 20-Minute Commute.” *Southern California Public Radio*, Southern California Public Radio, April 5, 2018. Available at <https://www.scpr.org/news/2018/04/05/82096/how-california-car-culture-killed-the-promise-of-a/>.

¹⁴Email correspondence with Ms. Jody Litvak. “Metro” is the name commonly used by the Los Angeles County Metropolitan Transportation Authority.

¹⁵Williams, J. “More Tales of the Exploding Ross.” *Curbed LA*, April 26, 2006. Available at <https://la.curbed.com/2006/4/26/10606668/more-tales-of-t>.

region. However, he was also characterized as “allay[ing] many of his wealthy constituents’ fears of undesirables invading their neighborhoods.”¹⁶

Then, in 1998, County Supervisor Zev Yaroslavsky successfully sponsored Proposition A, stripping Metro of the ability to use sales tax revenue for subway drilling in response to public frustration with project delays and overspending.¹⁷ Today, Yaroslavsky cites a lack of fiscal discipline on the part of the Metro Board, insufficient oversight over contractors, and unrealistic plans for new subway lines which were neither feasible nor justified for the passage of Proposition A. He describes Proposition A as a “two-by-four” that was needed to reintroduce pragmatism to the Board’s decision-making process.¹⁸ Specifically, Yaroslavsky maintains that Proposition A prevented Metro from approving a misguided east-west subway line underneath Pico Boulevard since, at that time, federal funding could not be used to tunnel under the high-density Wilshire corridor.

Seven years later in 2005, at the urging of Supervisor Yaroslavsky and newly-elected LA Mayor Antonio Villaraigosa, Congressman Henry Waxman reversed course and pushed for a repeal of the Wilshire subway federal funding ban he had instituted 20 years earlier.¹⁹ Villaraigosa had campaigned on the promised “Subway to the Sea,” a term he himself coined. By that time, traffic congestion on the Westside had become a major problem, and popular sentiment had shifted in favor of the much-maligned subway.²⁰

That November, however, Supervisor Yaroslavsky told the *LA Weekly* that “Proposition A was approved by over 65% of the voters in 1998, and I don’t believe that the result would be substantially different today.” But, public sentiment did change. Three years later, in 2008,

¹⁶Berkowitz, Eric. “Go, Henry, Go.” *L.A. Weekly*, November 17, 2005. Available at <https://www.laweekly.com/go-henry-go/>.

¹⁷Rabin, Jeffrey L. “Anti-Subway Funding Measure Wins Easily.” *Los Angeles Times*, November 4, 1998. Available at <https://www.latimes.com/archives/la-xpm-1998-nov-04-mn-39290-story.html>.

¹⁸Interview with former L.A. County Supervisor Zev Yaroslavsky.

¹⁹Levey, Noam N. “Subway Tunnel Ban May Be Lifted.” *Los Angeles Times*, September 19, 2006. Available at <https://www.latimes.com/archives/la-xpm-2006-sep-19-me-redline19-story.html>.

²⁰Pelisek, Christine. “Red Line to Somewhere.” *L.A. Weekly*, March 3, 2005. Available at <https://www.laweekly.com/red-line-to-somewhere/>.

voters approved Measure R a county-wide half-cent sales tax to fund transit development including subway construction (which Yaroslavsky supported).²¹

The Route is Chosen: Stop the Purple Threat

In 2010, Metro considered an underground Purple Line extension route beneath Wilshire Boulevard, which would pass 70-100 feet under Beverly Hills High School before connecting to a Century City station at Constellation Boulevard.²² An alternate route had been planned beneath Santa Monica Boulevard, but seismologists strongly pushed for a relocation. They argued that an underground station in such close proximity to the Santa Monica fault would be hazardous in the event of a major seismic event.

Some Beverly Hills residents, including the president of a local homeowners' association, objected to the proposed route which would bring the subway underneath a residential neighborhood and directly beneath some homes. The homeowners' association immediately began seeking allies to oppose the subway plan. It presented its case to the Beverly Hills Unified School District (BHUSD) Board, pointing out that the planned subway would also pass underneath Beverly Hills High School (BHHS). By that time, Supervisor Yaroslavsky had successfully negotiated a compromise whereby the subway would avoid all homes and instead pass underneath the street 20 feet away. But the BHUSD maintained its opposition even after affected homeowners were satisfied.

The BHUSD Board objected to the projected route on the basis that BHHS was an emergency preparedness center with 2,200 students. Moreover, members of the public at a Metro Board of Directors meeting cited a perceived risk of "explosive methane gas, active and abandoned oil wells, and the potential for subsidence from tunneling operations." Lisa Korbатов, vice president of BHUSD, suggested that the environmental review had been inadequate and threatened a lawsuit.

²¹Connell, Rich, et al. "Challenges Accelerate for Transit." *Los Angeles Times*, November 6, 2008. Available at <https://www.latimes.com/archives/la-xpm-2008-nov-06-me-transportation6-story.html>; "Measure R." *LA Metro*, Los Angeles County Metropolitan Transportation Authority. Available at <https://www.metro.net/projects/measurer/>.

²²Weikel, Dan. "Westside Subway Could Hit the Brakes in Beverly Hills." *Los Angeles Times*, October 29, 2010. Available at <https://latimesblogs.latimes.com/lanow/2010/10/westside-subway-could-hit-the-brakes-in-beverly-hills.html>.

Beverly Hills Declares War

Starting in 2011, the City of Beverly Hills and BHUSD launched a pricey legal campaign in the Superior Court of California to block Metro's construction of the Purple Line, citing insufficient environmental review. But following the initial defeat of the joint BHUSD-City lawsuit in the Superior Court in 2014 and a rejected appeal, the City of Beverly Hills backed off. The City at that point assumed a weakly supportive stance, helping Metro with permitting and alignment issues.²³ Surprisingly, however, BHUSD carried on the fight against the Purple Line for another four years.²⁴

At times, the District's decision led to questionable allocations of financial resources. In 2012, amid a CEQA lawsuit against Metro, the BHUSD board reapproved a pricey \$15,000 a month contract with Venable LLP, a D.C. lobbying and law firm, while also debating "potential budget cuts" for the upcoming school year.²⁵ Moreover, despite a budget problem for the 2013-14 school year, BHUSD launched a separate federal lawsuit against the Federal Transit Administration (FTA). The suit alleged that FTA had failed to perform an independent environmental analysis in violation of the National Environmental Policy Act (NEPA).²⁶

The District's campaign was in large part funded with taxpayer money; Measure E, a City of Beverly Hills ballot initiative sponsored by BHUSD, authorized the district to issue \$334 million in bonds "to provide safe and modernized school facilities." Although Measure E was advertised as a way to finance facilities improvement, \$13 million of these funds were used by

²³Hymon, Steve. "Court Rules for Metro in State Lawsuits Brought by Beverly Hills over Subway Extension." *The Source*, Los Angeles County Metropolitan Transportation Authority, April 2, 2014. Available at <https://thesource.metro.net/2014/04/02/court-rules-in-favor-of-metro-in-pair-of-state-lawsuits-brought-by-beverly-hills-over-subway-extension/>.

²⁴Email correspondence with Mr. Eli Lipmen (Commissioner of the City of Los Angeles Board of Neighborhood Councils and Board Member of Move LA).

²⁵Broverman, Neal. "Bev Hills School District Rehires Subway-Fighting DC Lobbyists." *Curbed LA*, June 13, 2012. Available at <https://la.curbed.com/2012/6/13/10362156/bev-hills-school-district-rehires-subwayfighting-dc-lobbyists>.

²⁶Broverman, Neal. "Bev Hills School District, Bleeding Money, Files Another Lawsuit Against the Subway." *Curbed LA*, November 16, 2012. Available at <https://la.curbed.com/2012/11/16/10304758/bev-hills-school-district-bleeding-money-files-another-lawsuit>.

the Beverly Hills Unified School District as a likely-illegal war chest to finance four separate lawsuits, years of lobbying, and PR campaigns.²⁷

Throughout this seven-year process, BHUSD maintained that the subway drilling had the potential to expose Beverly Hills High School students to methane gas emissions. In a worst-case scenario, it argued that the subway could cause a deadly explosion underneath the school. Noah Margo, Board President, even suggested that the tunnel would be a target for terrorist attacks.²⁸ However, after defeats in both state and federal courts, BHUSD had mostly run out of avenues for legal recourse by 2018 and decided on a new strategy.²⁹

The Strange Friends of Beverly Hills High School

An online petition created by the “Friends of Beverly Hills High School” appeared on Change.org in early July 2018, coordinated with the launch of a website entitled “Stop the Purple Threat.”³⁰ Both the petition and “Purple Threat” website called upon Beverly Hills residents, BHUSD students, and their parents to lobby their federal officials directly, including President Donald Trump and Transportation Secretary Elaine Chao, to pull federal funding from Metro.³¹ This step marked a significant development in the strategy of anti-Purple Line advocates; without grounds for another lawsuit, they reasoned that their best path forward was to make the fight political.

Central to the years-long crusade against the Purple Line was Beverly Hills Unified School District President Lisa Korbato. ³² Korbato is a wealthy heiress and generous donor to

²⁷Bliss, Laura. “Beverly Hills Has Financed Its Metro Fight With \$13 Million In Local Taxes.” *CityLab*, October 22, 2018. Available at <https://www.citylab.com/transportation/2018/10/beverly-hills-has-financed-its-metro-fight-13-million-local-taxes/573265/>.

²⁸Kudler, Adrian Glick. “Bev Hills Paper Warns About ISIS Attack on Unbuilt LA Subway.” *Curbed LA*, September 26, 2014. Available at <https://la.curbed.com/2014/9/26/10042166/bev-hills-paper-warns-about-isis-attack-on-unbuilt-la-subway>.

²⁹Hymon, Steve. “U.S. Judge Upholds Federal Approval of Purple Line Extension Project.” *The Source*, Los Angeles County Metropolitan Transportation Authority, August 12, 2016. Available at <https://thesource.metro.net/2016/08/12/u-s-judge-upholds-federal-approval-of-purple-line-extension-project/>.

³⁰Coleman, Laura. “Beverly Hills News - Petition To ‘Stop the Purple Threat’ Gains Momentum.” *Beverly Hills Courier*, July 10, 2018. Available at <https://bhcourier.com/2018/07/09/beverly-hills-news-petition-to-stop-the-purple-threat-gains-momentum/>.

³¹“Stop the Purple Threat.” *PurpleThreat.com*, July 2018. Available at <https://purplethreat.com/>.

³²Williams, Lance, and Matt Smith. “The Ultimate Test of Trump’s Local Cronyism Is Playing out in Beverly Hills.” *Reveal*, Center for Investigative Reporting, January 9, 2019. Available at <http://www.revealnews.org/article/the-ultimate-test-of-trumps-local-cronyism-is-playing-out-in-beverly-hills/>.

Republican candidates who frequently claimed to have personal interactions with the Trump family and influence with elected representatives. At an October 4, 2018 meeting, Korbatov revealed “that she and ‘one or two lawyers and consultants’ created the [Stop the Purple Threat] website.”³³ Korbatov, who had opposed the project ever since the initial 2010 Metro Board of Directors meeting where she had first threatened litigation. She had been involved in a mysterious real estate deal with Donald Trump in 2007 and was mistakenly convinced that she had sufficient political clout in Republican circles to pull Metro’s federal funding.

Korbatov claimed varyingly that the subway would cause carcinogenic and even explosive methane fumes, be a prime target for terrorists, and that tunneling could destroy the high school in a “subterranean construction accident.” Facing declining support, Korbatov did not register to run for re-election to the school board in August 2018. She chose instead to spend her remaining political capital on a dramatic district-wide stunt.³⁴

The Walkout

The culmination of Korbatov’s eight-year long fight was the Beverly Hills Unified School District student “walkout” on October 12, 2018. Although the term usually denotes a grassroots student action during normal class hours, BHUSD students who signed permission slips were bussed by the district to the event, and all classes were cancelled.³⁵ Students held ready-made signs reading “President Trump, You Can Stop This,” “President Trump, You Can Help Us,” and “President Trump, Stop Metro Now” in the hope that the president, an avid viewer of television, would intervene.³⁶ This highly choreographed protest was a failure and earned the

³³Caulder, Kelcey. “Korbatov Bashes Local Officials At ‘Stop the Purple Threat’ Meeting.” *Beverly Hills Weekly*, October 17, 2018, p. 9. Available at https://www.bhweekly.com/issues/pdf/2018_993.pdf.

³⁴Coleman, Laura. “Three Candidates Vie for Two Open Seats on Beverly Hills School Board.” *Beverly Hills Courier*, August 16, 2018. Available at <https://bhcourier.com/2018/08/17/three-candidates-vie-for-two-open-seats-on-beverly-hills-school-board/>.

³⁵Linton, Joe. “Beverly Hills School District Stages Student ‘Walkout’ Against Metro Subway.” *Streetsblog LA*, October 12, 2018. Available at <https://la.streetsblog.org/2018/10/12/beverly-hills-school-district-stages-student-walkout-against-metro-subway/>.

³⁶Carter, Brandon. “Trump Watches up to Eight Hours of TV per Day: Report.” *The Hill*, December 9, 2017. Available at <https://thehill.com/homenews/administration/364094-trump-watches-at-least-four-hours-of-tv-per-day-report>.

mockery of the *L.A. Times* editorial board.³⁷ One month later, Metro secured an additional \$100 million in federal grant money to finance the Purple Line.³⁸

Perceived Dangers by Anti-Purple Line Opponents

Despite assurances to the contrary, Beverly Hills opposition to the Purple Line has always characterized the subway as a threat, whether the danger is a methane blast,³⁹ cancer,⁴⁰ crime, terrorism,⁴¹ or a combination thereof. As of February 6, 2019, the City of Beverly Hills stipulated in negotiations over a memorandum of agreement with Metro that security measures should include bomb sniffing dogs at planned stations. Yet there was no evidence that they would be targets for explosive-based terrorist attacks.

Student protesters interviewed by the *Beverly Press* disputed Metro's research indicating that "cancer risks do not exceed the air quality management district threshold." They expressed their fear of a methane blast such as the one which caused an explosion in the Ross Dress for Less in 1985.⁴² The *Press* noted that the interviewed students admitted that they "did not know where the gas was underneath the school or how much was even there." Notably, however, a 2007 report of the City of Beverly Hills Mass Transit Committee concluded that "crime moving into Beverly Hills on the subway will not be a problem," that "fear of increased

³⁷Editorial Board. "Seriously, Beverly Hills? Cut Your Purple Line Hysteria, Already." *Los Angeles Times*, October 12, 2018. Available at <https://www.latimes.com/opinion/editorials/la-ed-beverly-hills-purple-line-20181012-story.html>.

³⁸Nelson, Laura J. "Metro Secures \$100-Million Federal Grant to Extend the Purple Line to West L.A." *Los Angeles Times*, November 28, 2018. Available at <https://www.latimes.com/local/lanow/la-me-ln-purple-line-funding-20181128-story.html>.

³⁹Orange, Norman. *No Subway Under BHHS*. YouTube, April 25, 2012. Available at <https://www.youtube.com/watch?v=81tihdzaecc>.

⁴⁰Turcotte, Maura. "Beverly Hills Students Rally against Purple Line Project." *Beverly Press*, September 26, 2018. Available at <https://beverlypress.com/2018/09/beverly-hills-students-rally-against-purple-line-project/>.

⁴¹Coleman, Laura. "ISIS Threat Highlights Beverly Hills' Metro Worries." *Beverly Hills Courier*, September 25, 2014. Available at <https://bhcourier.com/2014/09/25/isis-threat-highlights-beverly-hills-metro-worries/>.

⁴²Rogers, Leslie T, and Phillip A. Washington. "Westside Purple Line Extension: Final Supplemental Environmental Impact Statement and Section 4(f) Evaluation." *LA Metro*, Los Angeles County Metropolitan Transportation Authority, November 22, 2017. Available at http://media.metro.net/projects_studies/westside/images/final_seis/WPLE_Final_SEIS_and_Section_4f.pdf.

crime is not a good reason to oppose a subway,” and that the process of underground subway tunneling would not present any unacceptable dangers.⁴³

Cancer at Beverly High

Curiously, an active oil derrick operated on the campus of Beverly Hills High School since its establishment in 1927 until 2016, when its owner, oil company Venoco, filed for bankruptcy.⁴⁴ Venoco’s derrick remained active despite health concerns, including a 2003 lawsuit that alleged that the drilling caused cancer in students.⁴⁵ The City-directed dismantling of the derrick began in April 2018 and is ongoing.

To reiterate, the Beverly Hills Unified School District claimed between 2010 and 2016, that the Purple Line, 100 feet underground, might expose BHHS students to carcinogenic fumes. At the same time, it did not object to the operation of an active oil derrick situated above ground on the high school campus, which itself had been accused of causing cancer in students. Both the City and the District received revenue from Venoco’s operation of the well prior to the firm’s bankruptcy.

A return to regional identity

Some of the opponents of the Purple Line in Beverly Hills were no doubt motivated by a genuine fear of danger (cancer, explosion, terrorism, sinkhole, or other). But, it is clear from the shaky evidence backing their claims and the school district’s hypocrisy vis-à-vis the active oil derrick on Beverly Hills High School’s campus that this fear was not the true motivation for the fight against Metro. Rather, the core reason for the legal, lobbying, and PR campaign that Beverly Hills and especially the school district have waged against the Purple Line was demographic anxiety. A select few residents feared that the subway would dilute the exclusivity

⁴³Alexander, Allan, and Mark Egerman. “City of Beverly Hills Mass Transit Committee Final Report, January 2007.” City of Beverly Hills, January 2007. Available at http://beverlyhills.granicus.com/MetaViewer.php?view_id=2&clip_id=1637&meta_id=88254.

⁴⁴Gilmartin, Wendy. “Beverly Hills' Fugliest Oil Well, Aka the 'Tower of Hope'.” *L.A. Weekly*, May 22, 2012. Available at <https://www.laweekly.com/beverly-hills-fugliest-oil-well-aka-the-tower-of-hope/>.

⁴⁵Madigan, Nick. “A Celebrity School's Students Say Oil Wells Are Making Them Sick.” *New York Times*, June 17, 2003. Available at <https://www.nytimes.com/2003/06/17/us/a-celebrity-school-s-students-say-oil-wells-are-making-them-sick.html>.

and glamorous regional identity of the City. Lisa Korbatov warned that “both the quality of our education and our property values will suffer” if the subway extension came to pass.⁴⁶

Similarly, back in 2011, Rodeo Drive merchants organized to oppose a planned stop near Wilshire and Beverly.⁴⁷ Paris Nourafashan, owner of an office tower, opined at an anti-Metro meeting of businessmen that “subway riders are not potential shoppers. They cannot afford the kind of products retailers in the Golden Triangle sell” and expressed his fear that a subway station would increase crime and trash. Douglas Christmas, an art gallery owner, fretted that “we will lose our high-end clientele permanently as businesses start catering to the subway passengers.” Merchants argued both that subway riders would not patronize Rodeo Drive businesses at all, and – in complete contradiction - that subway riders would become the dominant customer demographic.

The true fear underlying the anti-Metro campaign was that the exclusivity and exceptionality of Beverly Hills might be threatened. Reading between the lines, one can see that references to crime or terrorism were expressions of this anxiety. As noted earlier, the City of Beverly Hills website recounts the failed 1923 annexation referendum as having threatened “the very existence” of Beverly Hills as a distinct and privileged socio-political entity. Nowadays, some in Beverly Hills perceive the arrival of the Westside subway as a new form of annexation by Los Angeles County.

However, it is important to note that Beverly Hills residents overwhelmingly voted *in favor* of county Measures R (2008) and M (2016) and to increase Metro’s funding, even though Lisa Korbatov lobbied strongly against the latter. Supervisor Yaroslavsky argues that these results demonstrate that, despite what is commonly assumed, a majority of Beverly Hills residents now are not opposed to Metro and are in favor of the Purple Line.⁴⁸ As a result, a small and dedicated group of Beverly Hills residential and commercial elites who cling tightly to their perception of regional distinctiveness are most responsible for the school district’s

⁴⁶Stephens, Josh. “Subway Controversy Offers Beverly Hills a Lesson in Planning.” *California Planning and Development Report*, December 15, 2010. Available at <http://www.cp-dr.com/articles/node-2833>.

⁴⁷Broverman, Neal. “Beverly Hills Merchants Launch Class War Over Westside Subway.” *Curbed LA*, July 11, 2011. Available at <https://la.curbed.com/2011/7/11/10456908/beverly-hills-merchants-launch-class-war-over-westside-subway-1>.

⁴⁸Interview with former L.A. County Supervisor Zev Yaroslavsky.

campaign against the subway. However, Metro supporters within and surrounding the Beverly Hills community failed to mobilize effectively and were almost entirely overshadowed by subway opponents.

A Failure of Pro-Transit Advocacy

Jody Litvak, Metro director of local government and external affairs, cited various groups in support of the Purple Line's arrival in Beverly Hills, including Move LA, the Beverly Hills Chamber of Commerce, the Century City Chamber of Commerce, the Westwood, Comstock Hills, and Tract 7260 Homeowners Associations, and unspecified "labor and environmental groups."⁴⁹ A few organizations stand out immediately from this list.

For one, the Beverly Hills Chamber of Commerce, a business advocacy organization comprised of over 800 local business is cited as a supporter of the Purple Line.⁵⁰ This support may be surprising, given that some high-end, high-profile retail businesses in the Rodeo Drive area received much attention for expressing fears that the subway might dilute their luxury clientele. However, it appears that, as a whole, the Chamber recognized the value of public transportation as it relates to reduced needs for parking and increased pedestrian foot traffic in commercial districts.

Although the Chamber has partnered with Metro to disseminate information about ongoing and upcoming construction projects to the general public, it has done no apparent advocacy to leverage the power of the Beverly Hills business community, educate Beverly Hills citizens on the benefits of the Purple Line, or meaningfully lobby in favor of the subway.⁵¹ Rather, in public the Chamber of Commerce has remained mostly neutral and so remained out of the political fray while the high-end businesses garnered media attention.

Also interesting is the reference to Move LA, a pro-transit advocacy organization responsible for the passage of Measures R and M, two countywide sales taxes which generated

⁴⁹Email correspondence with Ms. Jody Litvak.

⁵⁰"About the Chamber." *Beverly Hills Chamber of Commerce*. Available at <https://www.beverlyhillschamber.com/about/>. Harold, Luke. "Beverly Hills, Metro Move Closer to Purple Line Construction Terms." *Beverly Press*, July 18, 2018. Available at <https://beverlypress.com/2018/07/beverly-hills-metro-move-closer-to-purple-line-construction-terms/>.

⁵¹Phone interview with Mr. Billy Parent (former community relations coordinator for Metro construction contractor Skanska-Traylor-Shea).

revenue for transit expansion.⁵² One might reasonably expect that Move LA, as the largest and most successful organization of public transportation advocates in Los Angeles County, would have played an active role in pro-Metro advocacy to counter the organized opposition presented by BHUSD. Yet, according to Denny Zane, executive director of Move LA, the organization has “not been directly involved in planning or advocacy for individual lines.”⁵³ Despite constant support from pro-transit outlets such as *Urbanize.LA* and *Curbed LA*, the Purple Line lacked sustained, on-the-ground, and community-based support from transit advocates.

None of Metro’s backers had the resources to match BHUSD’s \$15,000 per month D.C. lobbying firm and \$400,000 PR campaign.⁵⁴ At every step in the process, opponents of the Purple Line were able to control the conversation, fluster Metro’s construction plans, and dominate headlines simply because they had no serious opposition. Their eventual defeat came about through the exhaustion of legal arguments, financial attrition, and declining support from Beverly Hills residents. Thus, despite a quiet but supportive Chamber of Commerce and supportive noises from transit advocacy organizations, Metro was essentially on its own within Beverly Hills’ borders. A small but influential and loud minority was allowed to dominate the debate.

Conclusion and Recommendations

Given the lessons of Beverly Hills, how should transit advocates and policy makers approach similar instances of local exclusivism? The importance of full transparency and thorough research with respect to such concerns as environmental impacts and safety concerns cannot be overstated, as these issues are often targeted by opponents. Ultimately, however, localized opposition will likely not be swayed by any evidence-based argumentation. Despite Metro’s exhaustive research demonstrating the safety of its Beverly Hills tunneling plan, opponents either challenged Metro’s credibility or pivoted to other concerns and litigation.

⁵²“About Us.” *Move LA*. Available at http://www.moveLA.org/about_us.

⁵³Email correspondence with Mr. Denny Zane (executive director of Move LA).

⁵⁴Smith, Dakota. “Amid Subway Stop Fight, Beverly Hills Group Launches Web Site, Hires Sitrick and Company.” *Curbed LA*, March 30, 2011. Available at <https://la.curbed.com/2011/3/30/10475154/amid-subway-stop-fight-beverly-hills-group-launches-web-site-hires>.

The absence of dedicated and funded pro-transit advocates left Metro without allies in the struggle for public opinion. As a result, lacking vocal support within the Beverly Hills community, Metro was easily caricatured as an invading menace whose negligence would threaten the lives of high schoolers. Indeed, a school “walkout” was staged to make that point.

Had the Chamber of Commerce, for instance, organized pro-Purple Line rallies of business owners to demonstrate the existence of public support for the subway instead of remaining on the sidelines, Lisa Korbatov would have had a harder time portraying herself as the community’s sole representative. Similarly, if Move LA and comparable organizations had actively engaged with the Beverly Hills community to counter misinformation about dangers posed by subway tunneling, fewer BHUSD parents would have rallied behind the school district out of an understandable concern for their children's safety.

In similar conflicts between public transit and exclusivist neighborhoods, sustained advocacy and vocal demonstrations of stakeholders’ support are absolutely critical because, in the end, the sole determinant of whether or not transit infrastructure will be accepted or rejected is public opinion. When Los Angelenos were still reeling from the 1985 Ross Dress for Less methane explosion and frustrated with the MTA’s out-of-control spending, they responded by directing their elected representatives to pull funding for subway construction. Now that Metro has its house in order and public opinion has shifted in the agency’s favor, the “subway to the sea” first envisioned 58 years ago may finally come to pass.

Chapter 8

How Local Should Politics Be? Santa Monica's District vs. At-Large Voting Litigation

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*This chapter is based on information available through June 2019
from a website maintained by the City of Santa Monica.*

“When most people think of landmark voting rights cases, places like Alabama or North Carolina, not Santa Monica, usually come to mind. But last month, a judge in the affluent, left-leaning coastal enclave ruled that Santa Monica’s system of at-large City Council representation ‘intentionally discriminated’ against its growing Latino population.”

*Los Angeles Times report*¹

Former speaker of the U.S. House “Tip” O’Neill is often linked to the adage, “all politics is local.” In April 2016, an attorney named Kevin Shenkman – in conjunction with other associated lawyers - filed a complaint against the City of Santa Monica arguing that its system of at-large elections of its seven city council members discriminated against Latinx residents. In a sense, he was arguing that local politics in Santa Monica wasn’t local enough. Santa Monica’s city council should be elected by local district.

The Shenkman complaint cited the California Voting Rights Act of 2001 (CVRA) that had been signed into law by Governor Gray Davis in 2002, a state statute somewhat similar to the earlier federal Voting Rights Act. In common parlance, “brief” means short. But Shenkman’s complaint led to a shower of back-and-forth legal briefs whose paper consumption ultimately must have felled many trees and whose lower court resolution took three years and ended in early 2019 with a verdict against the City.²

That verdict, at this writing, is on appeal and the appeal itself may well require an additional grove of trees before the costly litigation is completed.

Conceivably, the case could ultimately

reach the U.S. Supreme Court and alter U.S. policies in such areas as voter suppression and affirmative action. But if the verdict stands, it could upend municipal politics in California in ways that go beyond Latinx representation in Santa Monica.



The City of Santa Monica

*When the Sun sets on America,
Where’s the perfect place to be?
Santa Monica, down by the sea.*

*Santa Monica song lyrics*³

¹Benjamin Oreskes, “Court battles could test constitutionality of California voting rights law,” *Los Angeles Times*, March 9, 2019. Available at <https://www.latimes.com/local/lanow/la-me-ln-santa-monica-california-voting-rights-act-20190303-story.html>.

²The Santa Monica city government posts all filings and decisions at <https://www.santamonica.gov/Election-Litigation-PNA-V-Santa-Monica>. A backup file is at <https://archive.org/details/Aug10thTrialTranscript>. There are over 100 documents posted at this writing.

³Available at <https://www.youtube.com/watch?v=x6CtZ4VkvQ>.

Santa Monica was not always the “left-leaning” town described in the italicized quotation above the introduction to this chapter. Until the 1970s, for example, the City was a significant part of the congressional district represented by Republican Bob Dornan, a predecessor of what much later was termed the “tea party” faction of the GOP. When Santa Monica moved leftwards, Dornan decamped to Orange County and won election to Congress there, retaining his seat until changing OC demographics caught up with him in 1996.⁴

The leftward move of Santa Monica that displaced Dornan and changed local politics was in part tied to the growing population of renters in the City. By 1978, about 70-75 percent of the City’s residents were renters.⁵ When Proposition 13 – proposing a large decrease in property taxes – was on the state ballot in 1978, proponents argued that renters, who don’t pay property taxes, should nonetheless support the proposition because landlords would surely pass on their tax savings in the form of lower rents. But Prop 13, when it passed, neither cut the demand for apartments nor increased the supply. There was no reason, therefore, for rents to go down, and they didn’t, angering renters who pushed for rent control.

Many cities adopted some form of rent control soon thereafter. Santa Monica, led by a political organization – Santa Monicans for Renters Rights (SMRR), adopted especially strict control administered by an elected Rent Control Board. SMRR remains a major player in City politics to this day, although more recently it has been somewhat eclipsed by developers, local public sector unions, and the union representing hotel workers in Santa Monica (UNITE HERE). The leftward shift in municipal politics ultimately led to the derisive appellation “Peoples Republic of Santa Monica.” Still, from time to time after adoption of rent control, more “conservative” (by Santa Monica standards!) candidates sometimes succeeded in gaining representation on the city council by emphasizing other issues.⁶

The stringency of Santa Monica’s rent control policy was substantially reduced when it was overridden by a 1995 state law – Costa Hawkins – that requires, among other provisions, vacancy decontrol. The earlier Ellis Act, enacted by the state legislature in 1986, also weakened Santa Monica’s rent control by allowing evictions of renters by landlords who were withdrawing their properties from the rental market. In any case, rent control is no longer the central issue in Santa Monica municipal politics that it once was.⁷

⁴Dornan was narrowly defeated in 1996 by Democrat Loretta Sanchez.

⁵Robert Lindsey, "In 'People's Republic of Santa Monica,' Voters Turn to the Right," *New York Times*, April 17, 1983. Available at <https://www.nytimes.com/1983/04/17/us/in-people-s-republic-of-santa-monica-voters-turn-to-the-right.html>; Kousser declaration, filed May 31, 2018. Available at

<https://www.santamonica.gov/Media/Default/Attorney/Election/20180531-2.Kousser%20Declaration.pdf>.

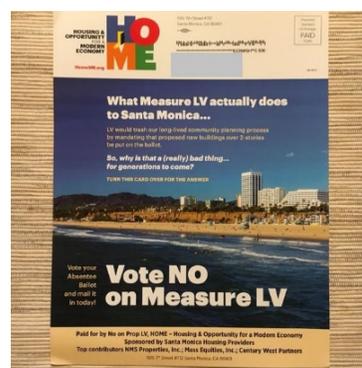
⁶In 1983, inroads were made by an alternative faction that emphasized high-handed tactics by incumbent SMRR-backed members. As part of that campaign, a cassette tape was sent to the local electorate featuring a recording of activists describing their campaign practices: <https://www.youtube.com/watch?v=uYPhMvqal4w>.

⁷There was a brief flurry of interest in the rent control issue in 2018 when a proposition appeared on the state ballot that would have repealed vacancy decontrol. (Proposition 10.) But it failed to pass. Proponents of the repeal may mount a similar campaign in 2020 or beyond in which case the rent control issue would again come into focus in Santa Monica.

But the related issue of “affordable housing” still animates local politics as does the problem of homelessness. Santa Monica has been known for lenient or “progressive” treatment of the homeless, depending on your viewpoint. The City’s 2019 census of the homeless counted 985 individuals, a figure somewhat higher in proportion to population than that of the City of Los Angeles which surrounds Santa Monica on three sides.⁸ Radio comedian Harry Shearer used to close his “Le Show” program – which for many years originated from Santa Monica College’s KCRW – as coming from “Santa Monica, the home of the homeless.” Local newspapers often feature stories about crime, often petty crime, by “transients” – generally a descriptor for homeless individuals. And concerns are raised about individuals sleeping in parks and doorways.

For a suburban city with a population estimated at this writing of 92-93,000 people and only 8.3 square miles, Santa Monica receives a surprising amount of attention, both regionally and even nationally. Its battle over rent control, for example, was featured in the *New York Times* in the 1980s.⁹ But you don’t have to go back that far; the *New York Times* also ran a travel guide to Santa Monica in 2010 and a photo essay on Santa Monica High School in 2016.¹⁰ More locally, when Measure LV – a proposition that would have put strict zoning limits on new development - was on the Santa Monica ballot in 2016, the *Los Angeles Times* followed the story, treating it as a possible bellwether for the larger Los Angeles area.¹¹

Measure LV was ultimately defeated after a major and expensive campaign against it was mounted by developers. Nonetheless, it received about 45 percent of the vote. SMRR, it might be noted, was somewhat divided by LV.¹² The LV defeat illustrated the shift in municipal influence toward developers,



⁸Madeleine Pauker, "Santa Monica homeless population grows by 3 percent," *Santa Monica Daily Press*, March 21, 2019. Available at <https://www.smdp.com/santa-monica-sees-little-growth-in-homeless-population/173593>. The 2019 count for the City of Los Angeles was 36,300. See Jill Cowan, "Homeless Populations Are Surging in Los Angeles. Here’s Why," *New York Times*, June 5, 2019. Available at <https://www.nytimes.com/2019/06/05/us/los-angeles-homeless-population.html>.

⁹Robert Lindsey, "In 'People's Republic of Santa Monica,' Voters Turn to the Right," *New York Times*, April 17, 1983. Available at <https://www.nytimes.com/1983/04/17/us/in-people-s-republic-of-santa-monica-voters-turn-to-the-right.html>.

¹⁰Fred A. Bernstein, "36 Hours in Santa Monica, Calif.," *New York Times*, October 13, 2010. Available at <https://www.nytimes.com/2010/10/17/travel/17hours.html>; "Inside Santa Monica High," *New York Times*, September 11, 2016. Available at <https://www.nytimes.com/interactive/2016/09/11/magazine/11mag-santa-monica-high-photo-essay.html>.

¹¹Sarah Parvini, "Santa Monica could pass highly restrictive growth limits. Is L.A. next?" *Los Angeles Times*, November 2, 2016. Available at <https://www.latimes.com/local/lanow/la-me-ln-measure-lv-santa-monica-20161027-story.html>.

¹²SMRR’s official position was that it “did not support” LV, which is not quite the same as “oppose.” It stated that, “SMRR does not support the Residocracy initiative, and instead wants the steering committee, community and City Council to work on a measure requiring voter approval of any project proposed beyond the standards of a City

with their PACs and ability to provide financial support to council campaigns, along with the public sector city unions and the hotel union.¹³ In any event, despite the LV defeat, local concerns about development – often tied to complaints about traffic congestion and parking – remain a major issue in Santa Monica.

Municipal Governance

“(I)n its recent findings to ban market-rate Single Room Occupancy (SRO) developments, planning staff cited their failure to ‘promote social connectedness and community wellbeing.’”

Report in *Santa Monica Lookout*¹⁴

Santa Monica’s brand of politics is often seen as unique. The City, for example, contracts for a survey of resident “wellbeing.” Most cities don’t, nor do they worry much about “social connectedness.” But like many cities of Santa Monica’s size in California, governance in Santa Monica since 1946 is based on a city manager model. There is an elected (part-time) city council of seven members. The council elects one of its members as mayor, but the mayoral position is largely ceremonial and rotates through the council on a regular basis. The mayor doesn’t have veto power; he/she has one vote out of seven on the council, the same as the other six members. The mayor does, however, represent the City.

For the day-to-day operation of the municipality, a hired city manager functions as chief administrator. Election to the city council is on a non-partisan basis and is done on an *at-large* basis. That is, the City of Santa Monica, unlike the much-larger City of Los Angeles, is not divided into local districts. City council members can live anywhere in the city and, in effect, they represent the City as a whole, not a particular neighborhood or area.

As is common in at-large systems, there is no primary. Elections occur at two-year intervals. Either three or four of the seven council seats are up for a vote. The electorate can choose to vote for up to either three or four candidates out of whatever number run for election. The top three or four vote-getters are the winners and serve four-year terms. There is no requirement of a majority vote for winners in Santa Monica; there is simply a tally of votes by rank. If a candidate is among the top three or four vote-getters, that candidate is elected.

In contrast, in the City of Los Angeles, elections are held within (fifteen) districts for full-time city council members. If no candidate receives a majority in the primary, the top two candidates run against each other in a runoff election. Los Angeles has a separate election ballot for its mayor and the mayor is not a member of the council.

Although there are managerial positions within Los Angeles’ government, the mayor – not a professional hired city manager - is the chief executive and represents the city as a whole. Council members in Los Angeles represent their districts. In a district system, such as that of Los Angeles, it is expected that

Council approved zoning code.” See http://www.smrr.org/news/2016_Candidates_Measures.html. In effect, it said it wanted an LV-type policy that was less strict than LV.7

¹³The public sector city unions fear anything that could limit growth and economic activity in Santa Monica, thus indirectly limiting tax revenue. The hotel union sees job opportunities in hotel expansion.

¹⁴Jorge Casuso, "Santa Monica Wins Award for Its Wellbeing Index," *Santa Monica Lookout*, May 23, 2019. Available at http://santamonicalookout.com/ssm_site/the_lookout/news/News-2019/May-2019/05_23_2019_Santa_Monica_Wins_Award_for_Its_Wellbeing_Index.html.

members of the city council will ultimately look after the interests of the particular neighborhoods they represent with the mayor more focused on larger citywide interests.

Table 1: Results of Santa Monica City Council Elections

Year	Number of Open Seats	Vote Range of Winners
2000	4	12-18%
2002	3	16-19%
2004	4	10-16%
2006	3	18-19%
2008	4	13-19%
2010*	3	17-22%
2010*	2	27-33%
2012	4	10-15%
2014	3	11-17%
2016	4	15-16%
2018	3	19-24%

*Apart from the regular election in 2010, there was a separate election for two vacancies.

Source: City of Santa Monica’s Answer to the First Amended Complaint, <https://www.santamonica.gov/Media/Default/Attorney/Election/20170627.City%20Answer%20to%20FAC.pdf>; Declaration of David R. Adler, <https://www.santamonica.gov/Media/Default/Attorney/Election/20180329-2.Request%20for%20Judicial%20Notice%20ISO%20City's%20MSJ.pdf>. Results for 2018 are from <https://www.smvote.org/#CityCouncil>.

A characteristic of California cities – regardless of their governance structure – is that voters often do not pay much attention to municipal politics, unless there is some major issue at the local level. Turnout in city elections is often low. Voters are more likely to pay more attention to higher political offices such as president, senator, or governor. If there are no pressing interests at the local level, name recognition is likely to be an important factor in attracting votes, giving incumbents an advantage. As a result of a sense that incumbents are simply renewed, some local governments have seen term limits enacted through ballot propositions. In the case of Santa Monica, however, no term limits were enacted until 2018 when twelve-year caps on council seats were imposed (although not retroactively). The term limit proposition – Measure TL – received almost three-quarters of the votes.

One consequence of the voting process in Santa Monica is that even the top three or four winners often receive a relatively small proportion of the votes that are cast, as can be seen on Table 1. In the 2018 election, the vote totals for the top three winners (those receiving more votes than anyone else) ranged from 19 percent to 24 percent of the vote. In 2016, the range was 15 percent to 16 percent for the top four. And in 2014, the range for the top three was 11-17 percent.¹⁵

¹⁵Source: <https://www.smvote.org/> and <https://www.smgov.net/Departments/Clerk/contentOneColumn.aspx?id=26354>.

That these levels of vote totals do not evidence strong electoral support seems self-evident. Name recognition and money for yard signs and mailers are generally key factors in election results. Incumbents tend to be reelected. And it can reasonably be asked if the top candidates in, say, 2014 through 2018 receiving 16, 17, or 24 percent of the votes are truly “winners” in the sense of having a true voter mandate. The question is even more pointed when aimed at the bottom-of-the range “winners” with 11, 15, or 19 percent.

It appears moreover from evidence adduced as part of the CVRA litigation that the pattern of low-percentage winners that characterized the elections from 2000 on shown on Table 1 goes back to the early days of the post-1946 at-large system. One election expert hired by the plaintiffs examined all cases in which there was a Latinx candidate and found a similar low-winning-vote-plurality pattern going back to 1953. The only exception was a special election in 1999 in which only one seat was open, and the winner received 54%. Before that election – at least in all available elections in which there was one (or more) Latinx candidate(s) – the winning range ran from 9 percent to 27 percent.¹⁶

Of course, one can argue that a governance system that produces winners with as little as a tenth of the vote is flawed and yet doesn’t violate the CVRA. The system – sometimes described as “first past the post” – might even be argued to *favor* minority voters. If such voters cohesively backed a candidate, that candidate might well win since relatively few votes are required. Indeed, one expert witness made such an argument, although apparently not persuasively, to the court.¹⁷

Although there is limited oversight by voters, Santa Monica has tended – as a relatively affluent city – to have more civic engagement than other similar-sized cities with similar governance structures. It has not had corruption scandals of the “traditional” type, e.g., outright bribes for council votes or for permits or for favorable inspection results. About the closest thing to a traditional scandal Santa Monica has had in recent years came when a city mayor apparently intervened to block the appointment of a communications officer after the position had been already offered by the city manager.

In that case, the hired/unhired individual – who councilmember and then-mayor Pam O’Connor apparently considered to be a political opponent – sued the city and won a settlement of over \$700,000.¹⁸ But apart from that affair, to the extent that voters are upset with their elected officials in Santa Monica, their concerns tend to be over policy matters and over a perceived lack of council responsiveness.

Some issues that have animated Santa Monica voters might be viewed as minor matters, although not to those immediately involved. *Los Angeles Times*’ former political cartoonist Paul Conrad had donated to the City a large sculpture of a mushroom cloud entitled “Chain Reaction,” and meant it to be a peace monument. The sculpture was erected in 1991 near the Civic Auditorium, but it eventually fell into disrepair. In spite of the peace theme – which might have been expected to appeal to Santa Monica’s

¹⁶Declaration of J. Morgan Kousser filed May 31, 2018. Available at

<https://www.santamonica.gov/Media/Default/Attorney/Election/20180531-2.Kousser%20Declaration.pdf>.

¹⁷See Declaration of Daniel R. Adler at <https://www.santamonica.gov/Media/Default/Attorney/Election/20180329-2.Request%20for%20Judicial%20Notice%20ISO%20City's%20MSJ.pdf>.

¹⁸Matthew Hall, “Complaint filed in Riel case,” *Santa Monica Daily Press*, September 1, 2015. Available at <http://www.smdp.com/complaint-filed-riel-case/150357>. Mayor O’Connor - who was again an ordinary city councilmember by the time of the 2018 general election – was defeated in that election. Other members of the city council and SMRR backed another candidate who won.



city council – its members seemed reluctant to fund the maintenance needed despite the appeals of residents. The council gave residents a deadline to come up with needed funds and \$100,000 was raised privately. Only then did the council agree to preserve the work.

Also, in 2014, the council was confronted by residents over what came to be known as the “Hines development,” an elaborate commercial project proposed for 26th Street and Olympic where the then-under-construction Expo light rail would be stopping. A group of residents called the Santa Monica Coalition for a Livable City (SMCLC) filed a lawsuit against the council’s approval of the development on grounds of environmental and traffic impact.

Another group formed around that time called Residocracy and managed to gather enough signatures to put a referendum on the ballot which would have reversed the council’s decision approving the Hines development. In response, the council repealed its decision rather than see a referendum campaign go ahead against its endorsement of Hines (and implicitly against the council itself).¹⁹ Residocracy continued thereafter, largely operating through a Facebook page and a website. It played a significant role in the unsuccessful campaign to pass Measure LV in 2016. However, since that time, its Facebook site seems not to be “curated” and sometimes degenerates into angry, troll-like comments about the local homeless problem and unrelated anti-vaccine posts.

The Shenkman Cometh

Kevin Shenkman, who is tall and bookish, does not look like the aspiring light heavyweight boxer he once was. Clearly, though, he still relishes a good fight. ...Shenkman, 38, ...has been suing, or threatening to sue, cities all over Southern California, demanding they change the way they elect members of their city councils in order to increase the numbers of African-American and Latino representatives. Many have agreed to do so, though some have resisted before capitulating.

Los Angeles Times report²⁰

Although the issues of 2014 were raising the possibility of political change through voter protests and direct democracy, the following year raised the possibility of abrupt change through the judiciary. A key

¹⁹Parimal M. Rohit, “Hines DA Rescinded,” *Santa Monica Mirror*, May 16, 2014. Available at <https://smmirror.com/2014/05/hines-da-rescinded/40182/>.

²⁰Robin Abcarian, "Meet the Malibu lawyer who is upending California's political system, one town at a time," *Los Angeles Times*, May 14, 2017. Available at <https://www.latimes.com/local/abcarian/la-me-abcarian-shenkman-voting-20170514-story.html>.

element in court-produced change is the California Voting Rights Act of 2001 (actually enacted in 2002 and reproduced in the Appendix B). Like the federal Voting Rights Act, the state counterpart aims at remedying past racially-based practices that hinder minority representation. However, the CVRA has special provisions that make allegations of past and current discrimination easier to demonstrate.²¹ The CVRA is self-enforcing in that it relies on private lawsuits rather than some official commission or inspectorate for enforcement.

Attorneys who file such suits on behalf of local plaintiffs can recover their costs and reasonable fees, which can be considerable once a lawsuit is filed. Thus, a city which resists and loses will have to pay the plaintiffs' attorneys as well as its own legal costs. Under a 2016 amendment to the CVRA, cities once notified of an impending suit move to district voting can avoid large bills if they agree to switch within 135 days of notification.²² Many cities that have received a warning moved to district systems. But one city with at-large voting that fought a CVRA lawsuit aggressively all the way through trial was Palmdale. (It lost and had to switch.)

Attempts to challenge the CVRA's constitutionality have so far been unsuccessful. In one instance, a lower court found the CVRA's use of race was unconstitutional, but the decision was reversed on appeal in 2006. The reversal found that any minority (which could include whites) could make a case under the CVRA.²³ Moves to take the matter all the way to the U.S. Supreme Court have so far not succeeded, but such an effort is underway at this writing. Ironically, these efforts put "progressive" Santa Monica on the same side as groups seeking to weaken racially-based legislation such as the federal voting rights law and the more general concept of affirmative action in higher education admissions.²⁴

CVRA focuses on at-large voting arrangements of the type used in Santa Monica city council elections. Its remedy is typically to move to district voting. The law defines a "protected class" as "voters who are members of a race, color or language minority group, as this class is referenced and defined in the federal Voting Rights Act." It looks for signs of "racially polarized voting," meaning that "the choice of

²¹The League of California Cities has sponsored publications on the CVRA. See Marguerite Mary Leoni and Christopher E. Skinnell, "The California Voting Rights Act," undated. Available at <https://www.cacities.org/getattachment/f736ba74-086a-4f5d-beb7-853d898691d8/LR-Leoni-Skinnell-THE-CALIFORNIA-VOTING-RIGHTS-ACT.aspx>; James L. Markman, "The California Voting Rights Act: Recent Legislation and Litigation Outcomes," Prepared for a conference of May 3, 2018. Available at <http://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2018/Spring-Conference-2018/5-2018-Spring%3B-Aziz-Johnson-Markman-California-Vot.aspx>. See also David C. Powell, "The California Voting Rights Act and Local Governments," *California Journal of Politics & Policy* (2018). Available at <https://escholarship.org/uc/item/031405xr>; Joanna E. Cuevas Ingram, "The Color of Change: Voting Rights in the 21st Century and the California Voting Rights Act," *Harvard Latino Law Review*, June 2012. Available for download at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1836791.

²²Phil Willon, "A voting law meant to increase minority representation has generated many more lawsuits than seats for people of color," *Los Angeles Times*, April 9, 2017. Available at <https://www.latimes.com/politics/la-pol-ca-voting-rights-minorities-california-20170409-story.html>.

²³The decision finding the CVRA unconstitutional, *Sanchez v. City of Modesto*, was reversed in 2006. See <https://caselaw.findlaw.com/ca-court-of-appeal/1250178.html>.

²⁴Bob Egelko, "California Voting Rights Act survives legal challenge, but it's not over," *San Francisco Chronicle*, February 6, 2019. Available at <https://www.sfchronicle.com/news/article/California-Voting-Rights-Act-survives-legal-13592466.php>. The case arose from Poway, a small city near San Diego. The Project on Fair Representation in the Poway case appeal is involved a court case challenging admissions practices at Harvard and supports adding a Census question on citizenship. See <https://www.projectonfairrepresentation.org/>.

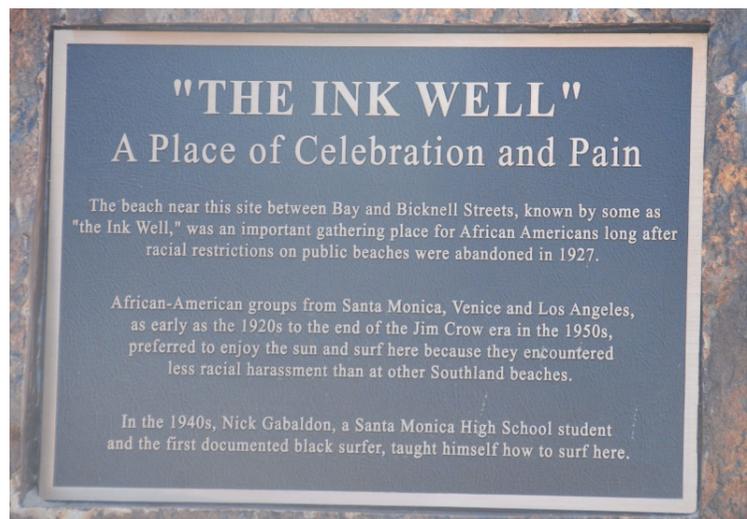
candidates or other electoral choices that are preferred by voters in a protected class” are different from “the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.” If the protected class tends to be concentrated in a particular neighborhood of the jurisdiction, and if that neighborhood were a district that elected candidates, presumably the candidates chosen by the protected class would be more likely to be selected. But in an at-large governance system, where the protected class is lost in a larger sea of voters with different interests, the protected class is hindered in gaining its desired representation.

To win a CVRA lawsuit challenging an at-large system, therefore, the plaintiffs must show that there is racially-polarized voting and that at-large governance is preventing the protected class from seeing its candidates elected. Plaintiffs don’t have to prove intent to discriminate under CVRA. But the law indicates that a showing of past intent can be taken into consideration.

A key factor in a CVRA lawsuit is statistical analysis of past election outcomes. If the historical evidence shows intent as well, the case is strengthened. Thus, plaintiffs will bring statistical evidence to court, typically through expert witnesses, as well as qualitative history such as past statements by city officials. A finding that the protected class is concentrated in a particular area is not required to show racially-polarized voting. However, if the protected class were spread homogenously through the city, switching to district voting would not remedy its disadvantage.

As noted earlier, Santa Monica was not always the “left-leaning” municipality that developed in the late 1970s. As an example, the city once featured a *de facto* segregated beach – known pejoratively as the “Ink Well” – for black residents that persisted as a practice until the early 1960s.²⁵ It’s not that Santa Monica was worse in that era when evaluated by modern standards than other cities with regard to racial issues. But the fact that the city’s current at-large governance system was created shortly after World War II, a period when homes and properties were sold with restrictive covenants and discrimination was not illegal, at least raises the possibility that its decisions on governance structures made back then were not entirely innocent. Whether those voting structures today continue to have discriminatory effects is the kind of question that the CVRA was intended to test.

The test for the City of Santa Monica came in late 2015, when a letter from lawyer Kevin Shenkman was sent to the City claiming that its at-large voting system violated the CVRA. A discussion of the letter was held in closed session at



²⁵A history of the Ink Well may be found at <https://www.blackpast.org/african-american-history/inkwell-santa-monica-california-1905-1964/>; Cecilia Rasmussen, “In ‘Whites Only’ Era, an Oasis for L.A.’s Blacks,” *Los Angeles Times*, July 3, 2005. Available at <https://www.latimes.com/archives/la-xpm-2005-jul-03-me-then3-story.html>. An official Santa Monica plaque commemorates the beach and indicates that it ended in the 1950s: <https://www.smgov.net/portals/culture/Content.aspx?id=20263>.

the city council meeting of January 12, 2016.²⁶ Since the session was closed, there is no official record of what, if anything, was decided.

In April 2016, after the City didn't respond, a lawsuit was filed by attorney Kevin Shenkman and associates contending that the Pico Neighborhood – with a concentration of Latinx residents – was the victim of the kind of discrimination that the CVRA prohibited. That is, the lawsuit contended that the Pico Neighborhood and Latinx voters exhibited racially-polarized voting and that the remedy would be a switch from at-large to district voting in which one of the seven districts would incorporate the Pico Neighborhood. At a special meeting of April 26, 2016, the now-actual (rather than threatened) lawsuit was again discussed by the council in closed session.²⁷

The plaintiffs in the case against Santa Monica included the Pico Neighborhood Association, Oscar de la Torre (an elected member of the Santa Monica-Malibu Unified School District) and his wife Maria Loya. (The school district, whose board – it might be noted – is elected at-large, is a separate entity from the City of Santa Monica and includes Malibu.) Both de la Torre and Maria Loya are on the board of the Association. Loya had been an unsuccessful candidate for city council in 2004.²⁸ De la Torre had at one time been in dispute with the council regarding city funding for the Pico Youth and Family Center which he founded, a dispute which heated up after the suit was filed.²⁹ He also complained about a 1930s-era mural in city hall which depicts a Native American showing a water source to Spanish conquistadors. De la Torre described the mural as demeaning to Native Americans and to “people of color,” and thus symptomatic of city council insensitivity.³⁰ De la Torre was an unsuccessful candidate for city council in 2016, i.e., after the lawsuit was filed.

As for Shenkman, he has certain aspects of the kind of small-firm lawyer who, in Hollywood movies and TV shows, takes on some giant opponent and – when it's a movie or TV show – inevitably wins at the end. For example, in the Amazon TV series “Goliath,” Billy Bob Thornton plays a washed-up, alcoholic lawyer, estranged from his family, who lives in a (real) beachfront Santa Monica motel and spends much of his time in the (real and locally well-known) neighboring Chez Jay bar. Through a series of twists and

²⁶See agenda item 1A(2) of http://santamoniacityca.iqm2.com/Citizens/Detail_Meeting.aspx?ID=1054.

²⁷See agenda item 1D of http://santamoniacityca.iqm2.com/Citizens/Detail_Meeting.aspx?ID=1080.

²⁸Michael Ashcraft, “Gadfly or David vs Goliath, Maria Loya sues for voting districts,” *Santa Monica Patch*, October 29, 2018. Available at <https://patch.com/california/santamonica/gadfly-or-david-vs-goliath-maria-loya-sues-voting-districts>.

²⁹Ashley Archibald, “SMMUSD boardmember under fire for youth center management,” *Malibu Times*, January 9, 2013. Available at http://www.malibutimes.com/news/article_75fd7750-5a77-11e2-9ea1-0019bb2963f4.html; Niki Cervantes, “Accusations Arise Over Lack of Funding for Santa Monica Youth Center,” *Santa Monica Lookout*, August 11, 2017. Available at https://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2017/August-2017/08_11_2017_Accusations_Arise_Over_Lack_of_City_Funding_for_Santa_Monica_Youth_Center.html.

³⁰Jorge Casuso, “Mural at Santa Monica City Hall Gets Airing as Petition for Its Removal Circulates,” *Santa Monica Lookout*, September 15, 2017. Available at https://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2017/September-2017/09_15_2017_Mural_at_Santa_Monica_City_Hall_Gets_Airing_as_Petition_for_Its_20Removal_Circulates.html.

turns in Season 1, he battles a giant corporation and a big-name law firm for which he once worked. (He wins, of course).³¹

In the CVRA case against Santa Monica, there is no giant corporation – but there is a deep-pocketed city. And that deep-pocketed city hired a big-name law firm – Gibson, Dunn, and Crutcher – for which Shenkman once worked. But there the similarity with “Goliath” ends. Shenkman isn’t a washed-up alcoholic and he lives in Malibu with his law partner and wife, not in Santa Monica. So far, at this writing, he has won his case against Santa Monica, although the verdict is on appeal and, thus, a Hollywood/TV ending is not guaranteed.

A Side Note Before Continuing

*“Both projects are in the Pico Neighborhood, **which activists have long complained has carried an unfair share of low-income projects and social services.** The loan document cites overriding considerations for granting the funds. ‘The proposed development is located in the Pico neighborhood which has historically been served by affordable housing developments. However, given the proximity to transit (both the Expo Line and bus routes) and services, the proposed development provides the increased opportunities... while providing access to transit, and services.’” [Bold face added]*

Report in the *Santa Monica Lookout* on two proposed low-income housing projects³²

Since the introduction to this chapter already has disclosed that Shenkman’s suit was a success at the lower court level and that district voting was ordered – albeit stayed while an appeal takes place – there is an obvious question. If the plaintiffs prevail on appeal and a new system of district voting is installed, would that result be a Good Thing for Santa Monica. Presumably, discrimination is a Bad Thing. But any answer to the question has to depend on what is defined as a Good Thing.

If voting by district is used, might the result be excessive NIMBYism (Not In My Back Yard-ism)? That is, might voters in the separate districts take a too-parochial view of their own interests and resist needed development (if you think more development is needed)? Might the 1946 system of at-large voting – precisely by making councilmembers less responsive to local concerns – produce better decisions from a larger, citywide perspective? This type of argument has also been made at the statewide level with regard to development. It has been argued at that level that the legislature should enact legislation that would override local zoning and thus permit denser development (which is seen as a Good Thing). The local governments, it is argued, even local governments elected at-large, are too-parochial and restrict development in their jurisdictions excessively, thus driving up rents and housing prices.

These kinds of arguments – essentially that too much democracy can/will have negative consequences – ultimately turn on grand philosophical concepts. They ultimately also rest on political predictions on what happens at the local level if a sense develops that decisions are being made on high without input

³¹In Season 2, the character played by Thornton does get entangled in municipal affairs but with regard to the City of Los Angeles, not Santa Monica.

³²Jorge Casuso, “Low-Income Housing Project Slated for Pico Neighborhood Subject of Meeting Tuesday,” *Santa Monica Lookout*, May 20, 2019. Available at http://santamonicalookout.com/ssm_site/the_lookout/news/News-2019/May-2019/05_20_2019_Low_Income_Housing_Project_Slated_for_Pico_Neighborhood_Subject_of_Meeting_Tuesday.html.

from those immediately affected. What happens when – fairly or not – voters feel that the powers-that-be-on-high are producing undesired results by not responding to local concerns.

Particularly in California with its institutions of direct democracy, the results of voter frustration in such circumstances can be jarring. Ask old-time state politicians who were around in the late 1970s about the taxpayer revolt, the election of June 1978, and the resulting passage in that election of Proposition 13 (which drastically cut property taxes).³³ Or ask former Governor Gray Davis, recalled by voters in 2003 and replaced by Arnold Schwarzenegger who was promising in the recall campaign to “Bring California Back.”³⁴

In any event, as the quote at the start of this section indicates, while low-income housing may be a Good Thing, not everyone in the Pico Neighborhood agrees that more of it should be built *there*. Not everyone agrees with “overriding” such concerns in the name of the greater good. In short, NIMBYism – if that’s what it is - is not confined to higher-income neighborhoods. In poorer, neighborhoods it occurs as well, sometimes taking the form of concerns about potential gentrification, and sometimes – as in the Pico case – about “reverse gentrification.”³⁵

Moreover, there are alternative views concerning NIMBYism, gentrification, and related issues. It has been argued that in the real world, overriding local concerns can produce perverse and unintended results. Suffice it to say, the issue of housing costs, zoning, and state and local policy on housing is complex. It is more complex than many folks want to believe, although evaluating the various viewpoints is off-topic for this chapter.³⁶ In any event, even new residents of Santa Monica who live in recently-constructed developments may not turn out to be proponents of yet more development. They, too, are affected by traffic and congestion, even those who make use of ride-hailing services, bicycles, and e-Scooters. As the saying goes, “the last one in says ‘shut the door; we’re all here.’”

The CVRA tilts toward local representation as a Good Thing, at least when a protected class is otherwise receiving less political voice than it should. It doesn’t guarantee that the results will be to everyone’s liking, or even that protected local residents will get what they want from the process. It doesn’t guarantee that more minority candidates will be elected. It just assumes that in racially-polarized situations, minority voters will have a greater chance with districts to elect candidates they think will represent their concerns than under at-large systems.

Whether or not you think district voting is a Good Thing or a Bad Thing, so far, the CVRA has produced what one study termed a “quiet revolution” in local government by pushing numerous cities to make

³³See <https://www.youtube.com/watch?v=IY6-YVfvtFQ> and <https://www.youtube.com/watch?v=Sm-1Fjgk4M>.

³⁴See https://www.youtube.com/watch?v=CkE11Egb_7Q.

³⁵Reverse gentrification refers to placing undesirable facilities in a neighborhood such as drug treatment centers, etc.

³⁶Readers might be interested in the views of UCLA Professor Michael Storper. An interview with him can be found in “Blanket Upzoning—A Blunt Instrument—Won't Solve the Affordable Housing Crisis,” *The Planning Report*, March 15, 2019. Available at <https://www.planningreport.com/2019/03/15/blanket-upzoning-blunt-instrument-wont-solve-affordable-housing-crisis>. The audio of a June 2019 presentation by Storper on this subject can be found at <https://archive.org/details/StorperNENeighbors632019>.

the switch to districts.³⁷ But some jurisdictions have sought to fight CVRA suits, probably the most resistant before Santa Monica being Palmdale (which, as noted above, ultimately lost and had to convert to districts). Santa Monica chose to resist, choosing a very prominent law firm – Gibson, Dunn and Crutcher – to defend its at-large electoral system and a lead attorney from that firm – Theodore J. Boutros Jr. – who has taken high-profile cases to the U.S. Supreme Court.

Although Santa Monica has refused Public Records requests for its expenses up through the appeal, estimates of \$10 million have appeared just for the defense cost.³⁸ If Santa Monica loses on appeal, it will have to pay Shenkman and his associates on the plaintiffs' side as well. In the Palmdale case, apart from its own legal costs of about \$7 million, that city paid the plaintiffs' attorneys, i.e., Shenkman and associates, a reported \$4.5 million plus interest.³⁹

Shenkman has said that some of his earlier settlement money has gone to the Southwest Voter Registration Education Project, a group that encourages Latinx voting.⁴⁰ While a detailed listing of Santa Monica's expenses might well disclose the City's strategy and is thus protected from a Public Records request, Shenkman has said that the City was obligated to hand over the expense total, although perhaps not the details within that total.⁴¹ But from a public relations viewpoint, it is probably to his advantage for the City to be in the position of hiding something from voters. Voters can see his proposed fees and costs from court records, but they are denied access to the corresponding information about the City's expenses.

As an affluent city, Santa Monica can afford very large legal bills, win or lose, an option not available to many other small and medium-sized cities with at-large election systems. But a loss of the appeal by Santa Monica would signal to other cities with ample financial resources that, in the end, even large legal fees can't save at-large systems. It would also suggest that Shenkman and associates aren't likely to be deterred by aggressive and expensive defenses in future litigation against other cities. In essence, it would signal that Good Thing or Bad Thing, the CVRA is a Big Thing that can't be ignored. A loss by Shenkman and associates through the remaining appeal process, would signal the opposite: If a city has the monetary resources, it may overcome a CVRA suit.

³⁷Justin Levitt and Douglas Johnson, *Quiet Revolution in California Local Government Gains Momentum*, Rose Institute of State and Local Government, Claremont McKenna College, November 3, 2016. Available at <http://roseinstitute.org/wp-content/uploads/2016/11/CVRA-White-Paper.pdf>.

³⁸Jorge Caruso, "City Plans to Appeal Decision in Voting Rights Case," *Santa Monica Lookout*, November 13, 2018. Available at https://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2018/November-2018/11_13_2018_City_to_Appeal_Decision_in_Voting_Rights_Case.html.

³⁹Mary Plummer, "The Massive Election Change in California You've Likely Never Heard Of," *LAist*, January 2, 2019. Available at <https://archive.org/details/NENeighbors6112018KevinShenkman>.

https://laist.com/2019/01/02/the_massive_election_change_in_california_youve_likely_never_heard_of.php; Robin Abcarian, "Meet the Malibu lawyer who is upending California's political system, one town at a time," *Los Angeles Times*, May 14, 2017. Available at <https://www.latimes.com/local/abcarian/la-me-abcarian-shenkman-voting-20170514-story.html>.

⁴⁰Meeting of Northeast Neighbors, June 11, 2018. Audio at <https://archive.org/details/NENeighbors6112018KevinShenkman>.

⁴¹Meeting of Northeast Neighbors, January 7, 2019. Audio at <https://archive.org/details/ShenkmanNENeighbors1719>.

Back to our Tale

“The previous system of district-based elections was abandoned and at-large elections were adopted in 1946, purposefully to prevent non-Anglo Santa Monicans... from achieving representation... Since that time, at-large elections have been very successful in achieving... (their) nefarious purpose, dilution of Latino voting power and denial of effective political population.”

Initial Complaint filed April 12, 2016 with Superior Court,
County of Los Angeles⁴²

In essence, the quote above is the heart of the case against Santa Monica. The complaint goes on to argue that Maria Loya and others have been the preferred candidates of residents of the Pico Neighborhood but have not prevailed citywide because of racially-polarized voting as defined by the CVRA. It notes that a letter to that effect was sent to the city attorney of Santa Monica who, in an email, said the claim would be discussed by the council.⁴³ Apart from the claim of violation of the CVRA, the claim against the City was also based on the assertion that the existing system of at-large elections violated the Equal Protection Clause of the California constitution by discriminating against non-Anglo voters.⁴⁴

The warning letter contained a copy of a report the city council had commissioned back in 1992. At the time, the council was concerned about whether its at-large system might be viewed as vulnerable to a challenge under the *federal* Voting Rights Act, which – as noted earlier – has a higher bar for proving discrimination than the CVRA (which wasn’t enacted until 2002). Back in 1992, the council had reason to be concerned about its at-large system thanks to a man who died shortly before the most recent lawsuit against Santa Monica went to trial.

Joaquin Avila, a voting rights attorney, had begun using the federal voting rights statute to sue California cities over their use of at-large systems which, he argued, discriminated against Latinx voters. Two of his cases went to the U.S. Supreme Court and succeeded in forcing a change to districts. But his most notable case involved Los Angeles County and its five elected supervisors who were in districts drawn in ways that disfavored the Latinx population. Avila forced a switch in the County to a revamped district

⁴²Pico Neighborhood Association, Maria Loya and Advocates for Malibu Public Schools, Plaintiffs v. City of Santa Monica, California; and Does 1-100, filed April 12, 2016, BC616804. Available at <https://www.santamonica.gov/Media/Default/Attorney/Election/Complaint.pdf>. The initial complaint referred also to the Santa Monica-Malibu Unified School District, not just the City, apparently the reason the Advocates for Malibu Public Schools group was involved.

⁴³The letter is reproduced in Exhibit E submitted by the City as the litigation developed. Available at <https://www.santamonica.gov/Media/Default/Attorney/Election/20180329-2-EXE.Demand%20Letter%20from%20Plaintiff.pdf>.

⁴⁴Article 1, section 7 of the California constitution says in part that, “a person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws.” See https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=CONS&article=1.

with a majority of Latinx residents in a suit settled (for a reported \$6.3 million) in 1991, i.e., shortly before Santa Monica commissioned its report.⁴⁵

The expert that the city council hired – Professor J. Morgan Kousser of Caltech – looked at the history of Santa Monica’s at-large system and concluded that, indeed, the City might well be vulnerable. Not surprisingly, Professor Kousser was hired again as an expert in the 2016 case. This time, however, he was hired not by the City but instead by the plaintiffs.

In any event, according to the 2016 CVRA complaint, no response to the initial letter was received from the Santa Monica city attorney or from anyone else. Complaints of this type are primarily venues for assertion, not proof. But it did note some local history. Some of that history had been discussed in the earlier Kousser report of 1992.

Santa Monica had a district form of government from 1906 until 1914. Before 1906, it had a system of five trustees elected at large. After 1914, it was run by three commissioners elected at-large, each with separate functions (public safety, public works, and finance).⁴⁶ In 1946, the issue of switching back to districts was raised, studied by a specially-created Board of Freeholders, and then rejected by voters. There is ample evidence that these concerns were that district voting would give power to minorities as they were viewed at the time. The complaint, for example, cites an ad from the 1946 campaign that *opposed* the at-large system that was being proposed then to voters, and which referred to the “dictatorship” that would result from at-large voting:

*“Where will the laboring man go? Where will the Jewish, colored, or Mexican go for aid in his special problems? Where will the resident of Ocean Park, Douglas district, the Lincoln-Pico and other districts go when he needs help. The proposed charter is not fair – it is not democratic. It is a power grab – and we plead with all citizens of Santa Monica to protect their interests (vote no)...”*⁴⁷

Santa Monica voters of that era evidently saw the kind of arguments raised in the opponents’ ad as precisely the reason to vote “yes” on the at-large option. That is, the issue of who would be favored and who would be disadvantaged by at-large voting was discussed in the campaign. And voters made their choice for an at-large system with that information in the background.

As the saying goes, the wheels of justice grind slowly. Nothing much happened after the 2016 filing, other than that the city council in closed session evidently decided to fight the lawsuit and to hire outside counsel to do so. However, the court requested more detailed information from the plaintiffs. From a strategic point of view, it is in the interest of plaintiffs to put just enough information in their complaint to have the court willing to consider it, but not so much as to provide the defendant city with all the evidence the plaintiffs plan to produce.

⁴⁵A tribute to Avila can be found in Marcos Breton, “Before he died last week, this man changed how we vote in California. Do you know him?” *Sacramento Bee*, March 18, 2018. Available at <https://www.sacbee.com/news/local/news-columns-blogs/marcos-breton/article205223534.html>.

⁴⁶This history is contained in <https://www.santamonica.gov/Media/Default/Attorney/Election/20170509.Opp%20to%20Demurer.pdf>.

⁴⁷Ibid.

According to a more detailed amended complaint filed in February 2017, no settlement discussion or negotiations had taken place between the plaintiffs' attorneys and City representatives. The amended complaint provided added evidence of intent to discriminate back in 1946 and included information about elections more recently.⁴⁸ It noted that of the almost 90,000 Santa Monica residents counted in the 2010 Census of Population, about 13% were Latinx. It cited the electoral defeats of candidates preferred by Pico Neighborhood voters who nonetheless lost citywide. And it indicated the prejudice was the cause of these defeats. For example, when Tony Vazquez ran in 1994, a cartoon appeared in the now-defunct local newspaper – the *Outlook* – showing him as member of a street gang. (Vazquez's case is complicated, however, because he had been elected in 1990, i.e., before the 1994 defeat, and later came back to the council in 2012.) Plaintiff Maria Loya's case of 2004 is cited along with the Oscar de la Torre case of 2016.

The amended complaint also referred to the episode in 1992 that led to the expert's report cited earlier. At that time, Santa Monica created a Charter Review Commission whose report suggested that at-large voting was "an obstacle to ethnic empowerment." It noted that the system provided for overrepresentation of the north of Montana (Avenue) area and the lack of Pico Neighborhood representation. However, the council – by a four-vote majority – rejected a change to the existing election system. All of these examples and allegations were previews of what was being planned for a future trial on the issue of a CVRA violation.

The Response

"The complaint... fails to allege the constituent facts of racially polarized voting – that Latinos have preferred certain candidates and have voted as a bloc, and that the white bloc usually outvotes the Latino bloc."

Demurrer filed by the City's attorneys March 30, 2017⁴⁹

With an initial court hearing on the complaint scheduled for May 22, 2017, the City's official response to the complaints came in late March, apparently after some contact by phone, email, and a face-to-face meeting with the plaintiffs' attorneys. A demurrer on behalf of the City was filed – essentially an argument to the court that there was no reason for further litigation on the issues to take place because the plaintiffs had not supplied sufficient evidence for further action. In effect, the demurrer was an argument that going forward would be a waste of time for the court. Accompanying documents with the demurrer disputed the plaintiffs' interpretation of the historical and voting records. It was noted that

⁴⁸The Advocates for Malibu Public Schools group was dropped as a plaintiff and the amended complaint focused only on the City of Santa Monica. It is available at <https://www.santamonica.gov/Media/Default/Attorney/Election/20170223.FAC-1.pdf>.

⁴⁹Available at <https://www.santamonica.gov/Media/Default/Attorney/Election/20170330.Demurrer%20to%20FAC.pdf>.

apart from events in 1946, Santa Monica voters, by roughly a two-thirds margin, had twice rejected going to district voting in 1975 and again in 2002.⁵⁰

On May 9, 2017, a response to the demurrer was filed by the plaintiffs pointing to the intent of the legislature in adopting the CVRA. The intent, as interpreted by the plaintiffs, was to provide a state-level path for complaints of racially-polarized voting that was easier to traverse than federal standards. The plaintiffs' attorneys argued essentially that the plaintiffs had provided sufficient evidence – presumably more would be adduced in a trial – for the court to proceed. Indeed, the plaintiffs suggested that expert witnesses would be provided at a later stage to attest to the merits of the complaint.

After a hearing on May 22, 2017, Superior Court Judge Yvette M. Palazuelos found that the plaintiffs had produced sufficient evidence on a preliminary basis for the case to go to trial. October 30, 2017 was set as the date, although the trial was later postponed to July 30, 2018.

The Next Phase

“That Santa Monica has said ‘we will fight to the death’ is ...a waste of resources (and) politically... not in line with Santa Monica’s progressive image.”

Plaintiffs' attorney Kevin Shenkman⁵¹

The period between the decision to proceed to a trial and the trial itself was marked with legal skirmishing and a discovery process that proved embarrassing to some members of the city council. The City's attorneys argued in a brief that the CVRA didn't authorize neighborhood groups such as the Pico Neighborhood Association to file the suit. They argued that even if there was a concentration of Latinx population in the Pico Neighborhood, most Latinx residents in Santa Monica lived outside that area. Basically, the defense strategy seemed to be to try and prevent the case from moving forward, and – if that strategy failed at the lower court level – to appeal.

There may also have been an intent to delay the process since the plaintiffs' attorneys had to bear the out-of-pocket costs while receiving no pay for their own services. They would be reimbursed for costs and rewarded with legal fees for their own efforts only if they ultimately prevailed and only after whatever appeals the City filed were adjudicated. The City's outside attorneys, it is reasonable to assume, were being paid as the process unfolded from municipal funds. It is unlikely that their payments were at risk or that they were contingent on the outcome of the case although, of course, neither the City nor its law firm disclosed what arrangements they had.

One assertion made by the City in this period sparked a mini-controversy. The City's brief pointed to city council members Latino Tony Vazquez and Latina Gleam Davis as evidence that Latinx candidates can be elected in Santa Monica. But Davis had not publicly identified herself as Latina prior to the lawsuit. After the suit against the City was filed, she then declared that her adopted parents had told her that her

⁵⁰Declaration of Daniel R. Adler. Available at <https://www.santamonica.gov/Media/Default/Attorney/Election/20170330-2.Request%20for%20Judicial%20Notice%20-%20Declaration%20of%20Daniel%20Adler.pdf>.

⁵¹Kate Cagle, “Lawsuit challenging Santa Monica elections survives City challenge,” *Santa Monica Daily Press*, June 21, 2017. Available at <https://issuu.com/smdp/docs/062117>.

biological mother was white – although from Chile – but that her father was Mexican. In a subsequent hearing, there was back and forth about DNA testing and family history.⁵² The controversy was somewhat reminiscent of the brouhaha over U.S. Senator (and 2020 presidential candidate) Elizabeth Warren’s claim of Native American heritage. At one point, the plaintiffs’ attorneys commissioned a poll aimed at showing that whatever Davis considered herself, Santa Monica residents thought she was white. Ultimately, the court found the entire matter to be irrelevant.

Notably, the City’s attorneys argued that the CVRA violated both the California and the U.S. constitutions because they are “race-conscious remedies that are not narrowly tailored to serve a compelling government interest, and impermissibly dilute the votes of non-Latino voters in the City of Santa Monica based on racial criteria.” In addition, they argued that “to the extent plaintiffs seek a remedy that is intended or designed to give more representation to Latino voters than to other voting groups or protected classes, the requested remedy violates the one-person, one vote of the United States Constitution.”⁵³

Thus, it appeared possible that the defense’s intent was to open an avenue to an eventual appeal to the U.S. Supreme Court. Their arguments were the type that has been used to challenge federal voting rights protections and affirmative action. In the past, the U.S. Supreme Court had refused to hear such arguments against the CVRA. But an increasingly-conservative Supreme Court might prove to be more receptive to these claims.

The interim period before the trial did impose some costs on council members. During a pre-trial discovery process, various members of the city council were forced to testify. Issues were uncovered that may not have had much to do with the CVRA allegations but were embarrassing. In one hearing, councilmember Pam O’Connor, who had been involved in the scandal over a firing of an appointee, walked out of a hearing when the firing matter came up saying “Bye, guys.” She was ordered back.⁵⁴ In another episode, she was questioned about possible conflicts of interest regarding payments as an historic preservation consultant on projects in the City.⁵⁵

⁵²Kate Cagle, “Davis’ testimony ends argument phase of voting rights trial,” *Santa Monica Daily Press*, September 11, 2018. Available at <https://www.smdp.com/davis-testimony-ends-argument-phase-of-voting-rights-trial/169247>; Jorge Casuso, “Santa Monica Has Two Latino Council Members, City Officials Contend,” *Santa Monica Lookout*, July 10, 2017. Available at https://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2017/July-2017/07_10_2017_Santa_Monica_Has_Two_Latino_Council_Members_City_Officials_Contend.html.

⁵³City of Santa Monica’s Answer to the First Amended Complaint, June 27, 2017. Available at <https://www.santamonica.gov/Media/Default/Attorney/Election/20170627.City%20Answer%20to%20FAC.pdf>.

⁵⁴Niki Cervantes, “Santa Monica City Councilmember Ordered Back to Deposition in Voting Rights Lawsuit,” *Santa Monica Lookout*, October 19, 2017. Available at https://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2017/October-2017/10_19_2017_Santa_Monica_Councilmember_Pam_OConnor_Ordered_Back_to_Deposition_in_Voting_Rights_Lawsuit.html.

⁵⁵Charles Andrews, “Don’t Remember... Can’t Recall,” *Santa Monica Daily Press*, April 25, 2018. Available at <https://www.smdp.com/dont-remember-cant-recall/165715>.

Councilmember Tony Vazquez revealed income from the TELACU organization during his deposition that it turned out was omitted from a required disclosure form he had filed.⁵⁶ The matter spilled over into issues of possible conflict of interest related to Vazquez’s wife and the Santa Monica-Malibu Unified School District. Depositions in the CVRA case also became linked to campaign contributions on behalf of councilmembers related to a dispute between rival Santa Monica hotels, the Huntley and the Miramar.⁵⁷

The City, having earlier failed to have the lawsuit thrown out, tried instead to have the court make a summary judgment in its favor. A request for summary judgment is a request that the court find, based on preliminary evidence, that the plaintiffs have no viable case and thus the matter should not go to full trial. Various arguments were made. An election expert hired by the City’s law firm provided statistical evidence that there was no way to create a majority Latinx district in Santa Monica because Latinx residents were spread out geographically, even if there was a concentration in the Pico Neighborhood. There was also analysis of election results suggesting – according to the interpretation of another expert – that Latinx residents were not disfavored by the at-large system.⁵⁸

The plaintiffs’ attorneys argued that the CVRA required only racially-polarized voting, not a majority district for a minority group.⁵⁹ The issue of what the remedy should be in cases of racially-polarized voting was a matter for the court to consider after trial. In addition, plaintiffs had their own expert who produced plausible districts that would address the problem. An alternative interpretation was provided of both history and voting outcomes.

As noted earlier, one of the experts hired by the plaintiffs’ attorneys was Caltech Professor J. Morgan Kousser, the same Professor Kousser who had written the 1992 report for the City warning of potential vulnerability of the at-large system under the federal voting rights law. In addition, the Latino mayor of San Juan Capistrano provided a statement that he had lost under that city’s at-large system, but then

⁵⁶Jorge Casuso, “Santa Monica Councilmember Tony Vazquez Has Reported Earning No Income Since His 2012 Election,” *Santa Monica Lookout*, November 1, 2017. Available at https://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2017/November-2017/11_03_2017_Santa_Monica_Councilmember_Tony_Vazquez_Has_Reported_Earning_No_Income_Since_His_2012_Election.html. TELACU is a Latinx-serving non-profit organization.

⁵⁷Niki Cervantes, “Voting Rights Plaintiffs Poised to Scrutinize Tainted Campaign Contributions,” *Santa Monica Lookout*, March 30, 2018. Available at https://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2018/March-2018/03_30_2018_Santa_Monica_Voting_Rights_Plaintiffs_Poised_to_Scrutinize_Tainted_Council_Campaign_Contributions.html

⁵⁸Declaration of Daniel R. Adler at <https://www.santamonica.gov/Media/Default/Attorney/Election/20180329-2.Request%20for%20Judicial%20Notice%20ISO%20City's%20MSJ.pdf>; Declaration of Peter Morrison at <https://www.santamonica.gov/Media/Default/Attorney/Election/20180329-2-EX%20AA.Morrison%20Declaration.pdf>.

⁵⁹Plaintiffs’ Opposition to Defendant’s Motion for Summary Judgment, filed May 31, 2018; Declarations of David Ely, J. Morgan Kousser, and Justin Levitt: <https://www.santamonica.gov/Media/Default/Attorney/Election/20180531.Opposition%20to%20MSJ-1.pdf>; <https://www.santamonica.gov/Media/Default/Attorney/Election/20180531-1.ElyDeclaration.pdf>; <https://www.santamonica.gov/Media/Default/Attorney/Election/20180531-2.Kousser%20Declaration.pdf>; <https://www.santamonica.gov/Media/Default/Attorney/Election/20180531-3.Levitt%20Declaration.pdf>.

won after the city moved to districts under threat of a lawsuit. He noted that none of the districts in San Juan Capistrano had a Latinx majority.⁶⁰

The Kousser Declaration

“A common editorial cartoon figure in the (Santa Monica Evening Outlook) in 1946 was ‘The Little Savage,’ an exaggeratedly thick-lipped, grass skirted, bare chested African or perhaps Australian native with a stick through his nose.”

Kousser declaration⁶¹

Kousser’s statement in the summary judgment phase of the litigation was particularly significant since it combined both statistical evidence of racially-polarized voting – the key to a CVRA case – and a descriptive history going back to the 1946 election when Santa Monica voters chose the current electoral system. In his statistical material, Kousser noted that there are no direct data available as to the racial or ethnic background of individual voters. When individuals register to vote, they are identified only by name. In the case of Latinx voters, however, lists of Spanish surnames can serve as proxies for the Latinx electoral composition in a precinct.

Statistical Analysis

The votes received by various candidates by precinct can then be analyzed as a statistical function of the proportion of Latinx voters in the precincts. That is, a regression analysis can be performed in which the percent of votes received by a particular candidate is a function of the percent of estimated Latinx voters by precinct. Latinx preferences can be inferred from what the regression analysis predicts would be the voting result in a hypothetical precinct that was 100 percent Latinx in composition. Because precincts vary in size (number of voters), the regression analysis can be weighted by size so that small precincts are not over-weighted.

Kousser went on in his statement to note that Asian names can also be used to add another racial/ethnic group to the analysis. He also noted that regression analysis, because it involves an assumed particular functional form can sometimes produce predictions that fall out of the possible range of the votes a candidate can receive. (A candidate cannot receive less than zero percent of the vote or more than a hundred percent.) He discussed statistical techniques that seek to limit the predictions to the possible range. And then he presented his statistical analysis of Santa Monica elections and concluded there was evidence of racially-polarized voting behavior.

In his historical analysis, Kousser analyzed the 1946 voter decision to create the current at-large system. Although he goes into detail and provides some statistical evidence, it really is pretty clear that race/ethnic prejudice played a part in that campaign. To say otherwise is to assert that Santa Monica was somehow isolated from the social currents of that period.

⁶⁰Declaration of Sergio Farias. Available at <https://www.santamonica.gov/Media/Default/Attorney/Election/20180531-4.Farias%20Declaration.pdf>.

⁶¹<https://www.santamonica.gov/Media/Default/Attorney/Election/20180531-2.Kousser%20Declaration.pdf>.

The next big push to switch to districts came in 1974. By that time, attitudes on race issues had begun to shift, partly as new, younger residents moved into Santa Monica. It was also the case that by the 1970s, the route of the Santa Monica freeway had swept through an area inhabited by minority groups and displaced them. There were by that time, however, two black members of the city council, both of whom (having been elected through the at-large approach) opposed moving to district voting. Although the history of the 1974 episode is ambiguous – certainly when compared with 1946 – Kousser provided statistical evidence that those voters who favored the two (losing) Latinx council candidates on the ballot in 1974, also voted *for* districts.

By the 1980s, the issue of SMRR domination of the city council was the dominant feature of Santa Monica politics. The anti-SMRR faction put Proposition J on the ballot in 1988 that would have kept the at-large system but had elections by seats. That is, each of the seven council seats would be a separate contest with separate candidates.

The anti-SMRR faction believed that with separate seats, SMRR would gain fewer seats on the council. In Kousser's view, dropping the first-past-the-post system (in which either three or four of the council seats are up for election) would have potentially *reduced* strategic voting which could have elected a minority candidate. (Under strategic voting – so-called “single shotting” – a voter could boost the chances of a single candidate under first-past-the-post by voting only for that one and not for any of the others.) Nonetheless, the campaign for Proposition J portrayed it as *favoring* minority candidates (perhaps because all successful SMRR-backed candidates had up to that point been white. In any case, J failed.

At the time of the Proposition J episode, Tony Vazquez – a local activist – said he favored a district system because it would allow a candidate from the Pico Neighborhood to win. Still, he managed to get himself elected as a SMRR-endorsed candidate in 1990 under the at-large system, the first Latinx candidate to do so. Four years later, he was up for re-election and was defeated. Kousser argued that the Vazquez defeat for reelection in 1994 illustrated the anti-Latinx tendency in the at-large system.

As noted, in the early 1990s, the city council created a Charter Review Commission to look at alternative voting systems. Ultimately, two alternatives were considered. One was a ranked voting system. Under that approach, voters rank the candidates. The candidate with the least number top-ranked votes has his/her voters' second choices allocated among the remaining candidates. This complicated process continues until one candidate receives a majority.⁶²

The other alternative considered by the Commission was district voting. But when the Commission's report – which favored the ranked approach - went to the council, neither option could obtain a majority of council votes. In the end, the at-large system remained in force. The Commission did point out that Pico Neighborhood residents at the time felt disenfranchised by the at-large system. They believed their neighborhood had been treated by the City as a dumping ground for the homeless, for drug-treatment centers, and other undesirable facilities.

Councilmember Vazquez, it might be noted, continued to favor a district system when the Commission report was considered. And in the 1994 (at-large) election he was defeated in what Kousser depicts as a

⁶²San Francisco uses this type of system.

hostile climate for Latinx residents. That year saw Proposition 187 on the statewide ballot. Prop 187 would have barred undocumented individuals from public services. It was part of then-Governor Pete Wilson's campaign for reelection. In the 1994 campaign, Vazquez was depicted by opponents as weak on crime and on the homeless issue. As described earlier, Vazquez was shown in a newspaper ad in a group of people who looked like gang members. He attributed his defeat at that time to racism and did not run again until 2012 (when he won).

In 2002, Measure HH was on the Santa Monica ballot which would have both created districts and moved to a mayor with veto power elected citywide. Measure HH would also have applied term limits to the council and installed a primary-runoff system rather than first-past-the-post. Santa Monica would then have had a system similar to that found in the surrounding City of Los Angeles. In the campaign, HH was depicted by opponents as a takeover by business interests and was defeated. Kousser simply recounted the HH defeat and didn't use it to illustrate a racial agenda.

In many ways, the Kousser declaration is the essential part of the plaintiffs' case. He argued that statistical evidence and descriptive history indicate that Santa Monica's 1946 at-large system was originally created, at least in part, for discriminatory reasons. When the issue of district elections subsequently arose, either there was a discriminatory element in rejecting the option or there was a complex of other issues that accounted for the defeat of districts. The thrust is to weaken the case of the City that even if motivations in 1946 were discriminatory, the system which endured thereafter is the will of the people as expressed in subsequent elections and that it doesn't violate the CVRA.

Because of the defendant's push for summary judgment, the Kousser declaration came out early, i.e., before a full trial. It is possible that the defense strategy in calling for summary judgment – apart from delay and apart from the off-chance that the court might actually make a summary judgment – was to obtain a preview of what would be offered in evidence in a trial. The City's attorneys succeeded in that objective, assuming that was their goal. But then they made a mistake, not of grand strategy but of postal delivery.

Whoops!

"Defendant's sole argument was that the motion was timely served because it was also served by e-mail... However, electronic service is not permitted unless the parties stipulate to such service..."

Decision of Judge Yvette M. Palazuelos, June 19, 2018⁶³

Despite the mini-trial that developed over the City's request for summary judgment, there never was an evaluation of the request based on statistical analysis, historical evidence, or legal interpretation. The City's attorneys failed to deliver required material within a legally-mandated time limit to Mr. Shenkman. This error occurred because priority mail was inadvertently used rather than express mail. As a result, the material arrived late.

⁶³Available at

<https://www.santamonica.gov/Media/Default/Attorney/Election/20180619.Orders%20Denying%20Motion%20re%20Waiver%20and%20MSJ-1.pdf>.

In view of the late arrival, the City's attorneys asked Judge Palazuelos to overlook the error, particularly because email delivery had been used within the time limit. In their view, the untimely paper delivery should be viewed as a technical error that shouldn't prevent a decision on summary judgment. A substantial volume of briefs and countering briefs was generated examining the arcane details of postal delivery service to Malibu (where Shenkman resides).

When Judge Palazuelos rejected these arguments. The delivery was late, and email was not an allowable substitute. She decided to proceed to a full trial due to the delivery error. That is, she decided not to consider the merits of the pro and con evidence on whether there was discriminatory voting that had been brought forth by the two parties. The City's attorneys filed their objections to her verdict with the Court of Appeal. Yet more briefs were filed. But the Court of Appeal rejected the City's objections to the lower court decision without comment.⁶⁴

It would be interesting to know how the prominent law firm that had been hired to defend the City explained its error of timely postal delivery to the city council and the city attorney. But whatever the explanation, it was conveyed behind closed doors. With the briefing and appealing and private explaining out of the way, the case proceeded to trial on July 30, 2018.

The Trial

"Other California cities believed just as strongly in their at-large election system. They nonetheless switched to district elections out of fear of overwhelming costs... We are fighting this lawsuit because we believe it lacks merit. But other cities without our financial resources haven't had that choice."

Santa Monica Councilmembers (Mayor) Ted Winterer and Gleam Davis⁶⁵

"Historically people in power have sought to preserve their position at the cost of the public good... Mayor Winterer recently wrote an op ed in the LA Times that these matters were best dealt with by voters and not the courts. Absent these court decisions, we would probably still have Jim Crow Laws and segregated schools."

Plaintiff Maria L. Loya⁶⁶

As the trial date approached, public awareness increased and there was an effort to move public opinion, as the quotes above suggest.⁶⁷ Also, at that time, a citizens' group with some support from certain city council members placed a term limits measure (Measure TL) on the November ballot. The

⁶⁴https://www.santamonica.gov/Media/Default/Attorney/Election/20180712.B291048_PTD_CityofSantaMonica.pdf.

⁶⁵Ted Winterer and Gleam Davis, "Santa Monica shouldn't have to change its local elections," *Los Angeles Times*, July 12, 2018. Available at <https://www.latimes.com/opinion/op-ed/la-oe-winterer-davis-santa-monica-20180712-story.html>.

⁶⁶Maria L. Loya, "City of Santa Monica's Election System Intentionally Dilutes Minority Vote," *Santa Monica Lookout*, July 26, 2018. Available at https://www.surfsantamonica.com/ssm_site/the_lookout/letters/Letters-2018/07_26_2018_OPINION_City_of_Santa_Monicas_Election_System_on_Trial%20.html.

⁶⁷Readers are reminded that the account presented in this chapter is based on the briefs and other litigation documents available on the City's website and news accounts. Complete transcripts were not available to the author.

City Facilities in Pico Neighborhood



measure set a limit of twelve years for service on the council, but without retroactivity. Thus, its immediate impact on the incumbent council would be nil. But TL might be interpreted as an alternative to the more dramatic shift to districts that the court case might produce.

The council also faced the likely loss of its one Spanish-named member, Tony Vazquez. Vazquez was a candidate for a seat on the state Board of Equalization. Although he came in second in the June 2018 top-2 primary behind a Republican, that showing was the result of a number of

Democrats splitting the Democratic vote. With the contest now between one Republican and one Democrat, and the district heavily Democratic, Vazquez would likely be leaving the council.⁶⁸

Although, as noted earlier, councilmember Glean Davis publicly claimed to be a Latina when the CVRA dispute began, the probable loss of Vazquez was at least a public relations problem. SMRR essentially solved the problem by endorsing a local restaurateur, Greg Morena. There was a good chance Morena would win in November since SMRR did not back incumbent Pam O'Connor who was associated with the local scandal involving the hiring and then unhiring of a city official. If Morena won, one departing Spanish-named Latino would be replaced by another.

The actual trial mirrored arguments that had developed earlier, especially those arguments surrounding the rejected request by the City for summary judgment. Plaintiffs' attorneys depicted the Pico Neighborhood as a dumping for undesirable municipal services due to lack of adequate representation. A landfill in the Pico Neighborhood that had been turned into a park was said to be leaking methane. The 1946 history was raised. Election results and statistics were cited. In effect, the Kousser

**Virginia Avenue Park
Pico Neighborhood**



⁶⁸There was some talk about whether it would be legal for Vazquez to hold seats on the Board of Equalization and the city council. The city attorney requested an advisory opinion from the state attorney general as to whether Vazquez could hold both positions and received an opinion that he couldn't. See Madeleine Pauker, "Councilmember Tony Vazquez to step down in January," *Santa Monica Daily Press*, November 29, 2018. Available at <https://www.smdp.com/councilmember-tony-vazquez-to-step-down-in-january/171177>.

material made up a large part of the plaintiffs' case. Kousser, of course, testified as did plaintiffs Maria Loya and her husband Oscar de la Torre.

The City's defense attorneys presented a brief at the start of the trial and made an opening statement using a PowerPoint slideshow with over a hundred slides.⁶⁹ Key defense arguments were:

- While the Latinx voting-age population of Santa Monica is only 13.6 percent of the total, they are currently represented by two of the seven members of the city council (Vazquez and Davis).
- At least during the elections of the 21st century, "Latino-preferred" candidates have done well in city elections.
- City voters rejected district elections in 1975 and 2002. The at-large system is the will of the people.
- The CVRA requires an alternative to at-large voting only if an alternative would provide increased opportunity for (in this case) Latinx voters.
- The plaintiffs cannot prove racially-polarized voting or vote dilution. Absent the latter, "racial gerrymandering" is not allowed.
- Kousser is an historian (not a statistician) who has manipulated and misinterpreted the data. He should have looked at Latino-*preferred* candidates as opposed to Spanish-*surnamed* candidates.
- Election results of non-council elections should have been considered (School Board, Rent Board, Community College Board)
- De la Torre deliberately threw the election by not making a real effort in 2016 to support the lawsuit so his results should be ignored.
- The defense's expert, Professor Jeffrey B. Lewis of UCLA's Department of Political Science *is* a statistician (unlike Kousser) and he properly uses Latinx-preferred candidates in his analysis. For historical analysis, the defense will use its own historian, American University Professor Allan J. Lichtman.
- The plaintiffs' demographic and electoral experts are unable to carve out anything close to a Latinx-majority district. The district they propose which includes the Pico Neighborhood would have a voting-age population that is only 30 percent Latinx.
- Key groups in Santa Monica such as SMRR and the local Democratic Club have endorsed Latinx candidates.
- There are very nice municipal facilities in the Pico Neighborhood such as a library and Virginia Avenue Park.
- Kousser has misinterpreted the 1946 episode. Various Latinx, Jewish, and black prominent residents in Santa Monica of that period endorsed the new system at that time.

The trial went on through October. It is clear from the listing above that the City's attorneys attacked the plaintiffs' case at every point. Yet when the decision came down, they lost. Before getting into the

⁶⁹City of Santa Monica's Opening Statement, August 1, 2018. Available at https://www.santamonica.gov/Media/Default/Attorney/Election/City%20of%20Santa%20Monica_Opening%20Deck%20v16.pdf.

mechanics of the decision and the appeal, it is interesting to speculate on why the City lost, given all the effort that went into its attorneys' aggressive attack on the defendants' case.

There may have been overkill in the defense, perhaps the result of hiring a high-profile law firm that had to prove its worth. The history of the 1946 episode is pretty clear. Why would Santa Monica be immune from the prejudices of the day? In the 1940s, discrimination on the basis of race and ethnicity was legal, nationally and locally. The U.S. military – that had just finished with World War II in 1946 – was segregated. The south was segregated. Some school districts in California segregated Mexican-American children from Anglo children. Restrictive covenants in housing were legal and commonplace. California had played a major role in the internment of the West Coast Japanese-origin population. The so-called Zoot Suit riots had occurred in downtown LA during the war.

Could Santa Monica have plausibly been an island oasis, idyllically separated from these external conditions and events? If there wasn't significant prejudice in the City, why would Santa Monica have had its "Ink Well" beach? Might it not have been better simply to concede that things were different in the distant past of 1946, and maybe even in the not-so-different past, but that in more recent times attitudes (and election results) had changed for the better? Yes, the defendants had made such claims about the recent past, but these claims were somewhat lost among all the other disputation.

While it is true that the plaintiffs could not produce a majority-Latinx district, they did produce a 30 percent district. If the City retained its first-past-the-post system but went to districts, even a significant minority could elect a preferred candidate. You really don't need highly sophisticated statistical evidence to see that point.

The idea that it's easier to campaign without a lot of money in a district that is 1/7th the size of Santa Monica than citywide is also hard to escape. Of course, no one can definitively determine in advance what a switch to districts would produce in practice. But if politics is local, it is more likely that local concerns will be emphasized, and significant demographic groups will have more voice.

The one (small) tangible victory that the City's attorneys had at the trial court level involved a dispute over plaintiff Maria Loya's emails. During the discovery phase, the defense had apparently requested emails related to various issues that would come up in the trial. However, only a perfunctory search for such emails had been made. The defense argued that substantial portions of the evidence presented by the plaintiffs should be excluded as a penalty and that monetary damages to the defense of about \$54,000 should be paid. Judge Palazuelos was unwilling to exclude the requested evidence since doing so would essentially preclude presentation of the plaintiffs' case. But although she found the claim of \$54,000 excessive, she did agree to damages of about \$21,600.⁷⁰

Given the overall failure of the City's defense at the trial court level, and – despite the need for a (closed) city council meeting to ratify an appeal – one interpretation of the strategy of defense overkill was that it was always aimed for an appeal. Perhaps appeal had always been the objective. Although

⁷⁰See Judge Palazuelos' ruling on this matter at <https://www.santamonica.gov/Media/Default/Attorney/2018.09.11%20Tentative%20Ruling%20on%20City's%20Sanctions%20Motion.pdf>.

there are no public records of what the City’s attorneys told the city council early on, given the Palmdale case, and given prior litigation successes of Shenkman and associates, the strategy from the beginning might well have been win-on-appeal.

The City’s attorneys may have contemplated going all the way to the U.S. Supreme Court if necessary (and if possible). The strategy could then be to make a counterargument to every assertion offered by the plaintiffs, put those counterarguments in the trial record, and give some friendly judge at a higher level something to which to point. If you – Mr. or Ms. Appeal Judge – or maybe you – Mr. or Ms. Supreme Court Justice – don’t buy argument A, what about argument B? Or C? Or D? Or E?

Decision and Appeal

“We received today the court’s tentative ruling. We are disappointed that it contains no reasoning in support of the court’s decision, which we believe is based on an unjustified adoption of the plaintiffs’ misguided and unsupported view of the law. In accordance with the court’s order, we will file briefing on the issue of remedies. Once the court’s ruling is final, we plan to appeal, which will allow the California Court of Appeal to address the significant legal issues of first impression posed by this case.”

Defendant's attorney Theodore J. Boutrous, Jr., November 13, 2018⁷¹

“...Defendant filed what it calls a “Request for Statement of Decision” but is really more of an inquisition of this Court by a litigant unhappy with the Court’s decision. Defendant is entitled to an explanation of the legal/factual basis for the Court’s decision; it is not, however, entitled to the rehearing of the evidence it seeks through its 152 questions, including subparts, that would only serve to burden and punish this Court for having the audacity to rule in favor of Plaintiffs in their effort to vindicate the voting rights of the Latino community in Santa Monica.”

Response of plaintiffs to defendant's request for Judge Palazuelos to explain her tentative decision⁷²

In November 2018, Judge Palazuelos announced she was making a tentative decision favoring the plaintiffs.⁷³ There was no detail in her announcement and no detail. The City’s attorneys asked for her reasoning and detail. Their request, however, was effectively a listing of every point that they had made as the lawsuit progressed and a demand that the judge explain how she had viewed each and every point. The plaintiffs’ attorneys saw the request as an attempt to relitigate the case.

⁷¹City of Santa Monica, Statement on Tentative CVRA Decision, November 13, 2018. Available at <https://www.santamonica.gov/press/2018/11/13/statement-on-tentative-cvra-decision>.

⁷²Brief filed November 26, 2018. Available at <https://www.santamonica.gov/Media/Default/Attorney/Election/Rsp%20and%20OBJ%20to%20Def%20Req%20for%20Statement%20of%20Decision.pdf>.

⁷³Available at <https://www.santamonica.gov/Media/Default/Attorney/Election/PNA-Tentative-Decision.pdf>.

Judge Palazuelos did issue a more detailed opinion. She found Santa Monica's at-large election system to be in violation of the CVRA and the Equal Protection Clause of the California constitution.⁷⁴ The City was ordered to hold a new, district-based election by July 2, 2019. The existing city council was ordered to cease function by August 15, 2018. Although the plaintiffs' attorneys had a proposed map of the City containing seven districts - shown in Appendix A to this chapter – Judge Palazuelos initially adopted only the single district (number 1) containing the Pico Neighborhood. The City could then propose the boundaries of the other six.

However, the City would not go along with the invitation to draw districts on the grounds that any such process would be lengthy and would involve consultations with local voters and residents. Another motive may have been that drawing districts would be seen by residents as a sign of concession that eventually there would be district elections. Some anonymous individual(s) began posting district maps, based on the plaintiffs' proposal, on City utility poles. (They were quickly removed as illegal postings.) And the plaintiffs' argued that the proposed consultation was just an attempt to delay a district election.⁷⁵ Absent a proposal for districts from the City, Judge Palazuelos adopted the plaintiffs' map as part of her final decision.



Appeals take time. Once the City lost before Judge Palazuelos, it faced a dilemma. Councilmember Vazquez was elected to the state Board of Equalization in November 2018, and thus a vacancy was created. With Vazquez gone, there would be one-less Spanish-surnamed individual on the city council. In theory, the council could have called a special election – which would have been held at-large – to fill the seat. But doing an at-large election would have been sticking a finger in the judge's eye, since she had decided that at-large elections were illegitimate.

The alternative route was for the council, by majority vote, to appoint someone to fill the seat. In theory, the council could have chosen plaintiff Maria Loya or her husband Oscar de la Torre.⁷⁶ But such a choice was not likely. Instead, the council called for applications for the vacancy and then chose a Latina from the Pico Neighborhood, Ana M. Jara, who had testified for the City during the trial. The council thus avoided antagonizing the judge and losing a councilmember with a Spanish-surname. It gained a

⁷⁴Decision of February 13, 2019. Available at <https://www.santamonica.gov/Media/Default/Attorney/4.%20Judgment.pdf>.

⁷⁵Plaintiffs' brief of December 4, 2018. Available at <https://www.santamonica.gov/Media/Default/Attorney/Election/reply%20remedies%20brief%20and%20declaration.pdf>.

⁷⁶De la Torre applied for the position. See Jorge Casuso, "Does the City Council Have the Votes to Appoint a New Member?" *Santa Monica Lookout*, January 17, 2019. Link for this article no longer functions. The author has a printout available on request. The author was unable to determine from news accounts if Loya applied.

new member who was likely to be friendly to the agenda of continuing the lawsuit through an appeal.⁷⁷ Loya unsurprisingly characterized Jara as “a rubber stamp on the council that will work in favor of special interests that control City Hall.”⁷⁸

When a decision, such as that rendered by Judge Palazuelos, is appealed to the Court of Appeal, the lower court’s decision is “stayed” (held in abeyance) while the appeal is processed. However, the decision in this case had two elements. The City was 1) ordered to hold a district election by July 2, 2019 using the district map included in the verdict, and 2) the current city council was ordered to cease functioning after August 15, 2019. Thus, the first part of the decision was an order for the council to do something (hold a district election by July 2, 2019) and the second part was an order *not* to do something (function after August 15, 2019). In the plaintiffs’ view, only the order to hold a district election – a “mandatory” injunction – was automatically stayed during the appeal, but the second element – a “prohibitory” injunction - was not automatically stayed.

The defense – not surprisingly – saw the issue differently. If the City didn’t hold a district election in July 2019, there would be no functioning city council by mid-August, an untenable situation. Thus, the City would be forced to hold a district election even though the requirement to do so might later be reversed on appeal. The City also sought to add an analysis of the November 2018 election by its expert, Jeffrey Lewis, presumably in support of the idea that the 2018 election was non-discriminatory.⁷⁹ Judge Palazuelos would not endorse the City’s position.⁸⁰

However, on appeal from her decision, the Court of Appeal eventually agreed with the City and ruled that the entire lower-court decision – the requirement for a July 2019 election *and* the August non-functioning of the at-large elected council was stayed.⁸¹ The Court of Appeal therefore excluded the

⁷⁷“Part I – Councilmember Jara’s Testimony in Voting Rights Lawsuit Provides Insight Into Her Ideas,” *Santa Monica Lookout*, January 29, 2019. Available at https://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2019/February-2019/02_01_2019_PART_I_Councilmember_Jaras_Testimony_in_Voting_Rights_Lawsuit_Provides_Insight_Into_Her_Views.html. “PART II: Councilmember Jara’s Cross Examination in Voting Rights Lawsuit,” *Santa Monica Lookout*, February 4, 2019. Available at https://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2019/February-2019/02_04_2019_PART_II_Councilmember_Jaras_Cross_Examination_in_Voting_Rights_Lawsuit.html.

⁷⁸Maria Loya, “Pico Neighborhood Residents Deserve an Uncompromised Voice on the City Council,” *Santa Monica Lookout*, January 23, 2019. Available at https://www.surfsantamonica.com/ssm_site/the_lookout/letters/Letters-2019/01_23_2019_OPINION_Pico_Neighborhood_Residents_Deserve_An_Uncompromised_Voice_on_the_City_Council.html.

⁷⁹Declaration of Dr. Jeffrey B. Lewis, February 28, 2019. Available at [https://www.santamonica.gov/Media/Default/Attorney/Election/4.%202019.02.28%20No.%20BC616804%20-%20Dr.%20J.B.%20Lewis%20Dec%20ISO%20Ex%20Parte\[2\].pdf](https://www.santamonica.gov/Media/Default/Attorney/Election/4.%202019.02.28%20No.%20BC616804%20-%20Dr.%20J.B.%20Lewis%20Dec%20ISO%20Ex%20Parte[2].pdf).

⁸⁰https://www.santamonica.gov/Media/Default/Attorney/Election/2019.3.6_Order%20denying%20ex%20parte%20Application%20to%20stay-1.pdf.

⁸¹Relevant documents are at <https://www.santamonica.gov/Media/Default/Attorney/petitionforwrit.pdf>; https://www.santamonica.gov/Media/Default/Attorney/Election/B295935_Stay%20Order_City%20of%20Santa%20Monica.pdf; <https://www.santamonica.gov/Media/Default/Attorney/Election/20190327.OrderGrantingWrit.pdf>.

Lewis analysis which had not been presented at trial (since the trial occurred before the 2018 election).⁸² The existing council could continue to function after August 15, 2019.

On April 29, 2019, the defense asked the Court of Appeal to grant “calendar preference.” Specifically, it asked that the appeal be decided by July 10, 2020 so that the November 2020 election for city council could be held on time. The request conceded that the City could hold a district-based election absent a decision on the appeal, but the City did not want to do so. Accompanying documents complained that the defense had asked the plaintiffs’ attorneys whether they would object to the request for calendar preference but hadn’t received a response.

Shenkman responded saying that after an email exchange on the issue, it was the defense that hadn’t communicated. But, in any event, there was no objection on the plaintiffs’ side to calendar preference. So, both sides agreed that calendar preference was desirable, even while disagreeing on whose fault it was that communication broke down. And on May 6, 2019, the Court of Appeal agreed to decide the case sufficiently in advance of the November 2020 election.⁸³

At this writing, there the substantive matter rests. The appeal will be decided by July 10, 2020. Whether the City would in fact go forward with a district election in 2020 if it loses the appeal, or whether it would instead attempt to delay and try for further appeals remains to be seen.⁸⁴ In the meantime, the plaintiffs’ attorneys submitted a tally of about \$900,000 in out-of-pocket expenses which the defense argued should be reduced or even entirely struck on technical grounds. In due course, if the plaintiffs ultimately prevail, the court will decide on what should be reimbursed.⁸⁵

Apart from the \$900,000, of course, would come the much larger sum of reasonable fees for bringing the case to court. The plaintiffs’ attorney requested over \$21 million as reasonable fees. They note that the defense attorneys were surely getting major payments and that they had to devote similar efforts to match the defense.⁸⁶

⁸²Relevant documents are at

[https://www.santamonica.gov/Media/Default/Attorney/Election/1.%202019.02.28%20No.%20BC616804%20-%20Ex%20Parte%20Application\[4\].pdf](https://www.santamonica.gov/Media/Default/Attorney/Election/1.%202019.02.28%20No.%20BC616804%20-%20Ex%20Parte%20Application[4].pdf);
<https://www.santamonica.gov/Media/Default/Attorney/Election/Motion%20to%20Strike-Lewis.pdf>;
<https://www.santamonica.gov/Media/Default/Attorney/Election/20190321.OppositiontoPetition.pdf>.

⁸³The relevant documents are at

<https://www.santamonica.gov/Media/Default/Attorney/Election/MotionCalendarPreference.pdf>;
<https://www.santamonica.gov/Media/Default/Attorney/Election/ResponseCalendarPreference.pdf>;
<https://www.santamonica.gov/Media/Default/Attorney/Election/ReplyISOCalendarPreference.pdf>;
https://www.santamonica.gov/Media/Default/Attorney/Election/20190506.B295935_Order_CityofSantaMonica.pdf.

⁸⁴After losing the initial decision, the City posted three short videos by Mayor Glean Davis giving its rationale for the appeal. See

<https://archive.org/details/Glean3WhatMakesSantaMonicaDifferentThanOtherCitiesWhoHaveComeUnderThisLawsuit>.

⁸⁵Relevant documents are at

<https://www.santamonica.gov/Media/Default/Attorney/Election/Memo%20of%20Costs.pdf>;
<https://www.santamonica.gov/Media/Default/Attorney/Election/Motion%20to%20strike%20or%20tax%20costs.pdf>.

⁸⁶The fee request was based on documented hours of work by the various attorneys, multiplied by hourly rates, and further multiplied by a “lodestar” factor which is used in California in such cases and is supposed to represent

The fee request of the plaintiffs came shortly after the Santa Monica city council had announced budget cuts for various programs, citing fiscal constraints. Thus, the City was put in an uncomfortable position. It had refused to release any information on the fees it was paying to its defense attorneys. If it continued to do so, it couldn't argue that they were receiving less than \$21 million. Or it could release the information on its costs so far. But whatever it had paid, even if less than \$21 million, the total had to be a big number. And the appeal would cost still more.

Where Does It Go from Here?

"...Some legal experts and critics contend that, by pushing cities to by-district elections, Shenkman inadvertently has exposed the California law to court challenges that could ultimately undermine its purpose, a point that he disputes."

*Los Angeles Times report*⁸⁷

By itself, the kind of governance Santa Monica ends up with as a result of the litigation is just a local issue involving one city with a population of less than 100,000. But if, after appeals are exhausted, the final result is district elections, it is likely that other California jurisdictions will fall into line. Shenkman has voiced confidence that the appeal will ultimately affirm the lower court ruling. He indicated that he had heard that city manager Rick Cole said that the strategy of the City is to get the case before a "Trump judge."

Of course, the assertion by Shenkman of what Cole may have said is the height of hearsay. The city council gets its legal advice behind closed doors. Whatever strategies the City's attorneys have discussed with the council, the city attorney, or the city manager is unlikely to become public anytime soon.

Shenkman further stated at a neighborhood group meeting in December 2018 that if a "Trump judge" is the strategy, the City's problem is that the first "Trump judge" the case will run into in the course of appealing is at the U.S. Supreme Court, and he doubts that the Supreme Court would take jurisdiction.⁸⁸ But that point is not clear. The Ninth Circuit, which would hear such a case before it got to the Supreme Court (assuming the Supreme Court took it), now has several sitting "Trump judges."⁸⁹ At this writing,

the difficulty of the case. See

[https://www.santamonica.gov/Media/Default/Attorney/Election/2019.6.3_Notice%20of%20Motion%20and%20Motion%20for%20Attorneys'%20Fees\[1\].pdf](https://www.santamonica.gov/Media/Default/Attorney/Election/2019.6.3_Notice%20of%20Motion%20and%20Motion%20for%20Attorneys'%20Fees[1].pdf);

[https://www.santamonica.gov/Media/Default/Attorney/Election/Decl.%20of%20Margaret%20M.%20Grignon%20ISO%20Fee%20Motion\[1\].pdf](https://www.santamonica.gov/Media/Default/Attorney/Election/Decl.%20of%20Margaret%20M.%20Grignon%20ISO%20Fee%20Motion[1].pdf);

<https://www.santamonica.gov/Media/Default/Attorney/Election/Decl.%20of%20Barrett%20S.%20Litt%20ISO%20Fee%20Motion.pdf>.

⁸⁷Benjamin Orestes, "Court battles could test constitutionality of California voting rights law," *Los Angeles Times*, March 3, 2019. Available at <https://www.latimes.com/local/lanow/la-me-ln-santa-monica-california-voting-rights-act-20190303-story.html>.

⁸⁸Audio recording of meeting of Northeast Neighbors, December 3, 2018 at <https://archive.org/details/NENeighborsDistricting1232018>.

⁸⁹Ross Todd, "Trump Gets a 4th Judge Appointed to 9th Circuit," *National Law Journal*, March 26, 2019. Available at <https://www.law.com/nationallawjournal/2019/03/26/trump-gets-a-fourth-judge-appointed-to-ninth-circuit/>.

the former mayor of Poway, a city which was forced to switch from at-large to district voting, also has an appeal going to the Ninth Circuit.⁹⁰

In addition, Shenkman suggested in response to a question at the same meeting that if Santa Monica voters want to halt the appeal, their only option is to mount a recall election against members of the city council. If such a recall, or a credible threat of one, caused a majority of council members to drop their resistance and accede to district voting, that decision would short-circuit the appeal. It would avoid rulings by “Trump judges” and it would produce a monetary settlement with Shenkman and his associates. Presumably, Residocracy or some other Santa Monica group could attempt a recall. But at this writing, no such moves have occurred.

The city council’s rationale for not switching to districts and expending large sums to defend the current at-large system, apart from all the legalisms, is that – in the words of Mayor Glean Davis, “...Districts will break up that solidarity of interests and create little Balkan states. They will start to compete against each other and not pull in the same direction.”⁹¹ But that statement is self-contradictory. If there were a “solidarity of interests” across neighborhoods, then they would “pull in the same direction” *regardless of voting systems*. You can argue that in the end it is a Good Thing if local differences of interests are suppressed for the benefit of some notion of the common good. But you can’t argue that interests are both different and uniform, as the mayor seemingly does.

In the end, the most reasonable interpretation of the council’s decision to press on with the legal fight is that of simple self-preservation. Perhaps some of the current council members might succeed in staying in office under a switch to districts, but not all seven. With access to Santa Monica’s ample treasury, they have essentially unlimited resources to carry on the litigation. They might be right that Santa Monica would be better off with the current at-large system than with districts. They might well believe that they are doing an excellent job, superior to anything that would result from districts. But their decision to fight on (and on) is not plausibly solely a matter of civic do-goodism. Only saints sacrifice their self-interest for higher principles. The City of Santa Monica is named after a saint, but sainthood generally does not extend to its local politics, nor to the politics of any city.

At this writing, the key Santa Monica interest groups have no particular interest in abandoning support for the incumbents on the city council, since those groups depend on them for near-term decisions on zoning, expenditures, pay, jobs, and other policies. The current members of the council are likely to remain in office until at least 2020, so there is little point in antagonizing them. But if it becomes clear, as the appeal continues, that districts are on the horizon, the interest groups will start seeking candidates who can win within the new districts. Old loyalties to the at-large incumbents, such as they are, will begin to melt. Past personal relationships are nice, slogans such as everyone “pulling together” are nice, but economic interests are more compelling.

If Santa Monica switched to districts, the possibility of using old-fashioned door-to-door campaigning, as opposed to the relatively large sums now needed to compete effectively in city council elections, might

⁹⁰Bob Egelko, “California Voting Rights Act survives legal challenge, but it’s not over,” San Francisco Chronicle, February 6, 2019. Available at <https://www.sfchronicle.com/news/article/California-Voting-Rights-Act-survives-legal-13592466.php>.

⁹¹Quoted in Benjamin Oreskes, “Court battles could test constitutionality of California voting rights law,” *Los Angeles Times*, March 9, 2019. Available at <https://www.latimes.com/local/lanow/la-me-ln-santa-monica-california-voting-rights-act-20190303-story.html>.

(and let's emphasize "might") produce council members more attuned to local neighborhood concerns. It might paradoxically, strengthen the influence of SMRR relative to developers, at least in some districts, since SMRR is an organized group that could conduct door-to-door campaigns. It might also strengthen the influence of the City's public sector unions and the local hotel union (UNITE HERE), all of which also have the human resources for such in-person campaigning. Or the various neighborhood associations in Santa Monica could play a larger role in municipal affairs than they have in the past, assuming they can mobilize their members. However, it might take more than one election cycle for new patterns of influence to stabilize as the various groups learn to play by the new rules.

So, would the eventual result of the change in the mix of influences produce a better Santa Monica? There are too many unknowns to answer definitively, and much depends on what you think is "better." Applied to other cities, a switch to districts raises the same questions that apply to Santa Monica, even if the details of local politics and influence are unique to each jurisdiction. The one thing that can be said is that the result of a switch to districts from at-large voting – in whatever city – is likely to be different long-term outcomes, whether better or not.

Appendix A: The District Map



The map above was proposed by the plaintiffs and subsequently incorporated into the decision of Judge Palazuelos. District 1 includes the Pico Neighborhood.

Source: Plaintiffs' proposed seven-district map, November 19, 2018. Available at https://www.santamonica.gov/Media/Default/Attorney/ex.261_Seven%20District%20Map.pdf.

Appendix B: The California Voting Rights Act

CALIFORNIA ELECTIONS CODE SECTION 14025-14032

14025. This act shall be known and may be cited as the **California Voting Rights Act of 2001**.

14026. As used in this chapter:

(a) "At-large method of election" means any of the following methods of electing members to the governing body of a political subdivision:

- (1) One in which the voters of the entire jurisdiction elect the members to the governing body.
- (2) One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body.
- (3) One which combines at-large elections with district-based elections.

(b) "District-based elections" means a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district.

(c) "Political subdivision" means a geographic area of representation created for the provision of government services, including, but not limited to, a city, a school district, a community college district, or other district organized pursuant to state law.

(d) "**Protected class**" means a class of voters who are members of a race, color or language minority group, as this class is referenced and defined in the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.).

(e) "**Racially polarized voting**" means voting in which there is a difference, as defined in case law regarding enforcement of the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.), in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate. The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.) to establish **racially polarized voting** may be used for purposes of this section to prove that elections are characterized by racially polarized voting.

14027. An at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class, as defined pursuant to Section 14026.

14028. (a) A violation of Section 14027 is established if it is shown that racially polarized voting occurs in elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision. Elections conducted prior to the filing of an action pursuant to Section 14027 and this section are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action.

(b) The occurrence of racially polarized voting shall be determined from examining results of elections in which at least one candidate is a member of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of a protected class. One circumstance that may be considered in determining a violation of Section 14027 and this section is the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class, as determined by an analysis of voting behavior, have been elected

to the governing body of a political subdivision that is the subject of an action based on Section 14027 and this section. In multiseat at-large election districts, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative groupwide support received by candidates from members of a protected class shall be the basis for the racial polarization analysis.

(c) The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy.

(d) Proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

(e) Other factors such as the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns are probative, but not necessary factors to establish a violation of Section 14027 and this section.

14029. Upon a finding of a violation of Section 14027 and Section 14028, the court shall implement appropriate remedies, including the imposition of district-based elections, that are tailored to remedy the violation.

14030. In any action to enforce Section 14027 and Section 14028, the court shall allow the prevailing plaintiff party, other than the state or political subdivision thereof, a reasonable attorney's fee consistent with the standards established in *Serrano v. Priest* (1977) 20 Cal.3d 25, 48-49, and litigation expenses including, but not limited to, expert witness fees and expenses as part of the costs. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

14031. This chapter is enacted to implement the guarantees of Section 7 of Article I and of Section 2 of Article II of the California Constitution.

14032. Any voter who is a member of a protected class and who resides in a political subdivision where a violation of Sections 14027 and 14028 is alleged may file an action pursuant to those sections in the superior court of the county in which the political subdivision is located.

Source: <http://archive.fairvote.org/?page=1307>.

Chapter 9

Reconsidering the Voting Age in Los Angeles and California

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Optimal democratic functioning requires that the views and interests of all citizens are represented in political decisions and social policy. In the United States, representation relies heavily on the right to vote for elected officials. The topic of voting rights—particularly *who* is allowed to vote—has been a reoccurring issue throughout US history. Non-white citizens were not granted the right to vote until the 1870s the right to vote for women was withheld until 1920 at the national level. Citizens between the ages of 18 and 20 were unable to vote before 1971. Convicted felons are disenfranchised, and their voting rights are reinstated in only some states. Non-citizens and citizens under the age of 18 are currently unable to vote with a few exceptions.

Recently, researchers and policymakers have raised the question of whether the right to vote should be extended to 16 and 17 year olds.¹ Voting requires certain skills thought to develop during adolescence, including a general understanding of social problems and knowledge of how to navigate the political system.² These skills develop alongside growth in civic participation more broadly, as adolescence is a time when youth are increasingly likely to become actively engaged in community service, environmental behavior, and political actions via social media or protests.³

Advocates for lowering the voting age stress that youth possess the skills to participate in politics and highlight the developmental and democratic benefits for allowing 16 and 17 year olds to vote.⁴ Opponents contend that youth are not developmentally mature enough to participate in politics and argue that expanding the voting age will ultimately weaken democratic functioning by introducing more uninformed votes⁵. Interestingly, public opinion on this issue is rarely examined or published, and thus we do not know how youth or adults in general feel about voting age policy change.

Policy initiatives that expand voting rights to 16 and 17 year olds are being actively debated in parts of the US, including in California, where two bills are under consideration by the state legislature at this writing. In Los Angeles, discussion is emerging about changing the voting age to 16 for school board elections. California is the most populous state, and Los Angeles is the second largest US city, and both are notable for their high degree of racial and ethnic diversity. Enfranchising younger voters in Los Angeles or across California would constitute large-scale change to the electorate. Thus, researchers, policymakers, and residents should pay attention to this policy issue.

The purpose of this chapter is to chart the voting age policy landscape in California and Los Angeles. First, we review the history of policy regarding changing the minimum US voting age, highlighting past endeavors to expand the voting age nationally and internationally and then focusing on California and Los Angeles. California policymakers have a long history of legislative attempts to change the minimum voting age, some of which are currently active. After

¹Hart & Atkins (2011).

²Sherrod & Lauckhardt (2009).

³Wray-Lake, Metzger, & Syvertsen (2017).

⁴Hart & Youniss (2017).

⁵Chan & Clayton (2006).

documenting perspectives on implementation and organizing efforts, we provide novel data on public opinion of voting age policy from youth and adults in Los Angeles. In concluding, we summarize implications and policy recommendations for voting age change in Los Angeles and the State of California. Our analysis of what efforts to lower the voting age look like and how the public feels about the issue can inform policymakers, the public, and campaigns for and against the issue as voting age policies continue to gain national attention.

Legislative History of Voting Age Nationally and Internationally

To put voting age policy change in context, recall that the voting age has not always been 18 in the US. Prior to July 1971, the right to vote was limited to US citizens 21 and older. As part of the Voting Rights Act Amendments of 1970, Congress voted to lower the national voting age to 18, largely in response to student activists whose mantra was “old enough to fight, old enough to vote.” In other words, youth argued that if they were old enough to be drafted into combat in the Vietnam War, they should be given the right to vote.⁶

The path toward securing voting rights for 18 year olds required several additional steps, however. The Voting Rights Act Amendments were challenged in court by Oregon, Arizona, Idaho, and Texas on the grounds that the amendments violated states’ rights. A subsequent 5-4 Supreme Court ruling in *Oregon v. Miller* determined that the Congressional decision could only apply to federal elections, and a constitutional amendment was required to change the voting age to 18 for state and local elections.⁷ Facing the logistical and financial challenges of administering federal and state/local ballots to two different age groups in the impending 1972 election, 38 states (the two-thirds majority required for a constitutional amendment) ratified the 26th amendment to enfranchise 18 year olds in a record time of 100 days.⁸

The 26th Amendment to the US Constitution states: “The right of citizens of the United States, who are 18 years of age or older, to vote, shall not be denied or abridged by the United States or any state on account of age.” The precise language of this amendment is quite important for understanding voting age discussions. It guarantees that the right to vote cannot be denied to citizens 18 and older but does not prevent states or cities from lowering the legal voting age.

At the time of this writing, five cities across two states have changed the minimum voting age. Four municipalities in Maryland have changed the minimum voting age to 16 years for local elections by amending their city charters, including Takoma Park (2013), Hyattsville (2015), and most recently, Greenbelt (2018) and Riverdale Park (2018). A descriptive look at Takoma Park’s 2013 local election results suggested that turnout among 16 and 17 year olds (16.9%) was nearly double the turnout of eligible voters 18 and older (8.5%).⁹

⁶Smithsonian (2018).

⁷Oyez (n.d.).

⁸Smithsonian (2018).

⁹CIRCLE (2013).

In 2016, ballot measure Y1 in Berkeley, California, which allowed 16 and 17 year olds to vote in school board elections, was put to residents to decide and passed with over a 70% majority.¹⁰ No dissenting arguments were filed with the Alameda County Registrar of Voters, and published arguments in favor of the measure give hints to the opinions that may have motivated voters. Supporting arguments included the importance of increasing voter turnout and civic engagement, offering youth an ability to influence their schools, and providing an incentive to strengthen civics education, as well as noting that 16 and 17 year olds already take on some privileges and obligations of adulthood such as driving, working, paying taxes, and being charged with felony offenses.

Outside California, two other efforts to expand voting rights to 16 and 17 year olds nationally are worth noting. In 2018, a bill was proposed in the District of Columbia's Council to lower the voting age to 16, but currently, this issue has been tabled.¹¹ Legislators in Oregon have proposed an amendment to the Oregon Constitution that would lower the voting age from 18 to 16.¹² If the bill passes, Oregon state voters will decide on the proposal in the 2020 election.

Internationally, the most widely used minimum voting age is 18 years worldwide, yet several countries currently allow 16 and 17 year olds to vote. The minimum voting age is 16 for national elections in 10 countries - Argentina, Austria, Brazil, Cuba, Ecuador, Malta, Nicaragua, the Isle of Man, Jersey, and Guernsey. Additionally, the minimum voting age is 17 in six countries - East Timor, Greece, Indonesia, North Korea, South Sudan, and Sudan. For many countries, the shift to a lower voting age is relatively recent. Austria became the first European country to adopt a voting age of 16 in 2007.¹³ Argentina approved a minimum voting age of 16 years in 2012.¹⁴ Scotland lowered the voting age to 16 for Scottish Parliament and local government elections in 2015, and in 2018, Malta became the second European Union country to set the voting age at 16.¹⁵ Other countries expanded their voting age to include 16 and 17 year olds much earlier, such as Brazil where 16 has been the minimum voting age since 1988.

These international examples of expanding voting rights to age 16 or 17 offer an opportunity to examine the effects of enfranchising younger voters. The majority of this research has been conducted in Austria and has indicated that (1) 16 and 17 year olds had similar levels of political maturity as older voters, (2) expanding the voting age increased political interest, and (3) voter turnout was higher among 16 and 17 year old first-time voters relative to 18 to 20 year old first-time voters.¹⁶ Research in the US has focused on comparing the political maturity—often measured in the form of political interest, knowledge, efficacy, and attitude cohesion—of 16 and 17 year olds versus adults. This work generally indicates that American 16 and 17 year olds have similar political efficacy, knowledge, interest, tolerance, and skills as 18 to 20 year olds.¹⁷

¹⁰Voter's Edge California (n.d.)

¹¹Thebault (2018).

¹²Griggs (2019).

¹³Paterson (2008).

¹⁴Khazan (2012).

¹⁵BBC (2015); Lavinder (2018).

¹⁶Wagner, Johann, & Kritzingner (2012); Zeglovits & Aichholzer (2014); Zeglovits & Zandonella (2013).

¹⁷Hart & Atkins (2011).

Despite some research support for expanding the voting age, two studies provide evidence that challenges the notion that 16 and 17 year olds are politically mature. Research with British youth found that 16 and 17 year olds had less political interest, were less likely to belong to a political party, and had less factual knowledge about the political system than adults.¹⁸ Similarly, research in Norway demonstrated that 16 and 17 year olds had lower political interest, lower political efficacy, less consistency in attitudes, and weaker links between attitudes and vote choice compared to older adults.¹⁹

Discussion and Policy at the State Level

California has several policies that already demonstrate a commitment to incorporating young people into the electoral process. The Student Voter Registration Act of 2003 was established to increase young voter registration by mandating that the Secretary of State provide voter registration forms to every high school, community college, California State University, and University of California campus.

Additionally, teenagers 16 and older have been able to pre-register to vote since SB 113 took effect in 2016. According to a 2018 report from California Secretary of State Alex Padilla, 281,551 pre-registrations have been completed since the launch of this initiative.²⁰ The state has made the process of pre-registration increasingly easier, creating an online system in 2017 and making the process automatic when requesting a driver's license or state ID since 2018. Thus, 16 and 17 year olds may register to vote, but the voting age in California generally remains at 18, except in Berkeley, where 16 and 17 year olds can cast votes for school board elections as of 2016.

San Francisco's measure F, a city charter amendment that would have allowed 16 and 17 year olds to vote in local elections, was put to voters in 2016, failed by a very small margin (52.1% no vs. 47.9% yes), and is expected to be on San Francisco's ballot again in 2020. Measure F would have come with a commitment from the Board of Education to implement new civic curricula. Opponents worried that youth would support unwise spending initiatives, argued that voting is a privilege of adulthood, or expressed concerns that lowering the voting age would create a legal precedent to charging youth as adults for crimes.²¹

Because Article II, Section 2 of the California Constitution clearly specifies 18 as the minimum voting age for the state, any state-level voting age policy change requires a constitutional amendment. California constitutional amendments require passage by two-thirds majority in the state assembly and senate, along with voter approval of the amendment. Interestingly, statewide efforts to offer voting rights to teenagers younger than 18 in California through constitutional amendments have a surprisingly long history.

¹⁸Chan & Clayton (2006).

¹⁹Bergh (2013).

²⁰Padilla (2018).

²¹O'Connor (2016).

From 1995 to 2019, 11 bills to lower the voting age in some form were introduced in the state legislature, but none have yet made it to the ballot box. Table 1 briefly summarizes each bill and its legislative history in order to map out these legislative attempts and the arguments that have animated them. (Tables and figures in this chapter follow the text and references.) These bills have varied in the lower bounds of age at which voting would be allowed (ranging from 14 to 17) and have varied in the scope of elections in which youth would be allowed to participate (from school board to national).

As of this writing, the 2019 bills ACA 4 and ACA 8 are active, having received a two-thirds majority vote in the state assembly and are under consideration in the State Senate. ACA 4 allows 17 year olds to vote in all primary elections if they will be 18 at the time of the general election. A version of this bill has been introduced five other times and passed by two-thirds majority vote in the assembly for the first time in 2019. This modest policy aligns with existing laws in 21 states that allow 17 year olds to vote in Presidential primaries.²² It has a primary goal of increasing election fairness by allowing youth to select candidates who will ultimately appear on their ballots. Allowing 17 year olds who turn 18 by Election Day to vote in primary elections is attempting to solve the problem of an elongated election process, but also acknowledges that 17 year olds possess the capacity to make informed political decisions.

ACA 8 would permit 17 year olds to vote in all elections and succeeded in the assembly with a two-thirds majority vote after similar legislation in 2017 (ACA 10) narrowly failed. ACA 8 is sponsored by Democratic and Republican representatives and is a more modest proposal compared to initiatives in Oregon and the District of Columbia that would lower the voting age to 16 years for all elections. A guiding rationale for selecting age 17 is that this age coincides with government and civics courses in junior and senior year of high school. Although these two bills are different, they share a goal of increasing youth's electoral involvement and giving voting rights to 17 year olds, and the arguments supporting and opposing these efforts tend to overlap considerably.

ACA 4 and ACA 8 are on a parallel timeline for Senate discussion and vote. However, Assemblymembers Kevin Mullin and Evan Low, the bills' authors, respectively, have agreed that if both pass with Senate approval, only one will be put to the voters. The intent of having just one bill is to avoid voter confusion.

Four main categories of arguments appear most notably in published arguments from California state legislative records, archived in the bill analysis available online. (See Table 1.) The four are 1) democratic arguments, 2) education-focused arguments, 3) arguments of precedent, and 4) developmental arguments. Democratic arguments emphasize that enfranchising teenagers would enhance voter turnout in the short and long term and articulate reasons that teenagers deserve to have a say in who represents them. Education-focused arguments center on the opportunities of voting while in high school to amplify classroom civic education curricula. Arguments of precedent point to other localities that already permit teenagers under age 18 to vote. Finally, development arguments involve issues of maturity and capability.

²²Four of these states only allow 17 year olds to vote in the Democratic Presidential primaries.

Whereas the first three types of arguments appear fairly frequently in legislative arguments, only one bill (ACA 7 of 2016) explicitly included a developmental argument that 16 and 17 year olds have the maturity to vote. Nevertheless, this idea arises in broader public discussion of legislation, and scholars suggest its importance in the larger public debate.²³ Later in the chapter, we will review the extent to which these and other reasons figure in the formation of public opinion on the issue.

Only a few opposing arguments have been officially registered in connection with these bills, and recent archived California assembly floor discussions also offer some insights into opposition arguments raised by policymakers and concerned citizens. These arguments emphasize that teens under 18 would be strongly influenced by parents and teachers and unlikely to express independent choices. Opponents also prioritize age 18 as the age of majority, emphasize that 17 year olds are legal minors, and see expanding rights to younger ages as arbitrary or a slippery slope.

Some opponents see a contradiction in allowing younger voting but advocating for raising the age at which youth are tried as adults in the criminal justice system. Additionally, in the one statewide bill aimed at granting 16 and 17 year olds rights to vote in school board elections (ACA 7 of 2016), some lawmakers pointed to inequity in the bill's establishment of two classes of voters based on age, unfairness to school board candidates who would answer to a different electorate from other elected officials, and complications in the administration of different ballots to voters.

The Los Angeles Context

Lowering the voting age became a concrete discussion in Los Angeles when 17 year old Tyler Okeke, the 2018 2019 student member of the Los Angeles Unified School Board, introduced the idea of 16 and 17 year olds voting in school board elections. In an interview with the first author, Okeke shared that he first learned about the issue of lowering the voting age through connecting with student leaders of Berkeley's initiative; together, they were part of California's YMCA Youth and Government program. He was motivated to raise the issue of 16 and 17 year olds voting in school board elections based on his view that school board decisions were sometimes guided by money and politics rather than by student interests.

The idea behind expanding teens' right to vote for school board elections in particular is that high school students are directly and frequently affected by the decisions of this governing body. As California Assemblymember Lorena Gonzalez stated in relation to California ACA 7, which would have allowed 16 and 17 year olds to vote in school board elections, *"The lack of meaningful representation of these students and in many cases even their parents may mean that these local educational decisions are neglecting a significant part of the community. Being able to vote in local educational board elections would give these young adults a true voice, and force local educational boards to be accountable to their true constituencies."*

²³Hart & Youniss (2017).

On April 23, 2019, Tyler Okeke along with co-sponsoring board members Mónica García and Kelly Gonez put forth a proposal that LAUSD research the feasibility and implementation of a lower voting age for school board elections. The resolution passed and established a task force of community organizations, city and county Registrar staff, and school district staff to inform the feasibility report. This report is in progress and is due to be presented to the school board in fall 2019. Importantly, the LAUSD school board can register its support, opposition, or ambivalence to the idea but it has no authority over elections or authority to put a measure of this kind on the ballot. This is because LAUSD and its elections fall within the purview of the City of Los Angeles based on the city's charter, even though areas of LAUSD fall outside of the City of Los Angeles. If the task force report to LAUSD is favorable, a plausible next step is that the LAUSD school board recommend that the Los Angeles City Council review the issue and place a measure on the ballot for the voters to decide.

How California cities change local voting age laws depends on whether a city is a "charter city" or "general law city." General law cities are governed by state law, even for municipal issues, whereas charter cities have the authority to govern municipal affairs. In charter cities, city law supersedes state law for municipal issues, which includes the governing of municipal elections.²⁴

Los Angeles is a charter city, so a change in law for municipal elections can be done via amending its charter. Based on the city charter, the LA City Council has the authority to change laws "on any subject of municipal control," but in practice, major amendments to the Charter would be put on the ballot for voters to decide. Outside of City Council's direct consideration of the issue, citizens or organizations could also submit initiative or referendum petitions for charter amendments.²⁵ In summary, for Los Angeles to make a change to the voting age, the City Council would need to consider the proposal and ultimately voters would have to decide it.

Implementation Considerations

Several aspects of the Los Angeles voting system are poised to make implementation of a voting age change simpler and more straightforward.²⁶ The first is voter pre-registration. As noted above, voting-eligible 16 and 17 year olds have been allowed to preregister to vote since 2016. The pre-registration process is key to simplifying the steps necessary for changing the voting age because the Registrar's office already has a database of 16 and 17 year olds eligible and registered. If Los Angeles did not have voter pre-registration, the Registrar would need to create registration and database systems from scratch, which would mean a longer, multi-step process.

²⁴League of California Cities (2007).

²⁵Initiatives have a higher bar for success, requiring review and approval by city clerk and attorney, and voter signatures equaling 15% of the number of votes cast for Mayor in the prior election. City Council can approve initiatives or submit them to the electorate for a future election. Referenda require 10% of the total number of votes cast for Mayor in the prior election and the City Council either repeals or submits the ordinance to voters.

²⁶Much of the information for this section came from an interview between Los Angeles County Registrar Dean Logan and author Laura Wray-Smith.

Second, as of the 2020 election, Los Angeles County will migrate to a vote center model. This new voting system is designed to make voting easier and thus increase turnout. It includes the ability of eligible voters to cast a ballot at any voting center in the county, an 11-day voting window, and the use of electronic ballot marking devices to facilitate accessibility. Most notably, the ability of the electronic ballot marking system to personalize each person's ballot to his/her precinct and school district means that the system already has a mechanism for delivering different ballots at any given center. In localities not using electronic ballot marking devices, the logistical processes would be more cumbersome. It would involve preparing separate ballot styles, anticipating voter turnout to print the appropriate number of each ballot style, and training poll workers to ensure the correct ballot is given to each voter.

SB 450 gives Los Angeles County an exemption from a state law requiring all-mailed ballots under certain election conditions. In other words, LA County only prints and mails ballots to voters on request. This exemption means that the costs of adding to the electorate would be significantly reduced due to not having to print a ballot for every single voter. However, this reprieve could be temporary, as the exemption is set to expire in 2020.

In summary, databases and voting systems are already in place in Los Angeles that appear capable of integrating 16 and 17 year olds into the electorate without large procedural overhauls.

Implementation Challenges

Some challenges to implementation are also worth noting. First, to the extent that youth are granted partial voting rights, such as for school board elections only, the back-end technical preparation needed to create distinct databases and ballots prior to the election grows in complexity. Even though ballots will be personalized and printed on-site at voting centers, the Registrar's office would still need to create paper ballots in 13 languages besides English for those who request to vote by mail. This work would be doubled if youth had different ballots as a result of partial voting rights. From this perspective, the statewide initiative to lower the voting age to 17 for all elections appears less cumbersome technically and logistically than a measure to lower the voting age for school board elections only.

Second, if youth were only allowed to vote in school board elections, additional voter education and messaging efforts would be needed to communicate which elections are open to 16 and 17 year olds and which are not. It is possible that having two different electorates could produce confusion at election time. Teenagers might show up to vote in elections for which they are ineligible.

Third, changes would be expected for candidates, namely in the number of signatures needed to get one's name on the ballot. The required number is based on a formula that includes the number of registered voters in an area, and this number would presumably increase if more voters were added to the rolls. If 16 and 17 year olds were enfranchised for school board elections only, school board candidates would have a higher threshold to get on the ballot

compared to candidates for other local offices. Similarly, the threshold for recalling a member of the school board would also increase.

Finally, there are several open questions about implementation for which not enough information is available to gauge impact. First, adding voters to the electorate could have an impact on the number and location of vote centers, although the extent and nature of this impact depends on how many youths turn out to vote and how the teen vote is distributed across Los Angeles. However, any impact due to high volume of youth voters might be fairly minimal, as the vote center placement approach appears prepared to adapt from one election to the next to meet the needs of voters.

Second, as with any new policy, fiscal impact should always be considered. In statewide initiatives, costs have been estimated by appropriations committees to be \$200,000 to cover the necessary printing to list the issue in the voter guide. Berkeley's measure Y1 was framed as cost-neutral. The key costs of adding 16 and 17 year olds to the electorate would pertain to additional technical support staff time required to prepare databases and ballots, additional printing costs of by-mail ballots, and potentially additional training of poll workers.

Other less tangible costs related to equality and democracy could arise in theory, such as increased socioeconomic inequality if voting increases only among more advantaged teens. There might be corruption in elections if youth are unduly influenced. We cannot know the potential for these outcomes until legislation passes and research is conducted.

Third, the lower voting age effort in Los Angeles has not yet materialized into a specific bill, but Registrar Dean Logan pointed out that specificity in the bill language would lead to clearer implementation of the policy. For example, if teenagers are allowed to vote in school board elections, can they also vote in run-off elections, or for school funding ballot measures? It would facilitate implementation to clarify the scope of youth's rights in a given measure.

One additional open question pertains to schools serving as polling places. According to Registrar Logan, national trends suggest increasing reluctance of schools to serve as polling locations due to safety concerns of opening their campus to the public. Schools may decide they want to be vote center locations if more of their student body became eligible to vote. However, from the perspective of voting integrity, it would be important to make sure youth were not being coerced to vote or that adding schools as vote centers does not privilege a particular voting bloc. Given the differing angles of this issue, more concerted dialogue about the role of schools as vote centers is needed.

Community Organizing Motivations and Strategies

Efforts to lower the voting age across the nation are being led by non-profit community organizing groups with missions to empower and engage youth. For example, the national organization Generation Citizen is currently working with local groups in eight locations around

the country and is primarily focused on advocating for a lower voting age for local elections.²⁷ We spoke to individuals representing three Los Angeles-based community organizing groups that are involved in advocacy around lowering the voting age: Community Coalition in South Los Angeles, Inner City Struggle in East Los Angeles, and Power California, a statewide organization that has *Vote at 16* as one of its initiatives.

From four conversations with staff across these three organizations, insights emerged around motivating reasons for organizing around voting age policy as well as organizing strategies being prioritized for these efforts. Three motivating reasons for advocating for voting age change stood out in conversations with community organizers:

- (1) giving voice to youth of color;
- (2) voting as a natural extension of youth's active civic engagement; and
- (3) the current political moment.

First, these organizations are engaging in advocacy around voting age policy as part of broader efforts to mobilize communities of color and amplify the voices of youth and adults who are less often heard. Thus, a key motivation guiding interest in a lower voting age is to engage youth of color in the political process. Organizers hold the belief that earlier political involvement can lead to sustained engagement over the long term, an idea supported by empirical evidence.²⁸ As Luis Sánchez, Executive Director of Power California, put it, *"This is our whole idea around organizing: If you can engage someone at the age of 15, and 16, imagine where they could be at 21."*

Second, these community organizers have first-hand evidence of youth's potential as organizers and civic leaders and see voting as a natural extension of the civic engagement already visible among youth they interact with on a daily basis. As Henry Perez, Associate Director of Inner City Struggle, stated, *"We feel that, that our young people are already civically engaged, they already demonstrate that they care about these issues, they demonstrate that they understand these issues enough to want to participate in the electoral process...Young people are doing that work already. So why wouldn't we give them the right to vote?"*

Third, community organizers echoed the theme that the United States is experiencing a pivotal point in history: organizers believe that Trump-era politics and other national events are activating youth around issues such as immigration, gun violence, police brutality, and climate change. Organizers point to recent national and international events showing adolescents at the forefront of the Global Climate Strike, March for Our Lives, and Black Lives Matter movements, underscoring the power of youth as leading civic actors. These organizers see a youth movement building in their communities and nationally with powerful potential for social change and believe this is the right moment to give young people the right to vote.

²⁷Vote16usa.org.

²⁸ Coppock & Green (2016); Plutzer (2002).

Community organizing groups are focusing on four key strategies to build support for the movement. A first step is political education of youth in their organization about voting rights issues. Youth are leaders within these organizations, and it is important that they are informed about the issues and motivated to extend voting rights to 16 and 17 year olds. A second step is mobilizing youth leaders to engage the broader community around the issue and build support through campaigns, events, and conversations. It is also important to gauge interest and level of support for the issue among youth and community members, and community organizers typically accomplish this through collecting surveys, petition signatures, or pledge cards.

Third, these organizations recognize the importance of collaborating. Power California brings together a coalition of organizations in Los Angeles and around the state that share a common interest in empowering youth through voting enfranchisement. As a final strategy of note for statewide initiatives, Power California is first targeting their *Vote at 16* efforts in small charter cities, where organizing strategies such as door-knocking are more likely to be successful.

Los Angeles Public Opinion Survey

Any next step in Los Angeles or statewide legislation would involve a ballot initiative, so ultimately voters will decide whether to change the voting age. We gathered opinions by surveying adults and 16 and 17 year olds in Los Angeles. Brief informational advertisements about the study were purchased on Instagram and Facebook and targeted to the Los Angeles area. Our study is not representative, although we tried various strategies to increase the sample diversity. A complete description of the methodology used is presented in Appendix A. Sample demographics are shown in Table 2. The sample of 538 respondents (54.2% female) included 16-17 year olds (34.2%), 18-30 year olds (23.2%), adults 31-92 (24.3%), and race/ethnicity was 28.6% White, 25.2% Hispanic or Latinx, 24.5% Asian, 5.3% Black, and 7.9% Other race/ethnicity. Half were liberal, with the remaining conservative (10.0%), moderate (13.4%), or unreported (25.7%).

We asked opinions on changing the voting age to 16 for school board, city, state, and national elections, respectively, with five response options: *strongly oppose* (1), *oppose* (2), *neutral or undecided* (3), *support* (4), and *strongly support* (5). Participants also provided justifications for supporting and opposing a lower voting age. Table 3 provides a full list of these items, which are framed in terms of 16 year olds, and their means and standard deviations. Due to our interest in demonstrating which justifications were more salient in guiding opinions, we examined each justification separately. The full analytic plan is described in Appendix A.

Describing Support and Opposition for Voting Age Change

First, we describe the extent to which respondents supported voting age policy change in general and across different types of elections. The averages for supporting a lower voting age hovered around the neutral point of “3” across each election type, and there was wide variability in levels of support and opposition across respondents. Support was strongest for expanding voting rights to 16 for school board elections ($M = 3.45$, $SD = 1.33$) and was successively lower for city ($M = 3.08$, $SD = 1.32$), state ($M = 2.89$, $SD = 1.38$), and national

elections ($M = 2.78$, $SD = 1.45$; all means were significantly different at $p < .05$). Thus, overall, support weakens as proposals expand voting rights for youth beyond school-board issues.

To describe the nature of support and opposition further, we created “support,” “neutral,” and “oppose” categories. Figure 1 shows the percentages of respondents falling into each of these categories across each election type. It is again apparent that support is strongest for allowing 16 year olds to vote for school board elections and support weakens successively as election types broaden. Importantly, these findings also illustrate that very few respondents reported neutral views, with neutral responses at 20% of the sample or less across the election types.

We next wanted to capture strength of support and opposition across the four policy opinions, which we did by counting the number of policies supported and opposed for each respondent (see Figure 2). We found that 55.8% of the sample expressed a consistent opinion about voting age policy across the four election types; 23.8% opposed all types of voting age changes, 27.7% supported all types of voting age changes, and 4.3% were consistently neutral. A significant proportion of our sample (44.2%) expressed nuanced opinions that varied across election types.

In examining these patterns, again trends indicated increased support for each policy as it becomes more local. For example, among respondents who supported only one voting age policy change, 85.6% expressed support for expanding school board voting rights to 16 year olds. Likewise, among respondents who opposed one policy, 81.4% opposed expanding national voting rights to 16 year olds. A range of other patterns were evident, although less common, suggesting that some respondents hold complex views on this topic.

Who Supports and Opposes Voting Age Policy Change?

Next, we examined who is more likely to support and oppose voting age policy change by examining demographic differences in policy opinions. Specifically, we examined age, gender, race/ethnicity, political ideology, financial strain, political interest, and self-assessment of being politically active. For a portion of the sample, we also examined differences in voting age policy opinions by prior voting history and parenthood status.

Age. To examine age differences, we divided the sample into three relatively equal groups of 16-17 year olds ($n = 189$), 18-30 year olds ($n = 128$, $M_{age} = 21.7$), and 31 year olds and older ($n = 134$, $M_{age} = 56.1$). We compared these groups on their voting age policy opinions, and findings are summarized in Figure 3. Teenagers (16-17 years old) consistently expressed more support for lowering the voting age than adults 31 and older across all four election types. Young adults (18- 30) did not differ from 16-17 year olds in support for lowering the voting age for local or state elections. Young adults expressed significantly more support for lowering the voting age than adults 31 and older for school board, city, and state (but not national) elections. In summary, from local to state elections, the age divide in voting age policy opinions is between 16-30 versus older adults; 16 and 17 year olds show more support than older respondents for lowering the voting age in national elections.

Gender. Women expressed more support for lowering the voting age for school board and city elections compared to men (see Figure 4), but there were no gender differences in levels of support for state and national voting age policies.

Race/ethnicity. Our examination of racial/ethnic differences in voting age policy opinions is necessarily tentative, as our data do not fully reflect the diversity of Los Angeles. Black and Native American groups were too small to examine in our sample, and comparisons were limited to White, Asian, and Latinx respondents. We found differences among these three groups in their support of lowering the voting age for school board and city elections only (see Figure 5). For school board elections, Asian and Latinx individuals were more supportive of lowering the voting age than White individuals. For city elections, Latinx individuals were more supportive of lowering the voting age than White individuals. In summary, findings tentatively suggest that individuals of color appear more supportive of lowering the voting age than White individuals for local elections.

Political ideology. To examine political ideology, three groups were created that reflected conservative ($n = 55$), moderate ($n = 74$), and liberal ($n = 281$) political ideology. Regarding school board elections, liberal individuals expressed the strongest support, followed by moderates, and conservatives expressed the least support for this policy. For city, state, and national elections, liberal individuals expressed more support for lowering the voting age compared to moderates and conservatives, and the latter two groups did not differ from each other (see Figure 6). In summary, liberals are most likely to support expanding voting rights to 16 year olds. Except for school board elections, conservative and moderates express similar views on lowering the voting age and are less in favor of it than liberals.

Unrelated factors. A series of factors we examined did not have any association with voting age opinions. These factors included political interest, whether one voted in the 2016 and 2018 elections, parenthood status (tested among those 31 and older) and financial strain (i.e., difficulty meeting financial needs in the household). Regarding prior voting, this factor was likely not significant because the vast majority of age-eligible respondents reported voting in the 2016 (22 and older; 90.8%) and the 2018 (20 and older; 86.7%) elections²⁹.

Justifications for Voting Age Opinions

Our next goal was to describe respondents' justifications for supporting and opposing voting age policy change. We did this in two ways: First, we asked respondents to indicate how much they agree with a set of supporting and opposing justifications for voting age policy opinions, on a scale from *strongly disagree* [1] to *strongly agree* [5]. (See Table 2.) Second, we asked respondents to describe their thoughts about changing the voting age to 16 in their own words and provided an open text box in the survey. We describe the most and least endorsed

²⁹These numbers do not match those in Table 2, because Table 2 presents percentages for anyone who answered the question (those 18 and older), but we restricted the analysis to those age-eligible to vote in both elections (22 and older for 2016 election, and 20 and older for the 2018 election).

justifications from the quantitative responses and supplement these findings with respondents' open-ended responses.

Opposing justifications. The top three most highly endorsed justifications for opposing lower voting age were that (1) 16 year olds are too easily influenced by other people to think for themselves, (2) 16 year olds are too impulsive to make good decisions, and (3) 16 year olds do not understand the consequences of their actions. The ideas that youth are too easily influenced and do not understand the consequences of their actions were even somewhat compelling to respondents who most strongly supported voting age policy change. Among those most opposed to lowering the voting age across election types, strongly held justifications also included ideas that 16 year olds are too inexperienced to address social problems and not mature enough to have informed opinions. A 32 year old politically moderate female summarized some of these opposing arguments:

“Sixteen year olds are still growing and are not mature enough to vote with informed opinions. Sixteen year olds still have underdeveloped brains, are easily influenced based on their peers’ opinions, and many aren’t thinking critically. Rather than thinking for themselves they tend to go with the opinions and views of those who surround them without questioning.”

Although less common, even some teens endorsed views of not being capable of voting, such as this 17 year old politically liberal female who said,

“I believe we mature near 18, we process our mistakes and know where they are important. At 16, I still made quick decisions based on nothing at all. I do not agree we should change voting age to 16.”

The least commonly endorsed opposing justifications were that young people weaken democracy and that 16 year olds are not allowed to smoke or drink and thus should not be allowed to vote.

Supporting justifications. The top three most highly endorsed supporting justifications for lowering the voting age are that (1) 16 year olds should have a say in policies that directly affect them, (2) voting will give 16 year olds a reason to become more informed about politics, and (3) 16 year olds are capable of understanding politics. These justifications were also the most compelling among respondents least supportive of voting age policy change. On the value of input from youth, one respondent (who did not report demographics) said, *“Changing the voting age to 16 allows more input from a younger community, which makes the votes more diverse and fair among everyone,”* and a 16 year old liberal male said, *“16 year olds are going to live in this country much longer than the 70 year olds we have in our government and they should have a say in their own future.”*

Some respondents connected youth's capability to understand politics to opportunities to become informed, such as this 18 year old politically moderate female who said, *“I think that given the proper exposure in educational courses, 16 year olds ARE capable of making well*

informed decisions in the public sphere." The strongest supporters of changing the voting age tended to agree with all the supporting justifications in our study, with one exception; they were not as likely to endorse the idea of few differences between 16 and 18 year olds. Indeed, the least commonly endorsed justification for supporting a lower voting age was that there is not much difference between 16 and 18 year olds.

Other Salient Justifications. The open-ended responses raised three opposing justifications and one supporting justification not listed in the survey. First, several respondents believed that efforts to change the voting age were a partisan strategy to increase Democratic voter turnout. As a 61 year old conservative man stated:

"This is a bad idea that is being put forth by a liberal state legislature that is trolling for more Democrat votes. It has nothing to do with 'getting young people involved in the issues of our day' but it's 100% about continuing the absolute shift to the left for the State of California."

Second, some respondents voiced concern that changing the voting age would disproportionately benefit wealthier voters and exacerbate inequality. These concerns sometimes aligned with the idea that 16 and 17 year olds are too easily influenced by adults. As one 25 year old liberal woman explained:

"I'm 100% for expanding civic participation, but I'm concerned that this change could disproportionately benefit groups who already have a strong voice in governance. For example, if it were mostly wealthy white teens who were voting for whomever their parents supported, while low income teens of color still face similar significant hurdles to voting as their parents."

Third, some respondents were apprehensive about burdening 16 and 17 year olds with too much responsibility, explaining that they believed teenagers should be focusing on academics and getting into college, as well as enjoying themselves before the responsibilities of adulthood. A 63-year old liberal female stated that *"voting is a responsibility that I feel 16 year olds should not have at this time of life. They have enough with high school and other life stresses."*

Finally, echoing a supporting argument that appeared in California policy initiative ACA 7 of 2016 and was salient for community organizers in Los Angeles, two respondents believed that lowering the voting age was important for expanding voting rights indirectly to parents who could not vote due to immigration or previous felonies. These respondents explained that children of non-voting parents could help to represent their parents' interests, such as the 38 year old moderate female who said: *"I think it will allow 16 year olds to vote just in case their parents can't and they can do it as early as 16 years of age."*

Demographic Differences in Justifications

To identify whether certain groups of people resonate with particular reasons to support and oppose voting age policy change, we examined age, gender, racial/ethnic, and political ideology differences in justifications. These differences are summarized in Table 2. In large part, these demographic differences parallel differences reported above on policy opinions. Namely, 16-30 year olds, liberal, and - to some extent - Latinx and Asian respondents tended to endorse more supporting justifications. Adults 31 and older, White, and conservative and moderate respondents tended to endorse more opposing justifications.

Teens (16-17 years old) stood out in one respect, as they were most likely to endorse the view that voting will help 16 year olds become lifelong voters than both other age groups. Regarding race/ethnicity, compared to Latinx respondents, Asian respondents differed less often from White respondents. Regarding political ideology, conservatives endorsed several opposing views more strongly than moderates, as shown in Table 2. Additionally, moderates more strongly endorsed the view that 16 year olds are capable of taking voting seriously compared to conservatives.

Finally, although gender did not appear to be a major factor determining voting age policy opinions, several gender differences emerged in justifications. Women appeared more likely to support youth voice than men, via stronger endorsement of views that 16 year olds should have a say in policies that affect them and are already civic leaders in their communities. Men appeared more skeptical of youth's readiness to vote, being more likely than women to endorse the view that 16 year olds are impulsive, easily influenced, immature, do not understand consequences of their actions, and would weaken democracy.

How Justifications Relate to Policy Opinions

A final step in the survey analyses was to examine the associations between people's justifications and their voting age policy opinions. The goal here is quite different from asking which justifications are most strongly endorsed, as we did above. Rather, here we want to know which justifications are most likely to drive individuals' policy views. The list of key justifications in this analysis could differ from the justifications that are most endorsed.

Before we share these results, three methodological points should be noted. One is that we entered multiple justifications together in a single model, allowing us to examine the unique contribution of each justification to policy opinions. Second, given the age differences in policy opinions and justifications, it was important to also test whether justifications differentially are related to policy opinions across age groups. Thus, we present findings that are consistent across ages and highlight instances where results differ by age. Third, we examined the four policy opinions separately and also created an index representing strength of support/opposition, calculated on a 0 to 4 scale based on the number of voting age policies supported or opposed, respectively. Results are summarized in Table 4.

Opposing justifications. Five justifications were salient predictors of opposing the expansion of voting rights to teens. Viewing 16 year olds as too inexperienced to address social problems and believing that 16 year olds are not allowed to smoke or drink were associated with weaker support across all four election types and weaker overall strength of support.

Believing that 16 year olds are not mature enough to have informed opinions was related to weaker support for voting age policy change at city, state, and national levels and weaker overall strength of support; this belief was also related to stronger overall opposition for adults 18 and older only.

Viewing 16 year olds as too impulsive to make good decisions was a justification salient for all, predicting weaker support for voting age change across age groups at city, state, and national levels. However, viewing teens as impulsive especially predicted weaker support for city elections among adults 31 and older. As shown in Table 4, viewing teens as impulsive predicted weaker support for school board elections for adults 18 and older, but not for 16-17 year olds. When considering strength of support and opposition, 18-30 year olds' policy opinions were most strongly guided by viewing teens as impulsive. This view predicted lower strength of support and greater strength of opposition for 18-30 year olds relative to other age groups.

Finally, the view that 16 year olds don't care about politics was related to weaker support for lowering the voting age across age groups for school board elections only.

Supporting justifications. Regarding supporting justifications, four justifications were fairly consistently related to support for voting age policy change. First, although it was least commonly endorsed, the view that there is not much difference between 16 and 18 year olds was consistently associated with stronger support for voting age policy change across election types, greater strength of support, and weaker overall opposition. Second, the view that 16 year olds are allowed to drive and pay taxes as justification for voting was related to stronger support for changing the voting age in city, state, and national elections and weaker overall opposition. Additionally, this view was related to stronger support for allowing 16-17 year olds to vote in school board elections and to stronger overall support for adults 18 and older only.

Third, viewing youth as civic leaders in their communities was related to greater support for voting age policy change for city and state elections and stronger strength of support. These findings were consistent across age groups. Fourth, when individuals viewed youth as capable of taking voting seriously, they were more likely to support voting age policy change for state and national elections and expressed weaker opposition overall. This view that youth could take voting seriously also predicted greater strength of support for 16-30 year olds only.

Three justifications were more selectively related to support for voting age policy change. First, believing that voting will help 16 year olds become lifelong voters was related to stronger support for allowing 16-17 year olds to vote for school board elections. Second, the view that 16 year olds should have a say in how policies affect them predicted was related to stronger support for 16 year olds voting in school board elections, but especially for 16-17 year olds. Third and unexpectedly, believing that 16 year olds are capable of understanding politics was

related to *lower* strength of support only for 16-17 year olds. The reasons for this result are unclear and would require more research to untangle.

Conclusions and Policy Implications

California policymakers have been reconsidering the voting age for over two decades. Successful expansions of voting rights to teens in several Maryland towns and in Berkeley, California, along with optimism about the potential of youth movements among community organizers, suggest a potential sea change in favor of policies that lower the voting age. However, the issue would ultimately have to be put to voters, and public opinion is wide-ranging on the issue, with very few of our survey respondents neutral about voting age policy and stronger opposition among older and more conservative Los Angelenos. Below, we highlight the major take-away messages from this research, with an emphasis on recommendations for policy and future research.

Take-Away #1. Los Angeles is well positioned to implement voting age policy change.

Three main factors suggest that Los Angeles would have fewer challenges to implementing a change to the voting age. These factors include the 1) flexibility of the voting center model where personalized ballots are printed for each voter, 2) California's pre-registration system that offers a basis for the necessary database infrastructure, and 3) the law exempting Los Angeles from having to mail paper ballots to all voters, meaning less preparation and lower cost. These factors predispose Los Angeles to an easier implementation of voting rights expansion for teens compared to other places. But even so, technical challenges and costs would be non-zero. Our conclusion is that the technicalities and financial aspects of implementation should be understood better. However, these factors should not deter policymakers from seriously considering changes to the voting age.

Take-Away #2. Expanding teens' voting rights for school board elections is most strongly supported by public opinion yet raises implementation and equity challenges. The Los Angeles residents we surveyed most strongly supported extending teens the right to vote in school board elections. School board voting age change garnered more support overall across the sample and was more likely to be supported among those who generally opposed the idea of lowering the voting age. Such a policy is in effect in Berkeley, was considered at the state level in 2016, and is under discussion in LAUSD. Public support for offering limited voting rights to youth in this way may suggest a viable path forward for policymakers and advocates.

However, our implementation analysis suggested that, whereas any voting age change could be implemented without major constraints, lowering the voting age for school board elections only would be most costly, logistically challenging, and potentially confusing to voters compared to implementing voting age changes of a large scope. Additionally, for some, school board election voting age changes raise concerns about inequality for voters and for candidates. There are few precedents for having local candidates with very differently sized and aged constituencies to answer to in making policy decisions.

In our research, we saw no reasons to support teen voting at the school board level that would not also extend to voting city-wide. Expanding voting rights to teens for citywide elections and issues would eliminate the inequality on the candidate side, as local candidates for city council, mayor, and school boards would be beholden to the same general constituencies. From a historical perspective, the idea of partial voting rights evokes other times in our nation's history when certain individuals were not considered full citizens. From 1787 to 1868, only three-fifths of slaves were counted for representation and taxation purposes (and slaves could not vote).³⁰

From an equity perspective, then, statewide efforts to lower the voting age for all elections, such as ACA 8, are much more palatable than initiatives that advocate for partial voting rights for teens. In light of the lower relative support for extending state and national voting rights to teens, however, our findings tentatively suggest that garnering the necessary public support for ACA 8 would require a major shift in public opinion. One caveat is that our study did not distinguish between 16 and 17 year olds; perhaps the public would more easily favor extending voting rights to only 17 year olds.

Our conclusion is that Los Angeles policymakers should more favorably consider extending youth voting rights to citywide elections compared to school board election proposals. Although somewhat less supported in our public opinion survey, giving 16 and 17 year olds voting rights for citywide elections relies on a very similar rationale as that of school board elections. Lowering the voting age citywide would reduce the equity and implementation concerns that arise when considering school board election voting age change.

Take-Away #3. The voting age policy views of policymakers, community organizers, and the general public may be guided by distinct justifications. Community organizers advocate for lowering the voting age as part of their broader mission to empower youth of color, yet empowering the most marginalized youth with voting rights was not explicitly evident among survey respondents or policymakers. Community organizers also see *Vote at 16* initiatives as part of a larger movement, in which youth are voicing concerns about current issues and leading social change efforts, but this idea was rarely expressed elsewhere. The public's opposing views were more likely to rely on negative stereotypes about teenagers, emphasizing impulsivity, immaturity, and lack of knowledge.³¹ In contrast, policymakers seem largely to avoid negative attributions about youth. Instead, policymakers appear to largely stick to democracy-focused arguments and age precedents, which are justifications that hold appeal for the public and organizers alike.

Take-Away #4. The research on justifications offers a range of implications for policy messaging on both sides of the issue. Effective messaging would focus on the most highly endorsed justifications and the justifications most predictive of policy opinions because they can convey different information. Commonly held justifications point to places of potential common ground across groups, because these views are more likely to be agreed on by supporters and opponents. For efforts to garner support, common ground might come from

³⁰Digital History (2019).

³¹Gross & Hardin (2007).

arguments about giving youth a say in policies that directly affect them, giving youth a reason to become more politically informed, and believing youth are capable of voting.

For opposition efforts, common ground may be found with ideas that youth are easily influenced, impulsive, or do not fully understand the consequences of their actions. In contrast, the most predictive policy opinions point to messages that could be used to target and sway likely voters on either side. The supportive justifications that are most consistently predictive of voting age policy opinions include beliefs that teens are already civic leaders, are capable of taking voting seriously, there is not much difference between 16 and 18 year olds, and teens are allowed to drive and pay taxes.

For opposing arguments, the most important predictors of voting age policy opinions were views that youth are inexperienced, teens are not allowed to smoke or drink, that youth do not care about politics, and again the arguments that youth are immature and impulsive. Additional nuance emerged from our survey findings regarding justifications that are particularly appealing for certain subgroups by gender, age, race/ethnicity, and political orientation. More generally, those involved in support or opposition campaigns might benefit from understanding the likely demographics of supporters (who tend to be younger, more liberal, and residents of color) and those most likely to be opposed (older, White, and moderate or conservative).

Should There Be an Age of Majority?

Existing age-based laws are used to justify both supporting and opposing viewpoints and dominate voting age policy discussions among lawmakers. In other words, when we consider at what ages rights and responsibilities should take effect, we tend to look for precedents, which reflects conventional reasoning guided by social norms.³² As we see from the debate around age 18 voting rights in the late 1960s, when the nature of an existing law (being drafted at 18) aligns well with the right sought (opportunity to vote on policies related to war and the draft), public support can be quite strong.

However, U.S. law does not have one consistent age of majority. Although many legal privileges take effect at age 18, driving and working privileges are offered at earlier ages, substance use rights are held until later, and the age at which youth are tried as adults varies across states. Thus, the working assumption is that the US is not guided by age of majority considerations, which opens the door for legislation that considers age-based rights in a more nuanced way. A nuanced understanding of adolescence better aligns with decades of developmental research documenting the complexity of adolescents' developing competencies and biological, social, and cognitive systems.³³ Yet, the varying rights of teenagers across domains means that reliance on conventional reasoning to support voting age policy will necessarily be contentious and difficult to resolve. Thus, although appealing to both sides, it stands to reason that with

³²Oosterhoff & Metzger (2017).

³³Lerner & Steinberg (2009).

respect to voting age debates, arguments of other age precedents are not likely to be effective because there are equally attractive counterarguments on the other side.

What about Civic Education?

Some policymakers, community organizers, and Los Angeles residents touched on the importance of civic education when discussing voting age change. However, the relative lack of attention to whether and how civic education should change in relation to voting age change is somewhat concerning. There are studies showing that policies lowering the voting age are more successful at increasing turnout when paired with enhanced school-based civic education.³⁴ Attention to civic education in concert with allowing 16 and 17 year olds the right to vote is persuasive, especially for those who endorse the rationale that teens should vote earlier while connected to school, home, and community supports.

Some voting age policies, such as San Francisco's Measure F or California's SCA 19 in 2004, specifically call for the creation of educational programs to prepare teens to vote. To date, an educational component has not been explicitly discussed related to California's ACA 4 or ACA 8 or voting age change initiatives in Los Angeles. Perhaps lawmakers are concerned that schools or teachers may unduly influence students' voting, see current civic education as adequate, or do not place priority on enhancing civic education in relation to this policy. Teachers may need to be trained on how to foster a climate of dialogue and debate and build civic skills for voting without pushing an agenda. Scholars have shown this is certainly possible.³⁵

Limitations

Although thorough, our documentation of perspectives by key informants in Los Angeles was not exhaustive. The omission of views of Los Angeles City Councilmembers is notable, as these elected officials most likely would be asked to consider a voting age policy proposal in Los Angeles if it were to move forward. In addition, our public opinion survey was not representative of Los Angeles residents, and small sample sizes for some groups gave us low power to test for racial/ethnic group differences or differences among moderates versus conservatives.

On a broader level, this chapter focused on expanding voting rights for teenagers, but was unable to take up voting rights issues more comprehensively. The issue of expanding local voting rights to non-citizens is an active topic of discussion. It is often discussed in concert with lowering the voting age, given the common focus on enfranchising groups who are directly affected by decisions of local elected officials. Some areas are taking a more holistic approach to enfranchisement, as illustrated by the Riverdale Park, Maryland voting rights decision (2018), which included lowering the voting age to 16, expanding voting rights to all residents regardless of citizenship status, and offering same-day registration for voters.

³⁴Zeglovits & Aichholzer (2014).

³⁵Hess & McAvoy (2014).

Directions for Future Research

Additional voting age policy research would be especially fruitful in several areas. First, as suggested above, a larger, more representative sample is needed to replicate our public opinion findings. Second, extending our findings regarding justifications for voting age opinions, experimental research would be useful for determining whether indeed specific messaging leads to increased support or opposition to voting age change. Third, many oppose voting age change based on the belief that youth are more easily influenced by others than adults. This intriguing question has never been empirically tested, and future research could examine the extent to which adolescents are more, less, or equally susceptible to others' influence regarding political views.

Fourth, if a large city such as Los Angeles, or a state such as California, did lower the voting age, opportunities to thoroughly research the positive, negative, or neutral impacts of this policy would be unprecedented. The towns that have enfranchised teen voters to date are so small that rigorous quantitative examinations of increased voter turnout are not feasible. Extending voting rights to 16 year olds in Los Angeles would offer the first large-scale opportunity to test the impact of this policy on voter turnout in the US, as well as examine effects on parents' voting, changes in civic education, and effects on lifelong voting habits. Just as all policy impacts take time to detect with accuracy, it may take several election cycles to reliably determine the impact of voting age change on turnout and other outcomes.

Conclusion

Ultimately, voters of Los Angeles and California will be the decision makers on changes to the voting age. Our results lead us to recommend that the Los Angeles City Council move toward introducing a ballot measure that would allow 16 and 17 year olds the right to vote in local elections. We further recommend that the California State Assembly move ahead with approving ACA 8 and/or ACA 4 so that this issue can be decided by voters. With no large impediments to cost or implementation, it is time that voters be given the chance to weigh in on voting rights expansion for teenagers.

With varying public opinions documented in our research, we cannot say whether the expansion of voting rights will be favored or opposed by the majority of voters. Indeed, with few of our respondents neutral on the issue, the topic of voting age expansion could bring people to the polls and spark passionate debate on both sides. Given that Los Angeles and California often lead the way in progressive policy change, other cities and states may look to LA and California as test cases for the viability of voting age change policies in their areas.

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Table 1. Summary of California Legislation to Lower the Voting Age

Bill Name	Description	Status	Arguments
ACA 23 (1995) Au: Speier	Allow voting for 14 year olds and older.	Inactive - Never set for hearing in committee	Not available
SCA 19 (2004) Au: Vasconcellos	Allow voting at 14; 14-15 year olds' votes count ¼, 16-17 year olds' votes count ½. Amended: Allow fully counted votes at 16. Programs to prepare teens to vote.	Inactive - Failed to pass Senate Appropriations Committee	First Bill Support: Partial votes accustom youth to the responsibilities of citizenship. First Bill Oppose: Partial votes may violate the 14 th amendment of the constitution. Amended: Not available
ACA 25 ('04) Au: Mullin ACA 17 ('05) Au: Mullin ACA 15 ('08) Au: Mullin ACA 2 ('09) Au: Furutani ACA 7 ('13) Au: Mullin ACA 4 ('19) Au: Mullin	Allow 17 year olds who will be 18 at the time of the general election to vote in primary elections and any intervening elections.	ACA 2(2016), 15, 25 – Failed to pass Assembly. ACA 2(2009), 17 No vote taken on Assembly floor. ACA 7 Held by committee. ACA 4 – Active. Passed in House with 2/3ds majority vote (58-13-8); Headed to Senate	Support <ul style="list-style-type: none"> • Increase voter turnout. • Create lifelong voters. • Vote while connected to school & community. • Allows youth to help select candidates that will appear on their ballots. • Rectifies a disadvantage for youth with a birthday between primary and general election. • Pair meaningful action with civics courses. • 17s can be poll workers and serve in armed forces. • Law exists in 20 other states, and turnout increased. Oppose <ul style="list-style-type: none"> • Legal minors are children, under strong influence of parents and teachers, are unlikely to express independent choices.
ACA 7 (2016) Au: Gonzalez	Allow 16 and 17 year olds to vote in school and community college district governing board elections in their areas of residence.	Inactive Held by committee.	Support <ul style="list-style-type: none"> • Amplify youth voices. • Vote while connected to family and school. • Transitions at 18 present obstacles to voting. • United Nations call to increase voting. • Maryland cities allow it and turnout increased. • 16-17 year olds have the maturity. • Establish lifelong habits. • Increase parental voter turnout. • Youth drive, work, & pay income taxes yet have no representation. • Some youths' parents cannot vote due to citizenship. • Educational decisions neglect an important group. Oppose <ul style="list-style-type: none"> • Establishes two classes of voters; thus unfair. • Unfair to school board candidates who would have different electorates than others. • Could complicate election administration.
ACA 10 (2017) Au: Low ACA 8 (2019) Au: Low	Allow 17 year olds to vote in all elections.	ACA 10 – Inactive Failed to pass with two-thirds majority in House (46-24-9) ACA 8 – Active Passed in House with 2/3ds majority vote (57-16 6); Headed to Senate	Support <ul style="list-style-type: none"> • Other places allow youth to vote. • Increase voter turnout. • Build on success of California's preregistration. • Pair meaningful action with civics courses. • Vote while connected to school, home, & community. • Establish lifelong voting habits. • Increase learning about government and politics. Oppose <ul style="list-style-type: none"> • Legal minors are children, under strong influence of parents and teachers, are unlikely to express independent choices.

Note. This information was taken from the bill analysis available online by the California State Legislature. No information on ACA 23 was available. Au = Author. ACA = Assembly Constitutional Amendment. SCA = Senate Constitutional Amendment.

Table 2. Survey Sample Demographics and Descriptive Statistics

Categorical Variables	N	%	
Age			
16 and 17	189	34.9%	
18 to 30	128	23.2%	
31 and older	134	24.9%	
Missing	91	17%	
Gender			
Male	131	24.3%	
Female	299	55.6%	
Other gender identity	7	1.3%	
Missing	108	18.8%	
Race/ethnicity			
American Indian or Alaska Native	11	2.0%	
Asian	135	25.1%	
Black or African American	29	5.4%	
Hispanic or Latino/a	139	25.8%	
Native Hawaiian or Pacific Islander	9	1.7%	
Other	24	4.5%	
White	158	29.4%	
Missing	99	18.4%	
Parent^a			
Yes	101	39.0%	
No	155	59.8%	
Missing	4	1.5%	
Voted in 2016 presidential election^a			
Yes	176	68.0%	
No	80	30.9%	
Missing	3	1.2%	
Political Party			
Democrat	262	48.7%	
Independent	42	7.8%	
Republican	33	6.1%	
Other party	11	2.0%	
Don't know	17	3.2%	
No preference	75	13.9%	
Missing	98	18.2%	
Continuous Variables			
	M	SD	Missing
Financial Strain	2.48	0.796	333
Political Ideology	5.23	1.53	128
Political Interest	3.84	0.903	98
Politically Active	2.42	1.030	97

Note. Parenthood status and voting history were only asked of those 18 and older.

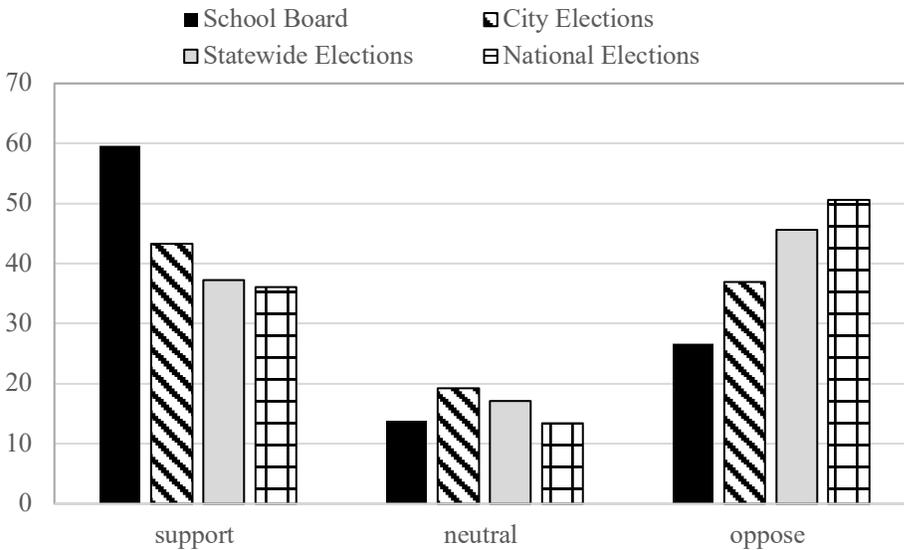
^aThese variables were only asked to participants 18 and older. Therefore, the number of cases is necessarily smaller. There may be participants 18 and older among the 91 people who dropped out before the age question, but there is no way of knowing this information. N = number, M = mean, and SD = standard deviation.

Table 3. Descriptive Statistics and Demographic Differences for Policy Opinions and Justifications

	M	SD	Group Differences
Supporting Justifications			
16-year olds should have a say in policies that directly affect them.	4.00	1.28	16-30 year olds, females, Latinx and Asians, liberals higher.
Voting will give 16-year olds a reason to become more informed about politics.	3.87	1.28	16-30 year olds, Latinx and Asians, liberals higher.
16-year olds are capable of understanding politics.	3.83	1.22	16-30 year olds, liberals higher.
16-year olds have valuable perspectives on political decisions.	3.76	1.20	16-30 year olds, liberals higher; Latinx higher than Whites.
Voting will help 16-year olds become lifelong voters.	3.70	1.40	All age groups differ; Latinx and Asians, liberals higher.
16-year olds are capable of taking voting seriously.	3.64	1.27	16-30 year olds, Latinx higher than Whites; all political ideologies differ.
16-year olds are allowed to drive and pay taxes, so they should be allowed to vote.	3.49	1.45	16-30 year olds, Latinx and Asians, liberals higher.
16-year olds are already civic leaders in their communities, so they should be allowed to vote.	3.35	1.39	16-30 year olds, females, Latinx and Asians, liberals higher.
There is not much difference between 16 and 18 year olds.	2.87	1.44	16-17 year olds higher than 31 & older; liberals higher.
Opposing Justifications			
16-year olds are too easily influenced by other people to think for themselves.	2.96	1.35	Males, conservatives and moderates higher.
16-year olds do not understand the consequences of their actions.	2.80	1.33	31 and older, males, Whites higher than Latinx; all political ideologies differ.
16-year olds are too impulsive to make good decisions.	2.80	1.41	31 and older, males, conservatives and moderates higher.
16-year olds are too inexperienced to address social problems.	2.75	1.43	31 and older, males, Whites and Asians, conservatives and moderates higher.
16-year olds are not mature enough to have informed opinions.	2.66	1.41	31 and older, males, conservatives and moderates higher; Whites higher than Latinx.
16-year olds do not care enough about politics to vote.	2.53	1.32	31 and older, males higher; all political ideologies differ.
16-year olds are not allowed to smoke or drink alcohol, so they should not be allowed to vote.	2.08	1.45	31 and older higher; all political ideologies differ.
Younger people voting will weaken democracy.	1.86	1.25	31 and older, males higher; all political ideologies differ.

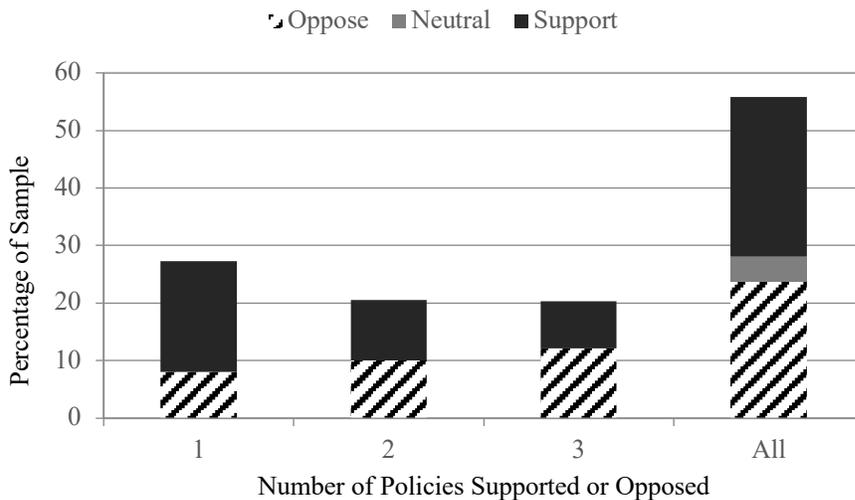
Note: Justifications are ranked from most to least endorsed by respondents. Mean difference tests indicated that for supportive statements, “There is not much difference between 16 and 18 year olds” and “16-year olds are already civic leaders in their communities, so they should be allowed to vote” ranked lowest; “16-year olds should have a say in policies that directly affect them” and “Voting will give 16-year olds a reason to become more informed about politics” ranked highest. For opposing statements, “Younger people voting will weaken democracy” and “16-year olds are not allowed to smoke or drink alcohol, so they should not be allowed to vote” ranked lowest; “16-year olds are too easily influenced by other people to think for themselves” and “16-year olds do not understand the consequences of their actions” ranked highest.

Figure 1. Percentages of Respondents that Support, Oppose, and are Neutral on Lower Voting Age across Election Types



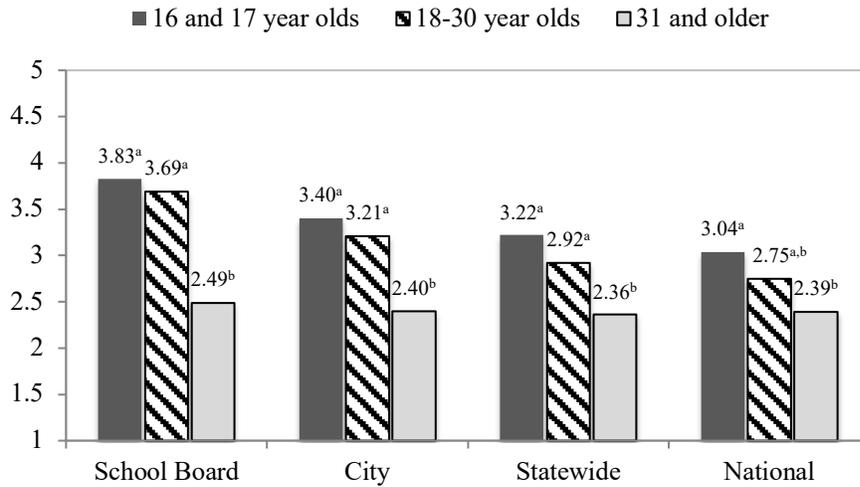
Note. Original responses were 1 (strongly oppose), 2 (oppose), 3 (neutral or undecided), 4 (support), and 5 (strongly support). Percentages were derived from combining support and strongly support categories and combining oppose and strongly oppose, respectively.

Figure 2. Strength of Support and Opposition for Voting Age Policy



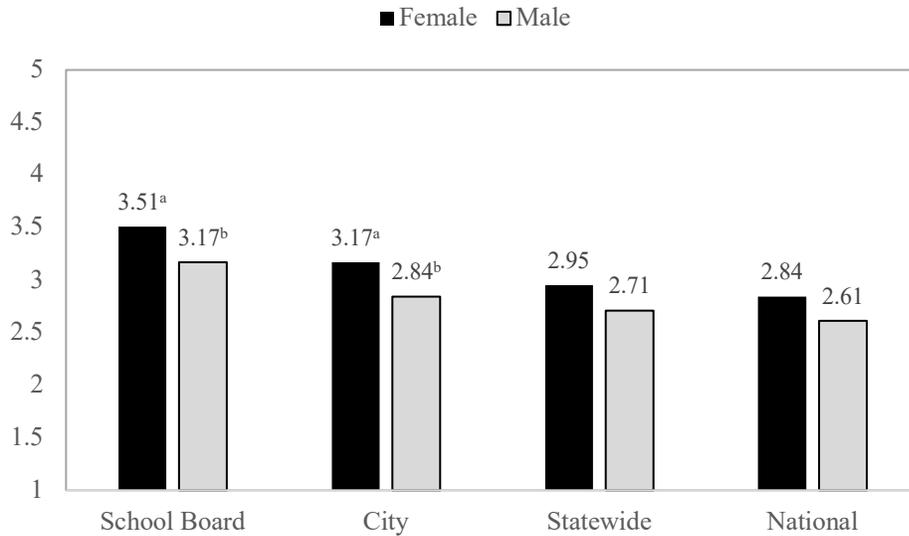
Note. Respondents were first categorized as supporting, opposing, or neutral on the four policy opinions. Then, the number of policies supported and opposed were counted, ranging from 0 to 4. Black bar segments represent proportion of sample indicating support for 1, 2, 3, and all policies, and striped parts of bars represent proportion of the sample indicating opposition for 1, 2, 3, and all policies. A small proportion of the sample (4.3%) were neutral on all four policy opinions.

Figure 3. Mean Differences in Voting Age Policy Opinions by Age Group



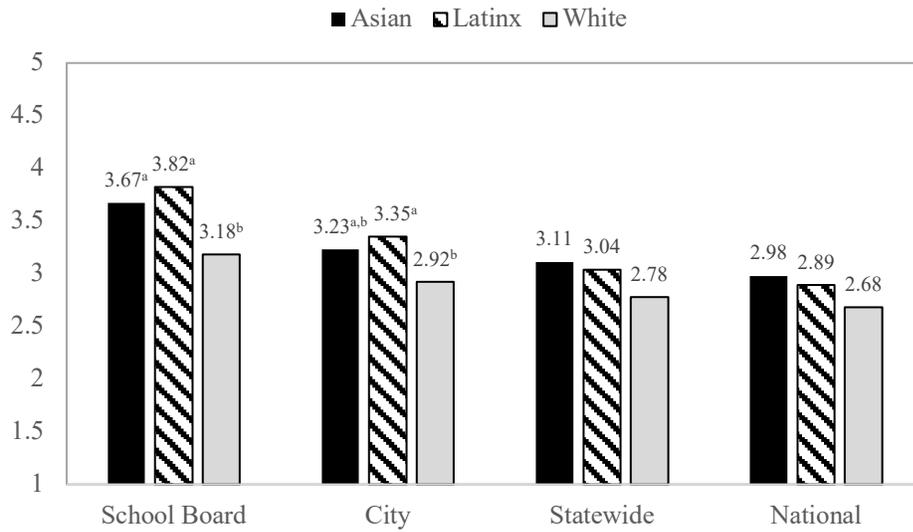
Note. Different superscripts represent significant differences for each policy type, i.e., only when columns for a type of election do not share the same letter, they are significantly different at $p < .05$.

Figure 4. Mean Differences in Voting Age Policy Opinions by Gender



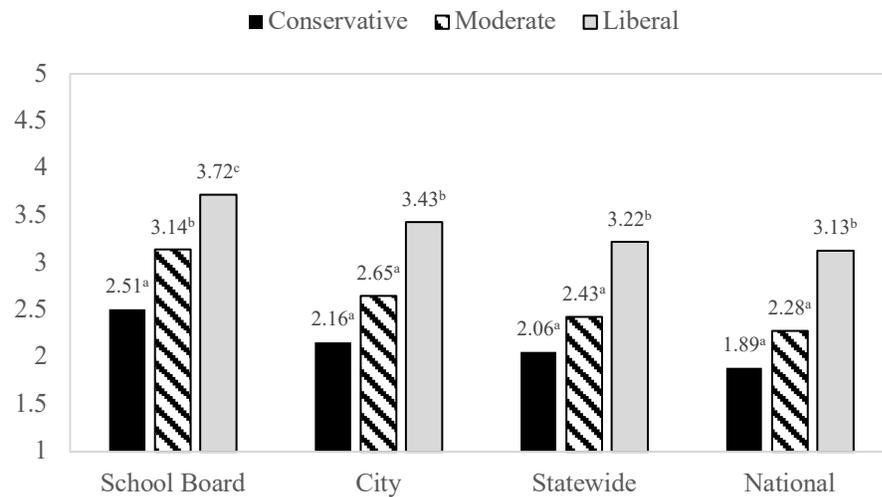
Note. Different superscripts represent significant mean differences for each policy type at $p < .05$. No superscripts indicate no mean difference between groups on the policy opinion.

Figure 5. Mean Differences in Voting Age Policy Opinions by Race/Ethnicity



Note. Different superscripts represent significant differences for each policy type, i.e., only when columns for a type of election do not share the same letter, they are significantly different at $p < .05$. No superscripts indicate no mean difference between groups on the policy opinion.

Figure 6. Mean Differences in Voting Age Policy Opinions by Political Ideology



Note. Different superscripts represent significant differences for each policy type, i.e., only when columns for a type of election do not share the same letter, they are significantly different at $p < .05$.

Table 4. Justifications Predicting Voting Age Policy Opinions

	V16 School Board	V16 City	V16 State	V16 National	Strength of Support	Strength of Opposition
Opposing Justifications						
16s don't care about politics.	-.10*	-.05	-.01	-.02	-.10	.03
16s are too inexperienced.	-.15**	-.12*	-.17***	-.14*	-.18*	.12
16s are not mature enough.	-.10	-.16***	-.15**	-.19***	-.21**	.12
16s are too impulsive.	-.04 ₁₆₋₁₇ /-.21*** ₁₈₊	-.15** ₁₆₋₃₀ /-.22*** ₃₁₊	-.20***	-.17**	-.09 ₁₆₋₁₇ /-.29** ₁₈₊	.13 ₁₆₋₁₇ /-.38*** ₁₈₊
16s don't understand conseq.	-.04	-.04	-.03	-.06	-.08	-.01
16s are too easily influenced.	.06	-.02	-.03	-.04	-.03	.24** ₁₆₋₁₇ /-.07 ₁₈₊
16s can't smoke/drink.	-.08*	-.10**	-.12**	-.14***	-.12*	.17***
Youth voting weaken democ.	.15 ₁₆₋₃₀ /-.11* ₁₈₊	-.07	-.06	.02	.06	.13
Supporting Justifications						
16s are capable of underst.	-.02	-.01	-.03	-.01	-.22* ₁₆₋₁₇ /.03 ₁₈₊	.03
16s have valuable persp.	-.01	.03	.04	.01	.05	.04
16s should say in policies.	.26*** ₁₆₋₁₇ /.09 ₁₈₊	.02	-.00	.05	.02	-.10
16s can take voting seriously.	.05	.06	.11*	.16**	.23** ₁₆₋₃₀ /-.11 ₃₁₊	-.18**
Reason to become informed.	.02	-.03	-.07	-.01	-.02	-.06
Help 16s be lifelong voters.	.14**	.07	.07	.01	.06	-.07
16s can drive and pay taxes.	-.03 ₁₆₋₁₇ /.20** ₁₆₋₁₇	.26***	.21***	.26***	.12 ₁₆₋₁₇ /.36*** ₁₈₊	-.25***
16s are civic leaders.	.12	.16**	.23***	.09	.20*	-.08
Little diff. between 16 & 18.	.11**	.16***	.18***	.22***	.25***	-.30***

Note. Standardized coefficients reported. Items are paraphrased for space reasons. When one parameter is reported, this effect was equivalent across age groups, and otherwise parameters are reported separately by age group. V16=Vote 16. The dependent variable for specific election types was the original continuous variable. Strength of Support/Opposition variables were calculated from counts of support/opposition across election types (range = 0 to 4). Reasons for and against the policy were examined in separate models. All models controlled for age, gender, political ideology, and race/ethnicity (Latinx and Asian only as dummy variables given small sample sizes for other groups), which are not pictured.

Appendix A: Methodology

Policy Research Methodology

We gathered various sources of data that contributed to the analysis of legislative history, policy context in Los Angeles, and community organizations' perspectives. We name our data sources when describing findings about California and Los Angeles' policy landscape regarding the voting age. We reviewed archived documents related to each piece of proposed legislation or motions and when available, video recordings of sessions, from the California state legislature (www.legislature.ca.gov) and the Los Angeles Unified School Board (<https://boe.lausd.net>). We reviewed the Los Angeles City Charter and related documentation, as well as documentation on voting laws, procedures, and statistics available from the California Secretary of State (www.sos.ca.gov) and Los Angeles County Registrar (www.lavote.net).

We supplemented insight gained from this documentation with qualitative interviews with a few key informants. We interviewed Dean Logan, Registrar for Los Angeles County, and Steve Zimmer, former LAUSD School Board President and Education Policy advisor to Los Angeles Mayor Eric Garcetti. We sent invitations for interviews or written comments to all current Los Angeles City Councilmembers, and only received a response from one, Bob Blumenfeld, who sent a short written response generally in favor of the idea. We also requested, but were unable to secure, interviews with several LAUSD School Board members. Regarding current voting age legislation under consideration at the state-level, we talked with Cassie Mancini, a legislative aid of Assemblymember Evan Low, sponsor of ACA 8. These interviews provided general information regarding current legislation, legislative procedures, and implementation of voting procedures, and only in a few select cases are these individuals quoted directly.

To gather perspectives from organizing groups advocating for voting age policy change, we identified several organizations active on the issue via news stories, events, and web searches, and reached out to three organizations and spoke to someone with knowledge of the organization's efforts to advocate for voting rights for young people. At Community Coalition, we talked with Hector Sanchez, Director of Finance and coordinator of youth programs; at Inner City Struggle, we spoke with Associate Director Henry Perez; and at Power California, we talked with Executive Director Luis Sanchez as well as a community organizer and former student member of the LAUSD school board Tyler Okeke. We attempted to schedule interviews with youth organizers at each of these organizations, but due to scheduling conflicts, were unable to obtain their perspectives in the timeframe needed for the research.

Survey Methodology

We purchased advertising time on Instagram and Facebook through the Facebook Business platform, which uses an algorithm to show advertisements to the target audience. In this case our target audience was Los Angeles residents 16 and older. We paid per "impression," or view, of our advertisements in Instagram and Facebook News Feed and Stories sections. Of participants who clicked on an advertisement leading to the online survey, about half completed it. On average, we paid \$1.91 in advertising time per survey completion.

Each advertisement allowed us to target audiences by platform (Instagram and/or Facebook), age, and geographical area. Initially, we created two advertising campaigns: one for 16 20 year olds and one for adults aged 18 and over. For each campaign, we tested two different advertisement photos and text placements to determine which performed better, and then implemented the more effective advertisement. Each advertisement featured a photo of an adolescent or adult female and text below the photo that specified our status as UCLA researchers and the purpose of the study.

The advertisements featured photos of African American, Asian, Latinx, and White race/ethnicities. Through data gathering, we discovered that Asian and Black participants were more likely to click on advertisements featuring models matched on ethnicity. We could not analyze results for advertisements featuring Latinx and White models because these two advertisements were less effective overall and, thus, we did not use them widely.

We monitored the demographics of our sample and engaged in more targeted recruitment when needed. Upon noticing that older adults were underrepresented in the sample, we introduced a separate advertisement for adults 35 and older. We also created separate advertisements targeting African American youth and Conservative youth (specified in the advertisement's target audience) because they were underrepresented in the sample. In addition to purchasing additional advertisements to increase African American and Conservative respondents, we reached out directly to 11 Los Angeles-based affinity groups via Twitter and email, yet these outreach efforts yielded few results.

Statistical Analyses

On our survey, 64.3% of respondents reached the end of the survey, 8.8% stopped after answering the first four policy opinion questions, and the remaining 26.9% stopped somewhere in the middle of the survey. Thus, amount of missing data varied across items (as shown in Table 2). For example, approximately 18% of the sample did not reach the demographics section of the survey. In comparing those who completed the survey versus those who did not on voting age policy opinions, there were no significant differences in policy opinions for those who stopped the study early, although there was a trend toward completers having lower endorsement of voting for school board elections than those who stopped early ($M_{\text{completer}} = 3.37$; $M_{\text{non-completer}} = 3.60$, $t=1.92$, $p = .055$).

First, to describe support and opposition for voting age change, we first examined mean differences across voting age policy opinions using a repeated measures ANOVA in SPSS with policy type as a within-subjects factor with four groups. There was a significant overall multivariate F test ($F(3, 532) = 50.49$, $p < .001$) and a significant effect for the within-subjects factor ($F(3,534) = 102.20$, $p < .001$). Pairwise comparisons were examined, and all differences were significant at $p < .001$.

Second, we examined demographic differences in policy opinions by age, gender, race/ethnicity, political ideology, financial strain, political interest, and self-assessment of being politically active. For each policy type we conducted a two-way ANOVA with age group (3) and gender (2), and their interaction, as between-subjects factors predicting policy opinion. Significant effects emerged for age group across all four policy types ($Fs(2,422) = 43.50, 20.29, 12.86, 6.59$, $ps < .01$). Gender was significant only in voting age for school board and city models, ($Fs(1,422) = 6.87, 5.71$, $ps < .01$), but was not significant for state or national voting age opinions. None of the models had a significant age group x gender interaction. Tukey's post-hoc follow-ups were examined for age group, and mean differences reported at $p < .05$. Race/ethnicity differences in policy opinions were examined with a series of one-way ANOVAs. Significant racial/ethnic differences emerged for lowering the voting age for school board ($F(2,389) = 9.42$, $p < .001$) and city elections ($F(2,389) = 3.93$, $p < .05$), and Tukey's post-hoc follow-ups were reported at $p < .05$. There were no racial/ethnic differences on state and national voting age opinions. Political ideology (3 groups) was examined in the same way; significant differences were found across all four policy types ($Fs(2,408) = 23.93, 29.58, 24.17, 25.42$, $ps < .001$), and Tukey's post-hoc follow-ups were reported at $p < .05$.

The remaining factors of political interest, prior voting in 2016 and 2018 elections, parenthood status, and financial strain were examined in relation to policy opinions using independent samples *t*-tests. Prior to the analysis, political interest was dichotomized into some interest or less (0) and a lot of interest or more (1), and financial strain was dichotomized into having no problem buying things (0) and having a hard time financially or just enough to meet needs (1). The sample for parenthood status was restricted to those 31 and older, and the sample was restricted to those voting-age eligible in prior elections. None of these *t*-tests met the .05 threshold for statistical significance.

Third, we examined justifications for voting age opinions. To have statistical support for determining the most and least endorsed justifications, we conducted two repeated measures ANOVAs with supporting justifications (9) and opposing justifications (8) as within-subjects factors, respectively. Both models showed significant *F* tests for within-subjects effects ($F_{opposing}(7,470) = 79.78, p < .001$; $F_{supporting}(8,466) = 69.94, p < .001$). Pairwise comparisons were examined and used to determine the rankings reported in text and in Table 3.

Fourth, we examined demographic differences in justifications with a series of one-way ANOVAs with gender, age group, race/ethnicity, and political ideology as between-subjects factors, respectively. Given the large number of statistical models conducted (17 justifications x 4 demographic factors = 68 one-way ANOVAs), we do not report each *F* test here. We used the same process as described for analyses above, in first looking for a significant *F* test (at $p < .05$), and then examining Tukey post-hoc tests to determine pairwise comparisons for between-subjects factors with 3 groups. These results are summarized in the last column in Table 2 and more information is available upon request from the first author.

Finally, to examine the role of justifications in predicting voting age policy opinions, we utilized *Mplus* version 8.1, a structural equation modeling software, to conduct regression-based models. We primarily moved to *Mplus* for these analyses so that we could use multiple groups modeling to statistically compare regression parameters across age groups. We did this by comparing a model where all parameters were free to vary with a model where parameters were constrained across age groups; comparisons were evaluated based on chi-square difference tests and change in CFI values, where CFI change of .01 or greater was considered significant. When models differed significantly, parameters were freed one-by-one using modification indices to determine which parameters differed by age. These results are summarized in Table 4; when one parameter is reported, this effect was equivalent across age groups, and otherwise parameters are reported separately by age group.

Chapter 10

Consent Policy for Youth Diversion in Los Angeles County

Susan Baik, Oceana Gilliam, Lindsay Graef, Nicollette Lewis, Erica Webster

The authors are graduates of the Master of Public Policy program
at the UCLA Luskin School of Public Affairs.

This chapter was adapted from an Applied Policy Project (APP) project report the authors completed as part of that program. The client for the project was the Los Angeles County Office of Youth Diversion and Development. The authors acknowledge this project would not have been possible without the generosity of justice-involved young people, community leaders, and justice system stakeholders who agreed to be interviewed.

Los Angeles County has the largest juvenile justice system in the nation.¹ Over the past decade, arrest and incarceration rates for youth in Los Angeles County have decreased significantly,² although Black and Latinx youth continue to be arrested and on probation at higher rates than other youth. Research shows that all levels of justice system involvement are associated with a multitude of negative outcomes. Incarceration in a juvenile facility exacerbates depression and mental illnesses in young people, increases school dropouts, and diminishes future earnings.³ Arrest alone has also been associated with expulsion from school and an increased risk of rearrest.⁴

Diverting young people away from the justice system at the earliest point of contact is not only more effective at reducing crime than incarceration, it also minimizes harmful collateral consequences by serving youth in the community.⁵ However, in Los Angeles County, the policy by which young people enroll in diversion programs – programs that keep them out of the formal arrest process and juvenile facilities - remains unclear.

In practice, diversion service providers require a parent or legal guardian to consent for a youth under age 18 to participate in diversion programs. This practice excludes some young people who do not have a present or willing parent or legal guardian to assist with the diversion process. Examples include foster youth, unaccompanied homeless youth, undocumented youth, and youth whose parents may act against their best legal interests. Furthermore, the lack of a standard consent policy has left open crucial legal and ethical questions about the balance between youth rights and parental rights. In this chapter, we address the following question:

How should the Los Angeles County Office of Youth Diversion and Development (YDD) construct its consent policy, given the ethical, legal, and practical concerns surrounding implementation in Los Angeles County?

To address this policy question, we researched existing literature on this topic, analyzed youth arrest data, and conducted over 40 interviews with key stakeholders. Given the complexity of laws governing youth justice, our restricted access to data and some key stakeholders, and the fact that YDD is just beginning to launch its programs, creating a set of evidence-informed *guidelines* is more useful than recommending one specific consent policy. These include *Policy Guidelines for Consent*, which are

¹Board of State and Community Corrections (BSCC). Juvenile Detention Profile Survey - Los Angeles County Average Daily Population (ADP) as of February 2018. At: http://www.bscc.ca.gov/s_fsojuviledetentionprofile.php. Accessed January 2019.

²Taylor Schooley, "Los Angeles County Diverts Justice-Involved Youth," HealthEquityGuide.org, accessed March 19, 2019, <https://theequityguide.org/case-studies/los-angeles-county-diverts-justice-involved-youth/>.

³Barry Holman and Jason Ziedenberg. The Dangers of Detention. Justice Policy Institute. June 2011. At: http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf.

⁴David S. Kirk and Robert J. Sampson. Juvenile Arrest and Collateral Educational Damage in the Transition to Adulthood. *Social Educ.* 2013 January 1; 88(1): 36–62. At: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4192649/pdf/nihms611904.pdf>; Akiva M. Liberman, David S. Kirk, and KiDeuk Kim. Labeling Effects of First Juvenile Arrests: Secondary Deviance and Secondary Sanctioning. *Criminology*. February 2014. At: <https://www.urban.org/sites/default/files/publication/33701/413274-Labeling-Effects-of-First-Juvenile-Arrests-Secondary-Deviance-and-Secondary-Sanctioning.PDF>.

⁵Anthony Petrosino, Carolyn Turpin-Petrosino, and Sarah Guckenburg, "Formal System Processing of Juveniles: Effects on Delinquency" (Washington, DC: US Department of Justice, Office of Community Oriented Policing Services, 2013), <https://ric-zai-inc.com/Publications/cops-p265-pub.pdf>.

immediately actionable and address the need for a standard consent policy, and *Policy Guidelines for the Diversion System*, which address longer-term, systemic issues that stem from the consent process. We also recommend specific policy options for YDD to consider as ways to meet each guideline. Ultimately, we recommend a set of policies that responsibly increases access to diversion by removing barriers to consent, while protecting against coercion and over-serving.

The Office of Youth Diversion and Development

The Los Angeles County Office of Youth Diversion and Development (YDD) was created in November 2017 by the LA County Board of Supervisors to oversee and expand County-funded youth diversion and development programs. Recognizing the benefits of reducing youth contact with the juvenile justice system as early as possible, YDD was tasked with implementing a pre-arrest diversion model across multiple law enforcement agencies that keeps youth out of the system altogether.

Methodology

We conducted descriptive analyses to understand trends in youth arrests and eligibility for diversion by different demographic variables in Los Angeles County using the following quantitative data:

- Juvenile arrest data for Los Angeles County from the California Department of Justice (DOJ) for 2005-2017.
- Population estimates from the Integrated Public Use Microdata Series (IPUMS) American Communities Survey (ACS) for 2005-2017, using a one percent sample from each year for individuals under 18 years old. (The juvenile justice system has jurisdiction over youth ages 0-17).

After building our dataset, we calculated annual arrest rates for Los Angeles County by dividing the total number of arrests by the population estimate. We then created a number of other variables to conduct our descriptive analysis.

Qualitative Data Sources and Methodology

The analysis for our research depends greatly on the comparison of policy versus practice for various juvenile justice and community stakeholders. To determine how the implementation of juvenile justice policies varies across stakeholders and how the intended effects of a policy may differ from the actual experiences of young people, we employed the following qualitative data and methods:

- Semi-structured interviews with three law enforcement officers, eleven community-based service providers, seven legal professionals, and twenty individuals who were involved in the juvenile justice system as youth.

- Interview guides for each stakeholder group asking the same core questions of each informant, but allowing them to deviate when relevant.
- “Snowball” sampling and sampling for range to recruit numerous informants with a diverse range of opinions.⁶
- Coding schemes based on themes that emerged from informant interviews allowing us to categorize interview responses into common experiences and key disagreements between stakeholders.

Analysis and Findings

Finding 1: Total youth arrests have decreased, but racial disproportionalities persist. Eligibility for diversion also varies significantly by racial group.

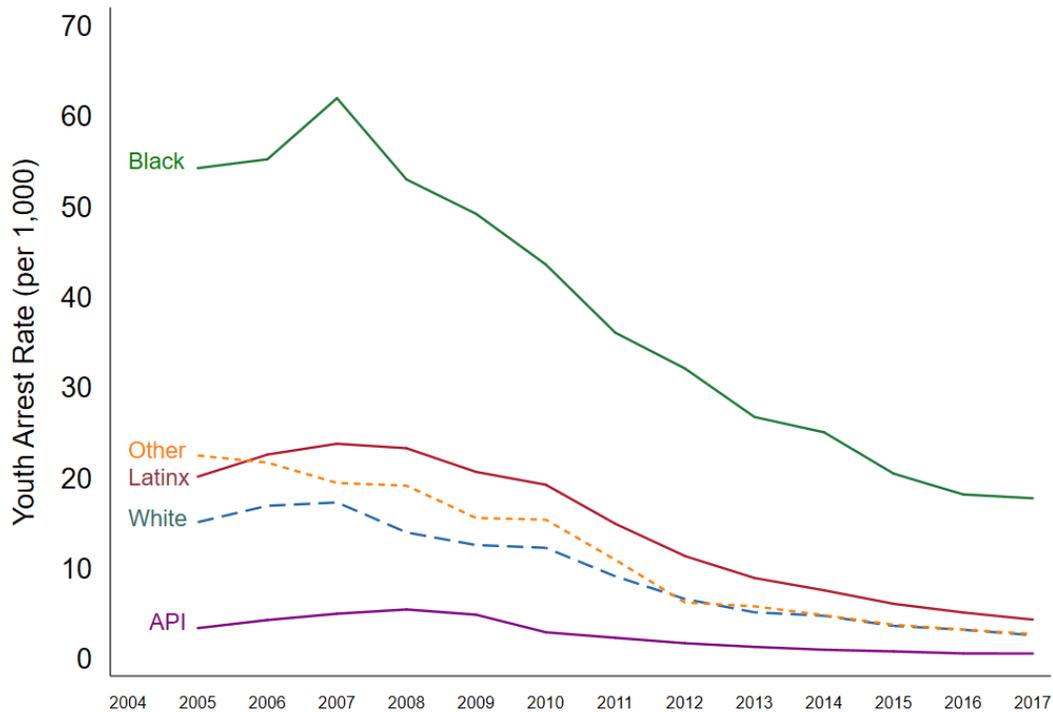
Los Angeles County experienced dramatic declines in youth arrests from 2005-2017. After peaking in 2007, the County’s juvenile arrest rate fell from approximately 24 arrests per 1,000 youth to 4 arrests per 1,000 youth in 2017. Arrest decreases across all three offense categories (felony, misdemeanor, and status offenses) contributed to this drop. From 2007 to 2017, felony arrest rates decreased by 70 percent, misdemeanor rates dropped by 80 percent, and “status offenses” saw a 95 percent decline. (Status offenses relate to minors and refer to such issues as truancy, curfew violations, underage drinking, etc.). There are no clear causal explanations behind this trend; however, Los Angeles County mirrors both California and national trends.⁷

Despite overall arrest rates dropping to historic lows, Black youth are still arrested at the highest rates given their proportion of the general youth population (Figure 1).

⁶Robert Stuart Weiss. *Learning from Strangers the Art and Method of Qualitative Interview Studies*. New York, NY: Free Press, 1995. In snowball sampling, interviewees suggest other persons to interview.

⁷Mike Males. “California Youth Continue Steep Declines in Arrests.” Center on Juvenile and Criminal Justice. December 2017. At: http://www.cjcj.org/uploads/cjcj/documents/steep_declines_in_juvenile_arrests.pdf; “Statistical Briefing Book: Juvenile Arrest Rate Trends,” Office of Juvenile Justice and Delinquency Prevention, October 22, 2018, https://www.ojjdp.gov/ojstatbb/crime/JAR_Display.asp.

Figure 1. Los Angeles County Youth Arrest Rate by Race, proportionate to the racial/ethnic composition of the youth population



In 2017, Black youth made up almost seven percent of the general Los Angeles County youth population but 27 percent of total juvenile arrests (Figure 2).⁸ Conversely, the County youth population is about 17 percent White, but White youth comprised only about 10 percent of youth arrests. Though the arrest rates of Latinx youth appear proportional to the Latinx youth population in Los Angeles County, there are documented examples of law enforcement officers targeting Latinx residents base on race.⁹ It is possible the data may be disguising disproportionalities resulting from inaccurate race reporting or failure to discern Latinx youth from other ethnicities.¹⁰

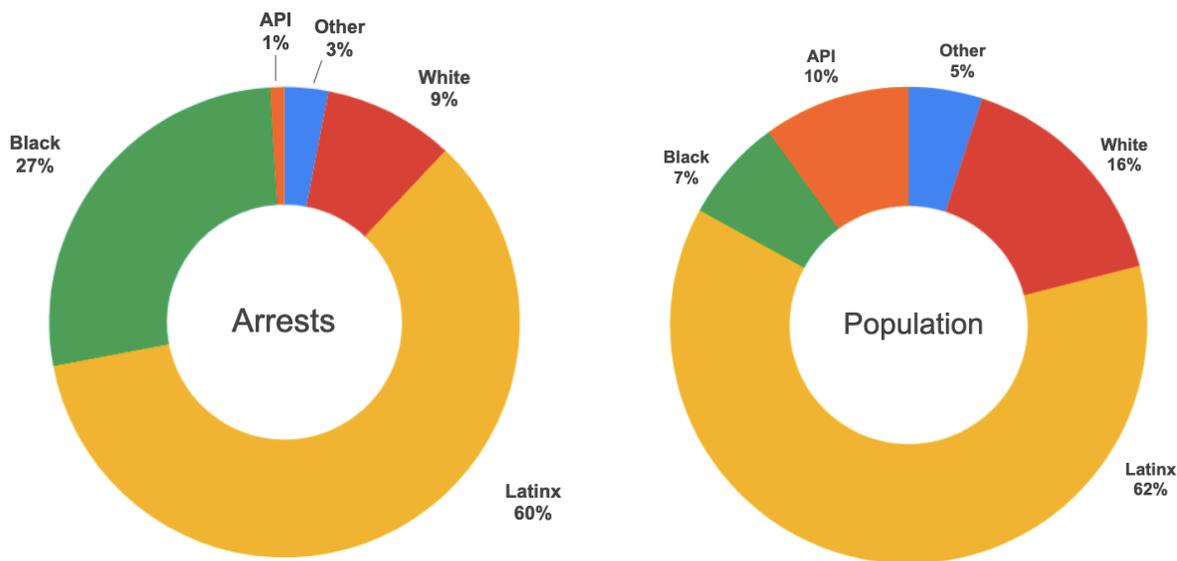
⁸IPUMS USA - CA DOJ dataset, 2019.

⁹Joel Poston and Ben Rubin, "L.A. County Deputies Stopped Thousands of Innocent Latinos on the 5 Freeway in Hopes of Their next Drug Bust," latimes.com, October 4, 2018, <https://www.latimes.com/local/lanow/la-me-sheriff-latino-drug-stops-grapevine-20181004-htlstory.html>.

¹⁰Shoshana Walter, "SFPD underreports Latino, Asian arrests." SFGate. August 15, 2012, <https://www.sfgate.com/bayarea/article/SFPD-underreports-Latino-Asian-arrests-3788809.php>; Michael Tapia. 2010.

"Untangling race and class effects on juvenile arrests," *Journal of Criminal Justice*, Elsevier, vol. 38(3), pages 255-265, May.

Figure 2. Los Angeles County Youth Population by Race vs Youth Arrests by Race, 2017



Arrests are unreliable indicators of behavior given the discretion of individual law enforcement officials (especially for status and misdemeanor arrests). Black youth are more likely to attend schools where police officers are stationed, and studies find that young people of color are more likely to be arrested for common, youthful behavior.¹¹ Thus, these data only describe arrest rates by race in Los Angeles County and do not provide accurate information on the crime rates of demographic groups.

Because we are concerned with how arrests relate to eligibility for diversion, we compared trends in arrests for different offense categories. While police have discretion when determining which youth are referred to diversion, the California Welfare and Institutions Code prescribes some guidelines for eligible offenses.¹² Generally, diversion-eligible offenses include all misdemeanors and nonviolent felonies. YDD recommends counsel-and-release for status offenses.¹³

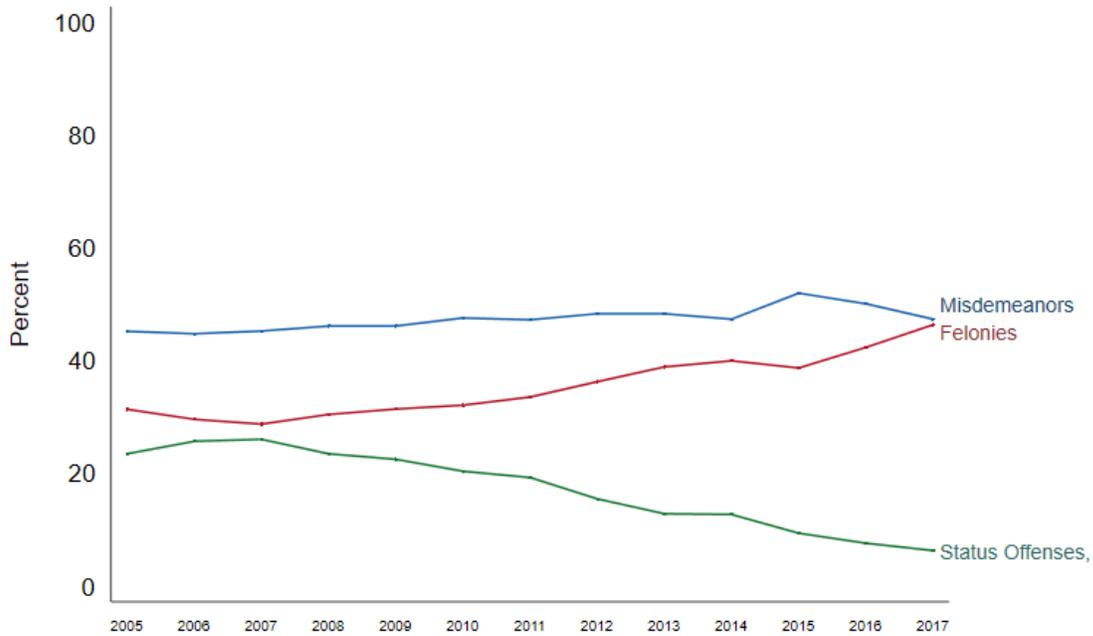
Figure 3 plots the proportion of total arrests that are felonies, misdemeanors, or status offenses in Los Angeles County. In 2017, misdemeanors and felonies comprised 47 and 46 percent of total arrests, respectively, with status offenses making up only six percent of total arrests. While it may seem disconcerting that the proportion of felonies is increasing, overall arrests have decreased, especially for low-level offenses, causing the proportion of felony arrests to increase.

¹¹Evie Blad and Alex Harwin, “Analysis Reveals Racial Disparities in School Arrests,” PBS NewsHour, February 27, 2017, <https://www.pbs.org/newshour/education/analysis-reveals-racial-disparities-school-arrests>; Jessalyn Schwartz, “Study on Racial Disparities in Youth Commitments and Arrests Released,” American Bar Association, April 25, 2016. <https://www.americanbar.org/groups/litigation/committees/childrens-rights/practice/2016/study-racial-disparities-youth-commitments-and-arrests-released/>.

¹²Cal. Welfare and Institutions Code § 707

¹³Countywide Criminal Justice Coordination Committee (CCJCC), “A Roadmap for Advancing Youth Diversion in Los Angeles County,” 2017. <http://ccjcc.lacounty.gov/LinkClick.aspx?fileticket=958nu4vfXQQ%3d&portalid=11>.

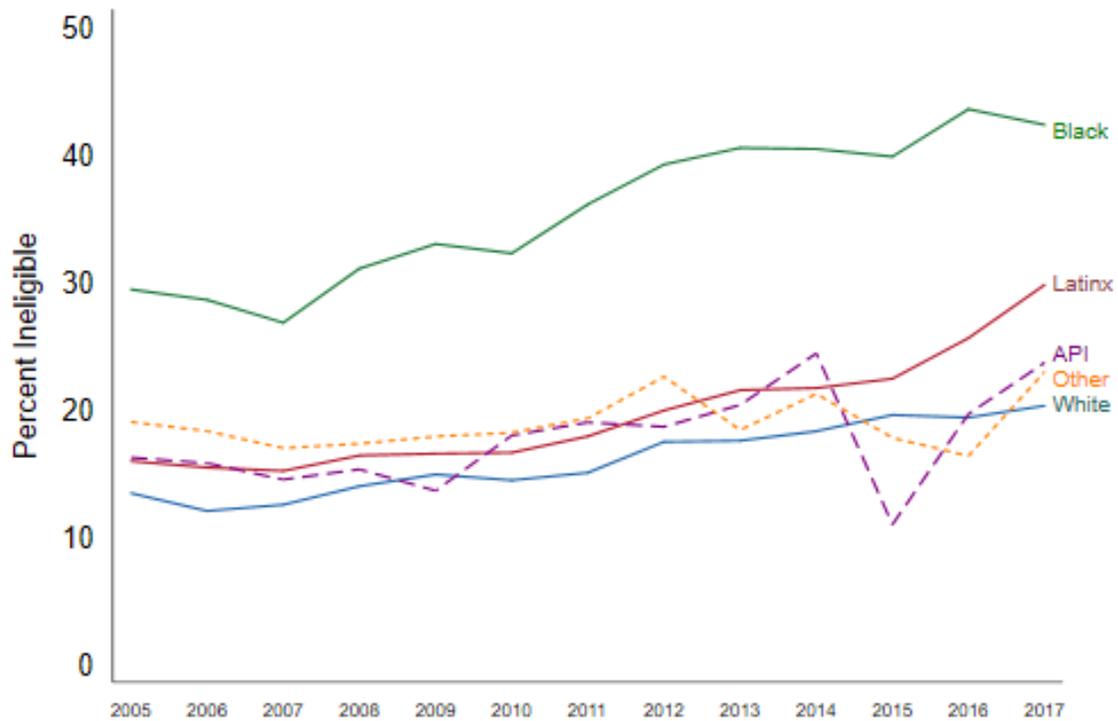
Figure 3. Percent of Total Youth Arrests by Offense Category



The proportion of felonies is directly related to the proportion of arrests that are eligible for diversion. In 2005, 82 percent of arrests were diversion-eligible; in 2017, it fell to 68 percent. As total arrest rates have declined, the proportion of violent felony arrests has increased, causing a slight decline in offenses that are eligible for diversion.

However, the proportions of eligible offenses are not changing equally across all youth racial/ethnic groups. Black youth are more likely to be arrested for felony offenses than all other racial/ethnic groups, and thus are more likely to be ineligible for diversion (Figure 4).

Figure 4. Percent of Youth Arrests Ineligible for Diversion by Race



Finding 2: Some youth cannot obtain parent/legal guardian consent or feel unsupported by their parent or legal guardian. Many youth would prefer additional agency for themselves and would choose an alternative adult to support them in a diversion program.

Interviews with individuals who were arrested as youth, CBO employees, and dependency court and juvenile defense lawyers revealed that some youth may not have access to a parent or legal guardian who would be willing to provide consent. Several system-involved interviewees did not think their parent would consent to diversion because their parent was the person who originally called the police on them or believed only punitive consequences (incarceration) would teach their child to behave.

Similarly, when asked if parents ever acted against the best or expressed legal interest of their child, youth attorneys in both dependency and delinquency court confirmed that this behavior was a common occurrence and were easily able to recall examples. One juvenile defense attorney responded, “Oh my God, absolutely!” and gave this example:

“[My client’s] mother hated me because she wanted to keep him locked up the entire time, because she felt like he was safer [in detention], because he wouldn’t be out on the streets of Baltimore. And at one point, after successfully getting my young person out again, and out into a group home—and he, for the record, he was always going to a group home because his mother wouldn’t take him home . . . She would yell at me, basically, every time I got him out.”

Interview with a legal professional, March, 5, 2019

Dependency court attorneys also recalled experiences where foster parents or group home managers were unwilling to fulfill the role of a “prudent parent,” even when that role was legally bestowed upon them.¹⁴ Our interviewees suggested that these individuals were afraid to act in a parental role for fear of being held liable if harm should befall a youth in their care. They speculated that such foster parents would likely not consent for their foster child to participate in diversion. An interviewee stated that social workers prefer written permission from the child’s attorney before acting, wrongly assuming that this protects them from being held legally responsible.

Given the prevalence of young people lacking access to a parent or legal guardian, some stakeholders argued that youth should have some control over their case outcomes. In fact, formerly justice-involved young people expressed a desire to be included in decisions affecting their lives and to have the option to make positive decisions for themselves. One interviewee said:

“I think as a kid, as a child, I think being presented with options and feeling like I have a decision to make a choice, I think that makes me feel like I’m included in something, and that my life is not just being governed by what other people say. I think that’s the positive part. And for sure, avoiding any type of criminal record or jail time.”

Interview with an individual arrested as youth, February 21, 2019

Lawyers who represent youth corroborated the lack of youth agency in both the dependency court and juvenile justice contexts, describing a literal lack of freedom in youth detention settings as well as hyper-regulated group home and foster care settings. One juvenile defense lawyer attempted to remedy this lack of agency by incorporating the client’s expressed interest into that client’s defense model. The lawyer found that young people are capable of making good decisions when informed about their options.

“Something that [young people] are rarely asked is like, ‘What do you want? What are your goals?’ They will define positive goals for themselves . . . And it’s like, 100% of the time, something like, ‘I want to finish school. I want to get a job.’ . . . They’re very receptive to a lot more than we think, and want [what’s] good for them.”

Interview with a legal professional, February 7, 2019

However, some of these same stakeholders also felt potential hazards may arise from a consent policy that does not involve a parent or legal guardian. For example, even if youth gain permission to participate in diversion, youth can become ineligible if their guardian stops participating.¹⁵ Attorneys described hearings where the judge deferred to the parents’ judgment about appropriate sentencing because the parent would be overseeing the young person, facilitating his/her participation in the

¹⁴Cal. Welfare and Institutions Code § 362.05

¹⁵Models for Change Juvenile Diversion Workgroup, “Juvenile Diversion Guidebook — Models for Change: Systems Reform in Juvenile Justice,” March 1, 2011, <http://www.modelsforchange.net/publications/301>.

program, and perhaps paying restitution. Stakeholders also noted that parents have many rights over their children, and CBO interviewees required at least initial consent from parents before searching for alternate adults.¹⁶

To address current barriers to consent, interviewees described a range of possible alternative contacts besides parents or legal guardians. One CBO mandates a parent or guardian signature upon intake but allows all additional interactions to be informal and flexible. An undocumented young person stated they would never call their parents if they were detained in a police station for fear of negative repercussions to their residency status, and thus would have preferred to call their school counselor.

Arrested youth who are ineligible for diversion due to lack of parent consent leave police officers with only two options: formal processing or case dismissal.¹⁷ Stakeholders fear that police will too often choose formal processing in these cases.¹⁸ This choice is especially harmful to young people living in jurisdictions where formal processing can include booking and detention in the absence of a parent/guardian. One law enforcement officer mentioned that officers cannot counsel and release youth under age 18 after the 10:00 pm curfew, so officers request that they be picked up by a parent or guardian. However, officers also estimated that 80 percent of youth arrests occur after 10:00pm, increasing the likelihood that youth will be brought to the station and booked if they cannot access a parent or guardian.

Finding 3: Stakeholders and youth worry about the legal consequences of diversion, and youth do not understand their legal rights or justice system processes.

Our literature review and qualitative research show that both youth and adults have trouble understanding the legal system. Several interviewees indicated that they did not understand their rights or the overall process of the justice system.

Informant: “[...] it just went over my head, 'cause I didn't understand how that system worked. It's just like, whatever is being brought to you and presented to you, that's just the way it is. You don't even question it.”

Interviewer: “Did you feel like your parents understood the process at all?”

Informant: “Not really, no.”

Interview with an individual arrested as youth, February 21, 2019

¹⁶Cal. Family Code § 7500-7507

¹⁷Interviews with law enforcement.

¹⁸Interviews with case managers, individuals arrested as youth, and youth justice advocates.

Due to this lack of understanding, youth easily become vulnerable to coercion without additional guidance. Research shows that youth under 15 are more likely to make choices “in compliance with authority,” such as waiving their Miranda Rights or accepting plea bargains.¹⁹ Our interviews with individuals who were arrested as youth revealed that youth consistently received harsher penalties or poor legal outcomes due to their lack of understanding of their legal rights and options as well as coercion by adults in the juvenile justice system.²⁰ A subgroup of our interviewees explained that they had trusted the adults in the justice system, including police officers and public defenders, to make the best choices for them; unfortunately for some youth, this trust resulted in negative legal outcomes.

“Yea, I got caught up for...I got caught up for some stuff. And the recommendation was to go to camp. And I had just got out of camp. So I was willing to go again. But my public defender was like “No, take this placement.” But I didn’t know she was taking me off to something worse than camp. They sent me off to up North, [Facility Name]. Sort of like a military school. I would have rather taken camp, ya know. I was supposed to do 5-7 months or 7-9 months and I ended up doing 16. So she kind of set me up, ya know.”

Interview with an individual arrested as youth, February 13, 2019

Without proper information and additional guidance, youth are at risk of making poor decisions for themselves. Research shows that traumatized youth have difficulty making decisions when faced with hostility, and that youth in general have difficulty making decisions under extreme stress or pressure.²¹ Additionally, although older adolescents weigh risks similarly to adults, they are much more sensitive to immediate rewards.

Thus, when making decisions, they have lower risk ratios and a higher likelihood of engaging in whichever activity is immediately rewarding.²² This fact has implications for how diversion and its alternatives should be conveyed to young people, especially at the traumatic moment of arrest. Information about diversion should be conveyed in a way that uses age-appropriate language, addresses language and cultural barriers, considers a young person’s cognitive abilities, and accounts for the effects of past and present trauma.

¹⁹Thomas Grisso, Laurence Steinberg, Jennifer Woolard, Elizabeth Cauffman, Elizabeth Scott, Sandra Graham, Fran Lexcen, N. Dickon Reppucci, and Robert Schwartz. "Juveniles Competence to Stand Trial: A Comparison of Adolescents and Adults Capacities as Trial Defendants." *Law and Human Behavior* 27, no. 4 (2003): 333-63. doi:10.1023/a:1024065015717.

²⁰Interviews with individuals who were arrested as youth.

²¹Julian D. Ford et al., “Pathways from Traumatic Child Victimization to Delinquency: Implications for Juvenile and Permanency Court Proceedings and Decisions,” *Juvenile and Family Court Journal* 57, no. 1 (2006): 13–26; Laurence Steinberg. “Adolescent Development and Juvenile Justice,” *Annual Review of Clinical Psychology* 5 (2009): 459–85, <https://doi.org/10.1146/annurev.clinpsy.032408.153603>.

²²Laurence Steinberg. "Adolescent Development and Juvenile Justice." *Annual Review of Clinical Psychology* 5, no. 1 (2009): 459-85. doi:10.1146/annurev.clinpsy.032408.153603.

"I'm specifically thinking of one of my clients who was 12 at the time. And you talk to her and a lot of people probably can't tell, but then when I sat and talked to her, I'm like, 'There's no way she understands what's going on.' [...] Even just the Miranda Rights, for sure she wasn't gonna understand. I don't think she could... I don't think she fully understood what a plea agreement was, right? [...] I honestly didn't know if she was competent to stand trial 'cause I was pretty sure she just wasn't gonna understand what she was facing, right? [...] But so there's gotta be something for, I don't know what the appropriate term is, intellectual disabilities, I suppose, but also recognizing that a lot of them are not obvious."

Interview with a legal professional, February 22, 2019

Finally, lawyers, law enforcement, and adults who were arrested as youth expressed concern about how records of diversion participation are kept. Youth advocates and CBOs expressed concern that youth would be denied diversion if their records indicated previous participation, whereas law enforcement felt that the maintenance of diversion records was necessary for appropriate referrals. Further, interviewees expressed concern over how diversion records would affect undocumented youth or youth with undocumented parents or guardians.

Finding 4: Depending on their experiences, individuals who were arrested as youth expressed strong distrust towards adults in the justice system. Many interviewees described coercive tactics used by law enforcement.

Our interviews reinforce findings that there is a strong distrust between individuals who were arrested as youth and authority figures in the juvenile justice system. While most of the mistrust was directed towards law enforcement, individuals also mentioned public defenders as unsupportive and coercive, pressuring youth to accept suboptimal plea deals. Therefore, while it may make sense logistically to have law enforcement officers explain diversion programs to youth, the lack of trust in justice system authority figures will make it difficult.

Many of our interviews with individuals who were arrested as youth highlighted coercive treatment by law enforcement officers. One participant noted that after a first encounter with the police, there was an assumption of guilt in every police encounter afterwards. Even when the police officer was mistaken, interviewees felt powerless to stand up against the officer. Additionally, several informants described being beaten and assaulted by law enforcement while in custody. These encounters with police led many of our interviewees to distrust the police. One informant's view of the role of the police was that police were not there to help but instead to arrest:

"They're not there to help you, they're there to arrest you, they're there to bust you. They're not there to help you, you're not gonna get help from them. If they feel like they can arrest you and pin a case on you, they're not gonna help you get out of that case 'cause their job is to bust people."

Interview with an individual arrested as youth, February 19, 2019

Interviews with law enforcement also show that there is not a standard protocol for officers to explain diversion programs to youth. Thus, youth are not provided equal information about diversion. One law enforcement officer equated explaining diversion programs to youth with explaining traffic school to someone with a speeding ticket. This oversimplification of diversion programs and the potential legal ramifications demonstrates that some officers likely do not understand how to explain diversion to young people.

Several interviewees stated that learning about diversion from a community member that was trusted in their community, or at least racially representative of their community would be preferable to a law enforcement officer or to an authority figure. Systems-involved young people also discussed the possibility of hiring specific YDD employees, such as a youth liaison or community-based contractors.

"[It should be] someone that's been in [justice-involved young people's] position or someone that's seen plenty of it. Because those people can be trusted too, a lot of people that are in the system, especially the juvenile system, they care, they want to help, and a lot of kids that have gone through the system they won't believe them, only because they've seen so much crooked stuff happen between lawyers and the cops."

Interview with an individual arrested as youth, February 19, 2019

Stakeholders also discussed the possibility of having public defenders or juvenile defense attorneys explain diversion. However, a legal advocate explained that public defenders are often hesitant to accept additional obligations due to lack of resources. There may also be trust issues; one interviewee described multiple negative experiences with public defenders who he believed never had his best interest at heart. He noted that every time he wanted to plead not guilty or tried to convince the public defender that he was innocent, the defender would urge him to take a plea deal instead. Several interviewees stated that they would prefer that a social worker explain diversion to them instead of a lawyer.

Finally, youth development studies suggest that young people should be granted the opportunity to make an informed decision to participate in diversion. The justice system often treats youth as independent social actors but also fails to give them the agency to act responsibly.²³ Thus, youth are assigned all the blame of their offense but are not given agency to help find a solution or make reparations.²⁴ In fact, decision-making agency is critically important in counteracting the effects of trauma.²⁵ As YDD constructs its consent policy, it must identify a credible messenger to explain diversion and offer insight into how it may affect a youth's future.

²³Roger Smith. "Childhood, Agency and Youth Justice." *Children & Society* 23, no. 4 (2009): 252-64. doi:10.1111/j.1099-0860.2008.00174.x.

²⁴Roger Smith. "Childhood, Agency and Youth Justice." *Children & Society* 23, no. 4 (2009): 252-64. doi:10.1111/j.1099-0860.2008.00174.x.

²⁵Elizabeth A. Bowen and Nadine Shaanta Murshid. "Trauma-Informed Social Policy: A Conceptual Framework for Policy Analysis and Advocacy." *American Journal of Public Health* 106, no. 2 (2016): 223-29. doi:10.2105/ajph.2015.302970.

Finding 5: Law enforcement is mostly diverting low-level offenses, and services for diverted youth are not always proportionate or responsive to their needs. These patterns increase the risks of net-widening and over-serving.

Our interviews with law enforcement officers, community-based organizations, and juvenile defense attorneys revealed that law enforcement officers are mostly diverting low-level offenses instead of higher-level offenses, despite the fact that many higher-level offenses are legally eligible for diversion.²⁶ Law enforcement officers stated that they are primarily diverting low-level misdemeanors and status offenses, and CBOs confirmed this pattern:

“We’ve gotten over time a lot of lower level citations, infractions, things that really don’t need an RJ (restorative justice) process. There’s not a victim-- there’s loitering or curfew.”

Interview with a diversion service provider, February 8, 2019

When asked how they make the decision whether or not to divert higher-level eligible offenses, law enforcement officers cited fears about protecting public safety. One officer gave a hypothetical example of a fight between two young people. Although both young people would be eligible for diversion, the officers would be unlikely to do field diversion in a tense situation. In this scenario, our respondent stated that officers would likely arrest the aggressor to defuse the situation.

This systemic propensity toward diverting low-level offenses is potentially harmful for youth. There is substantial literature that highlights the importance of implementing diversion only for the appropriate youth and in the correct dosage; otherwise, the system risks net widening.²⁷ “Net widening” refers to the phenomenon where the juvenile justice system expands its reach, usually through the adoption of prevention and early intervention programs.²⁸

For example, if the juvenile court processes the same number of cases as before, but additionally places large numbers of youth into diversion programs, then the system has “widened the net” by involving more youth than before. Additionally, low-level cases that would have previously been dismissed become more likely to be referred for formal processing.²⁹ In Los Angeles County’s proposed model, if a youth fails to complete diversion for a low-level offense, his/her case will be referred back to law enforcement personnel, who will then engage formal processing at their discretion.³⁰

²⁶California Welfare and Institutions Code § 707

²⁷Daniel P. Mears et al., “Juvenile Court and Contemporary Diversion,” *Criminology & Public Policy* 15, no. 3 (2016): 953–81, <https://doi.org/10.1111/1745-9133.12223>.

²⁸“Widening the Net in Juvenile Justice and the Dangers of Prevention and Early Intervention.” Center on Juvenile and Criminal Justice. August 2001. At: <http://www.cjcj.org/uploads/cjcj/documents/widening.pdf>.

²⁹Mears et al., “Juvenile Court and Contemporary Diversion.”

³⁰Taylor Schooley. “LAC DHS CHAMP: Youth Diversion and Development ICMS” (Los Angeles County, 2018)

In this way, expanding diversion can actually lead to increased system involvement for young people. Law enforcement can use diversion as an outlet for low-level cases that previously may have just been dismissed. Currently, CBOs have the option to decline a case that is inappropriate for diversion, but they rarely do so because they would be consigning youth to formal processing.

Finally, our interviews revealed a disconnect between who is being diverted and the services offered by CBOs. For example, we spoke with a CBO that offers restorative justice services, where offenders and victims communicate to repair the harm caused by a crime. However, law enforcement interviewees stated that they often decide whether to divert based on whether there was “another person that was injured or affected by the actions of the minor.” Given law enforcement’s hesitance to refer youth who would actually benefit from a restorative justice process, this CBO has been forced to develop new programs for youth with low-level offenses. One service provider expressed frustration about the dissonance between goals of restorative justice and law enforcement’s diversion practices:

“So how do we give them services and diversion without that intensive incident? 'Cause we used to do those circle processes [...] for everybody. And how long are we gonna talk about a loitering charge? Even to the point where we're just like, even the young person is like, 'this is messed up, why am I here?' And then for us as case managers, like, 'We agree with you, so let's talk about a screwed-up system.' And that's still not helpful 'cause we don't want to over-program here.”

Interview with a diversion service provider, February 8, 2019

Other stakeholders, including legal experts and justice-involved youth, agreed that over-serving was a problem, and their concerns are supported by literature review. Intensive services for low-risk youth have been shown to increase offending, and unnecessary diversion can have adverse effects on youth and families through stigma and labeling.³¹ Even the lowest tier of services offered by one CBO for low-level offenses required a considerable commitment from youth and families: four mandatory classes at four hours each.

Although YDD is immediately concerned with creating a youth consent policy, issues of eligibility, net-widening, and over-serving are directly affected by the consent process in that youth and their families may be unaware of these potential negative outcomes. Therefore, in addition to creating systemic protections against these harmful outcomes, a comprehensive YDD consent policy should include protections against net-widening and ensure that youth receive the appropriate level of services.

Finding 6: Coordinating youth services is difficult given the administrative requirements of CBOs and government agencies. Lack of coordination results in a delayed referral process, overlap between services, and an increased risk of over-intervention.

³¹Daniel P. Mears et al., “Juvenile Court and Contemporary Diversion,” *Criminology & Public Policy* 15, no. 3 (2016): 953–81, <https://doi.org/10.1111/1745-9133.12223>; Mears et al. “Juvenile Court and Contemporary Diversion.”

Our interviews with CBOs, law enforcement, and youth demonstrate that there is not a standardized timeline for the diversion referral process in either the citation or station models. Law enforcement who currently use the citation model informed us that it could take up to a month after the initial contact with youth to even mail the youth a referral letter. The youth then has about 90 days to select and enroll in a diversion program; however, this process doesn't always work as intended.

One CBO discussed a case in which law enforcement did not divert the youth involved in the offense until a year after their first contact with law enforcement. When law enforcement finally processed the referral to a diversion program, providing services would not have been beneficial because the offense involved a victim who could potentially re-experience trauma a year after the incident occurred.³² Waiting long periods of time to send diversion referrals misses a critical window, diminishing the responsiveness of a program to a young person's underlying needs.

Inefficiencies within the referral process also include insufficient coordination efforts between County youth services, law enforcement, and CBOs. Dual-status youth, or youth who are under the jurisdiction of both county probation services and child welfare services pursuant to California Welfare and Institutions Code section 241.1, are especially at risk of being over-served by being involved in multiple systems.³³ The complexities that come with serving dual-status youth are captured in an interview with a dependency court attorney:

"Most of the time when [dual-status youth are] in delinquency court, they are facing, generally, behavior that occurred because of their unmet trauma, and unmet mental health needs. There's been this historical [...] advocacy needed by our side when a foster youth is facing the possibility of being placed on diversion or probation.

There's so many different times within the systems themselves where they can be re-traumatized, like if they're living with a sister and suddenly they get separated. [...] And those were all traumas. And then what will happen is the kid might go back to their foster home or group home and break a window, and then they get arrested and they go to jail."

Interview with a legal professional, February 22, 2019

Our interviews with legal experts reveal a need for better coordination between County services, law enforcement, and CBOs. Some interviewees opined that youth experience service fatigue when being referred to multiple services, such as multiple iterations of a diversion program for a single offense. An interview with a legal expert highlights how youth who are served in multiple systems are more likely not to complete their diversion programs and enter into formal court processing for even minor offenses:

³²Interviews with CBOs.

³³Cal. Welfare and Institutions Code § 241.1.

"I've had young people that I've represented who do come through the doors of the system and are petitioned against. And I'm trying to collect their history and I find out that they've been involved in teen court for a year for a petty theft or they've been in a program that's part of a diversion [...] They sort of start all over again because they failed the terms of their diversion intervention. Then you start at point zero, a petition is filed. All for a petty theft. It feels like the feedback I get from young people and families, it's almost like there's two years of intervention for petty theft."

Interview with a legal professional, February 7, 2019

YDD's priority is constructing a youth consent policy that will make diversion services more accessible to youth who are currently not being served. However, it is also important to protect against over-serving. Coordinating County services to meet the complex, individualized needs of youth better will be an integral part of developing an effective youth consent policy. Thus, a comprehensive policy will make the referral process timely and create a framework that allows agencies to collaborate and share relevant information.

Recommendations

We recommend that YDD adhere to the following set of guidelines when developing its consent policy. First, *Policy Guidelines for Consent*: these policy guidelines deal directly with consent and are implementable in the short term. Second, *Policy Guidelines for the Diversion System*: these policy guidelines are tangential to the consent process and address broader concerns about eligibility and responsiveness.

Within each guideline, we also recommend a specific policy option. However, we established the broader guidelines acknowledging that YDD may need to diverge from these specific options given their evolving political and logistical concerns as a new agency.

Policy Guidelines for Consent

GUIDELINE 1: Eligible youth should not be denied access to diversion due to lack of parent/guardian at the initial point of consent.

Family involvement is a widely recognized best practice for diversion, and studies show that it does improve outcomes for youth.³⁴ However, requiring parental consent restricts access to diversion to youth with an actively involved parent or legal guardian. Our findings show that youth whose parents act against their best legal interest, youth with unclear custody situations, and youth who are protecting vulnerable parents (e.g., undocumented parents) would be unable to get consent for diversion.

³⁴ Amy Hoffman, "Nebraska Juvenile Pretrial Diversion Guidelines: Best Practice Recommendations for Juvenile Pretrial Diversion Programs in Nebraska" (Lincoln, Nebraska: Nebraska Commission on Law Enforcement and Criminal Justice, May 2015).

Instead, a moderate consent policy could allow youth to involve the most supportive adults in their lives, whether that person is a parent, relative, or family friend. An ideal policy would balance the need for support network involvement in diversion with protections for youth who do not have a supportive parent or legal guardian.

Youth should be able to consent for themselves after an attempt has been made to contact a young person’s chosen supportive adult.

We recommend that YDD implement a policy that allows youth to consent to participate in diversion after sufficient attempts have been made to contact a young person’s chosen supportive adult, which can include a parent or legal guardian. In the event that no adult can be contacted, youth should have the option to consent for themselves.

GUIDELINE 2: Youth should have access to legal counsel before giving consent.

Given the unanswered legal repercussions of participation in diversion, especially for undocumented youth or youth with undocumented parents, youth should be granted access to legal counsel before consenting to diversion. Legal counsel should be required to explain the grievance process for youth to contest their referral to diversion, provide an analysis of the risks to undocumented families, and explain the legal repercussions of diversion regarding how records are kept and what is shared with other agencies.

Contract with a legal advocacy organization to provide legal services for young people. Although there are several potential ways to provide legal counsel, we suggest that YDD contract out to provide legal services for young people. Contracting with a non-profit would not additionally burden public defenders, would not require YDD to undergo the cumbersome County hiring process, and would allocate funding to a more nimble organization outside of the County ecosystem.

GUIDELINE 3: Before youth consent to diversion, diversion should be explained by a credible messenger.

Our findings revealed that many young people don’t trust law enforcement and have felt coerced by adults in the justice system. Thus, having a credible messenger explain diversion is a critical step in building community trust of YDD. Additionally, having a law enforcement officer, school official, or other authority figure explain diversion could bias a young person’s consent process. Young people and their families should be able to discuss diversion options with someone in whom they feel comfortable trusting.

Community-based organization staff should explain diversion to youth before they consent.

While there are a number of stakeholders who could be credible messengers for youth, using YDD-contracted CBOs is the most feasible option. Case managers should reach out to youth and/or their families to explain diversion programs and the implications of enrolling.

Policy Guidelines for the Diversion System

GUIDELINE 1: Diversion should be applied to the appropriate offenses.

Given our findings that law enforcement are mostly diverting low-level offenses, YDD should develop a mechanism to ensure that *all* eligible offenses are being diverted—including the higher-level offenses. For example, YDD could stipulate in their memorandums of understanding with law enforcement partners that certain offenses must always be diverted; they could also implement an independent oversight body to review decisions not to divert eligible offenses. However, we are recommending the following strategies due to their greater feasibility.

YDD should set up a youth-initiated grievance process for young people who were denied access to diversion. Additionally, a law enforcement superior officer should review other officers' decisions to not divert youth.

We recommend that YDD implement these two complementary strategies. Giving youth the ability to appeal their case if they are denied access to diversion would help reduce the number of diversion-eligible cases being sent to the courts. Additionally, when a law enforcement officer makes the decision not to divert an eligible offense, his/her superior officer would be required to review the decision. The superior officer would have the final authority to divert an eligible offense.

GUIDELINE 2: Diversion should not be applied to cases that are not legally sufficient.

Because pre-arrest diversion seeks to avoid justice system involvement for youth, youth do not receive a hearing to determine their innocence or guilt before being diverted. Despite good intentions, this process means that diversion inadvertently assumes a youth is guilty. We are particularly concerned about diversion being applied unnecessarily for youth of color; a disproportionate number of youth who are wrongly charged are youth of color.³⁵ Thus, youth need a grievance process for when they are wrongly accused and sentenced to diversion.

Youth who are wrongly accused should be able to request review by YDD staff.

There are a number of possible avenues to protect youth who are wrongly accused. The simplest option is to give YDD the ability to drop a referral to diversion (without any record) if they found that a young person's case was not legally sufficient.

³⁵Edwin Grimsley. "Lessons about Black Youth and Wrongful Convictions: Three Things You Should Know - Innocence Project." The Innocence Project, May 1, 2015, <https://www.innocenceproject.org/lessons-about-black-youth-and-wrongful-convictions-three-things-you-should-know-2/>.

GUIDELINE 3: Diverted youth should receive the appropriate level of services.

One of the primary concerns we heard from case managers was that a large number of youth are being diverted for low-level offenses. Thus, YDD must find a way to right-size service provision to protect youth from the harmful consequences of over-serving.³⁶ Youth of color are at the greatest risk of being over-served, so aligning service levels with needs also advances YDD's goal of racial and ethnic equity.³⁷

YDD should implement a tiered service model for CBOs.

In a tiered service model, CBOs would develop different streams of services for youth depending on their level of need. For example, there would be a track for youth with higher-level offenses that entails a greater depth of services. Youth with lower level offenses would receive fewer services, and youth who were wrongly referred to diversion would receive minimal or no services.

Conclusion

Diversion programs in Los Angeles County aim to reduce harmful involvement in the juvenile justice system by providing community-based services in lieu of arrest. However, existing diversion programs restrict access to diversion by requiring parent/guardian consent to participate, and the County lacks a standard consent model for diversion. This chapter provides suggestions for YDD to create a countywide youth consent policy that will eliminate existing barriers to consent and responsibly expand access to diversion.

Our findings from a literature review and in-depth interviews with over forty stakeholders illuminated several issues that are directly affected by the consent process but are not explicitly part of a consent policy. Thus, we developed two sets of guidelines: *Policy Guidelines for Consent*, which YDD could use immediately to build a youth consent policy, and *Policy Guidelines for the Diversion System*, which YDD could use to address long-term systemic issues.

Finally, although our guidelines address many systemic issues affecting diversion, these guidelines were created given the *status quo*—and we believe the *status quo* should change. We believe there is a need for statutory reforms to decriminalize some extremely low-level offenses. For example, many cities in Los Angeles County still have curfew laws, despite conflicting evidence on their efficacy in reducing crime.³⁸ In the City of Los Angeles, breaking curfew is punishable by fines, driver's license restrictions, community service, and/or diversion.³⁹ Nationwide, curfew laws are disproportionately enforced in

³⁶Daniel P. Mears et al., "Juvenile Court and Contemporary Diversion," *Criminology & Public Policy* 15, no. 3 (2016): 953–81, <https://doi.org/10.1111/1745-9133.12223>.

³⁷"Black Youth Five Times as Likely to Be Incarcerated as White Youth," Equal Justice Initiative, September 14, 2017, <https://eji.org/news/black-children-five-times-more-likely-than-Whites-to-be-incarcerated>.

³⁸Taylor Tiamoyo Harris, "Curfews Still Controversial, but They Can Pack Big Fines," AP NEWS, July 21, 2018, <https://apnews.com/cdfd8e40630e42a998e14c5eb58df2ac>.

³⁹"City of Los Angeles: What Parents & Juveniles Should Know," Los Angeles Police Department, accessed March 18, 2019, http://www.lapdonline.org/juvenile_division/content_basic_view/2011.

communities of color, and our own research revealed that law enforcement officers are over-diverting these extremely low-level offenses.⁴⁰ In this chapter, we have provided options for how to mitigate the problem of over-serving. However, the ideal solution would be to create a Los Angeles where young people are no longer criminalized for minor actions.

⁴⁰Taylor Tiamoyo Harris, “Curfews Still Controversial, but They Can Pack Big Fines,” AP NEWS, July 21, 2018, <https://apnews.com/cdfd8e40630e42a998e14c5eb58df2ac>.

