

**Proposition 28:
Provides Additional Funding for Arts and Music Education in
Public Schools**

Initiative Statute

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I. EXECUTIVE SUMMARY

A. Proposition 28 Summary

If adopted, Proposition 28 would create an annual source of funding for public K-12 schools for arts education; specifically addressing funding for low-income schools.¹ It would require a minimum source of annual funding for K-12 public schools, including charter schools, to fund arts education programs.² The required funding is at least 1% of total state and local revenues that local education agencies receive under Proposition 98.³ This additional funding will come from the general fund. Proposition 28 would allocate 70% of the additional funding equally to all schools in the state and 30% of the additional funding targeted toward low-income schools.⁴ It requires schools with 500 or more students to use 80% of the funding for employing arts education instructors and 20% for training and materials.⁵ This proposition will not raise taxes, but it is estimated to cost the State about \$1 billion per year.⁶

A “YES” vote for Proposition 28 means the state will provide additional funding, from the General Fund, specifically for arts education in public schools. Because the funding comes from the General Fund, a “yes” vote will not raise taxes but will earmark existing tax revenue for this specific purpose.

A “NO” vote for Proposition 28 means the state will not provide additional funding, from the General Fund, specifically for arts education in public schools. The funding for arts education in public schools “will continue to depend on state and local budget decisions.”

II. THE LAW

A. Existing Law

The State of California is constitutionally required to “provide for a system of common schools by which a free school shall be kept up.”⁷ School funding comes from various sources, such as state funds, local property taxes, other local sources, federal money, and the lottery.⁸ Proposition 98 was approved in 1988 and it established a “minimum funding level for K-12 school and community colleges aka K-14 education.”⁹ Proposition 98 established a state

¹ *Proposition 28*, LEGISLATIVE ANALYST’S OFFICE, <https://lao.ca.gov/BallotAnalysis/Proposition?number=28&year=2022> (last visited Sept. 23, 2022).

² *Id.*

³ Cal. Proposition 28 § 8820(b) (2022) (adding Cal. Education Code Chapter 5.1 [commencing with section 8820 of part 6 of division 1]).

⁴ *Id.*

⁵ *Id.* at subd. (c)(1-2).

⁶ *Proposition 28*, *supra* note 1.

⁷ CAL. CONST., ART. IX, § 5.

⁸ *Who Pays For Schools?*, ED 100,

<https://ed100.org/lessons/whopays#:~:text=Most%20of%20the%20money%20for,many%20other%20functions%20of%20government> (last updated Sept. 2022).

⁹ *Id.*

constitutional requirement of funding K-14 education by setting a minimum percentage of the state budget to be spent on K-14 education.¹⁰

Proposition 98 entrenched two tests to determine the minimum percentage of the state budget to be spent on K-14 education.¹¹ Test 1 links the minimum guarantee to about 40% of the state General Fund “or at least the same amount as the previous year, adjusted for growth in student population and changes in personal income (whichever is larger),” which is equal to California’s 1986-87 funding level of public education.¹² Test 2 calculates the minimum guarantee by adjusting the prior year’s minimum guarantee by student attendance and changes in the cost of living.¹³ The Legislature can fund above the minimum guarantee, and the Legislature can suspend the guarantee with a 2/3 vote of each house.¹⁴ The minimum guarantee of Proposition 98 was suspended for the 2004-2005 and 2010-2011 fiscal years.¹⁵

Proposition 111 was approved in 1990, which added another test post-Proposition 98.¹⁶ Test 3 evaluates student attendance, the cost of living and changes in the General Fund revenue prior to distribution of the funds.¹⁷ To help meet the minimum guarantee for education funding, Proposition 2 was approved in 2014 and established the Proposition 98 Reserve.¹⁸ The purpose of the fund is to set aside Proposition 98 funding to help mitigate “funding reductions during economic downturns.”¹⁹

Several factors determine which test is used. Some of the most important factors include “annual changes in statewide K-12 student attendance, per capita personal income, and per capita General Fund revenues.”²⁰ Test 1 is used when it would provide the most money of the three tests.²¹ Test 2 is used when “revenues experience normal or strong growth in the prior year.”²² Test 3 is used “when General Fund revenues fall or grow slowly during the prior year.”²³ Test 2 is the most used test.²⁴

¹⁰ *Prop 13 and Prop 98*, ED 100, <https://ed100.org/lessons/prop13> (Updated Sept. 2022).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Proposition 98*, EDUCATION DATA PARTNERSHIP, <https://www.ed-data.org/article/Proposition-98#:~:text=Suspension%3A%20Proposition%2098%20can%20be,%2D05%20and%202010%2D11> (April 1, 2012).

¹⁶ *A Historical Review of Proposition 98*, LEGISLATIVE ANALYST’S OFFICE, <https://lao.ca.gov/Publications/Report/3526> (Jan. 18, 2017).

¹⁷ *Id.*

¹⁸ *The 2022-23 Budget: Overview of Proposition 98 Proposals*, LEGISLATIVE ANALYST’S OFFICE pg. 3, <https://lao.ca.gov/handouts/education/2022/The-2022-23-Budget-Overview-of-Proposition-98-Proposals.pdf> (last visited Oct. 5, 2022).

¹⁹ *See id.* (explaining how funding the reserve works).

²⁰ *Proposition 98 Sets a Minimum Funding Guarantee for Education*, EDSOURCE, <https://edsources.org/wp-content/publications/PolicyBriefR3.pdf> (Mar. 2009).

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *A Historical Review of Proposition 98*, *supra* note 16.

The California State Lottery is one of the contributors to the schools and districts throughout the state of California.²⁵ California Lottery does not use a test to allocate its funding, however allocations from the lottery are based on the district's average daily attendance figures.²⁶ In the 2020-2021 fiscal year, the California Lottery funded \$1.8 billion to public schools, which made up about 1% of the state's annual public education budget.²⁷ In addition to the minimum guarantee, all unclaimed prize money from the California State Lottery goes to California public schools.²⁸

B. Path to Ballot

To qualify Proposition 28 for the ballot, Proponents needed to gather 623,212 valid signatures.²⁹ On April 26, 2022, the campaign submitted 1,030,221 signatures for validation.³⁰ On June 8, 2022, the Secretary of State announced that 711,872 signatures were valid, fulfilling the requirements of the signature needed to get the Proposition on the ballot.³¹ Therefore, the ballot initiative qualified to appear on the ballot at the general election.³² Individuals getting paid to gather signatures is an increasing commonality in California³³, and it was reported signature gatherers were paid \$2 per signature for Proposition 28.³⁴

C. Current Funding/Revenue

1. *Federal Funding*

The 2023 fiscal year federal budget includes \$36.5 billion for Title I, which “helps schools with resources needed to support students from low-income communities.”³⁵ The \$36.5 billion is broken up by allocating “\$20.5 billion in discretionary funding and \$16 billion in mandatory funding.”³⁶ This funding is double compared to the 2021 level.³⁷ The 2023 budget is

²⁵ *Prop 13 and Prop 98*, *supra* note 10.

²⁶ *See Lottery - CalEdFacts*, CALIFORNIA DEPARTMENT OF EDUCATION, <https://www.cde.ca.gov/fg/aa/lo/cefllottery.asp> (last visited Sept. 23, 2022) (giving numbers rather than percentages).

²⁷ *California Public Schools Benefit*, CALIFORNIA LOTTERY, <https://www.calottery.com/who-benefits> (last visited Sept. 23, 2022).

²⁸ Iman Palm, *Some California Lottery Winners Not Claiming Prizes; Unclaimed Tickets Add Up To Tens Of Millions*, KTLA NEWS, <https://ktla.com/news/nearly-47-million-in-california-lottery-prize-money-goes-unclaimed-each-year/> (Sept. 17, 2022).

²⁹ California Secretary of State, *Statewide Initiative Guide*, CALIFORNIA SECRETARY OF STATE pg. 7, <https://elections.cdn.sos.ca.gov/ballot-measures/pdf/statewide-initiative-guide.pdf> (revised Mar. 2021).

³⁰ *Proposition 28*, BALLOTPEdia, [https://ballotpedia.org/California_Proposition_28,_Art_and_Music_K-12_Education_Funding_Initiative_\(2022\)](https://ballotpedia.org/California_Proposition_28,_Art_and_Music_K-12_Education_Funding_Initiative_(2022)) (last visited Sept. 23, 2022).

³¹ *Id.*

³² *Id.*

³³ *See* Josh Newman, *California State Legislature Advances Bill To Prohibit Pay-Per-Signature Incentives*, JOSH NEWMAN, <https://sd29.senate.ca.gov/news/california-state-legislature-advances-bill-prohibit-pay-signature-incentives> (Sept. 9, 2021) (advocating for legislation to address this problem).

³⁴ John Myers, *California Politics: Big bucks for Ballot Measure Signatures*, LOS ANGELES TIMES, <https://www.latimes.com/california/newsletter/2022-01-28/california-politics-high-price-of-collecting-ballot-measure-signatures-ca-politics> (Jan. 28, 2022).

³⁵ *Fiscal Year 2023 Budget Summary*, US DEPARTMENT OF EDUCATION pg. 6, <https://www2.ed.gov/about/overview/budget/budget23/summary/23summary.pdf> (2022).

³⁶ *Id.*

³⁷ *Id.*

intended to narrow down the gap between schools by addressing funding between under-resourced schools, “which disproportionately serve students of color,” and fully-resourced schools.³⁸

The federal budget includes a \$1 billion investment to prioritize the health and well-being of students by increasing the number of counselors, nurses, school psychologists, social workers, and other health professionals in schools nationwide.³⁹ The budget allocated funds to increase support for children with disabilities, expand support for full-service community schools, invest in educator recruitment and retention, and foster diverse schools and multi-language learners.⁴⁰

The federal budget anticipates \$30.5 million to be used in the Arts in Education program for students, “including disadvantaged students and students who are children with disabilities, through professional development for arts educators, development and dissemination of accessible instructional materials and arts-based educational programming, and community outreach activities that strengthen partnership amongst school and arts organizations.”⁴¹ Additionally due to the global pandemic in 2020 and 2021, Congress passed three COVID relief packages totaling up to \$190 billion for public and private schools.⁴² The flexibility of these funds allowed for local education agencies to spend it on their individual needs, which could have included arts education.⁴³

2. State Funding

In the 2022-2023 fiscal year the total state funding for K-12 education is \$128 billion.⁴⁴ In 2022-23, total funding from Proposition 98 alone will be \$110.4 billion.⁴⁵ The state budget allocates \$3.6 billion to Arts, Music and Instructional Materials Discretionary Block Grant, based on a district's total average daily attendance.⁴⁶ This portion includes the instructional materials that could also be used for “operational purposes,” including pension, retirement and health care costs, rising costs, teachers, and other employees.⁴⁷

³⁸ *Fiscal Year 2023 Budget Summary*, *supra* note 35 at 10.

³⁹ *Id.* at 10-11.

⁴⁰ *Id.* at 8.

⁴¹ *Id.* at 22.

⁴² Matt Barnum, *School got \$190 billion in COVID relief from the feds. What's happened to it?*, CHALKBEAT, <https://www.chalkbeat.org/2022/2/3/22916590/schools-federal-covid-relief-stimulus-spending-tracking> (Feb. 3, 2022).

⁴³ Kimberly Sellery, *Where's The Money? New CSBA Report Provides New Insight Into How LEAs Spend Federal COVID Funds*, CSBA BLOG, <http://blog.csba.org/federal-covid-relief/> (July 18, 2022).

⁴⁴ *California State Budget 2022-23*, STATE OF CALIFORNIA pg. 4 (2022).

⁴⁵ *Id.* at 16.

⁴⁶ *Id.* at 15, 18.

⁴⁷ *Id.* at 18.

III. PROPOSED LAW

A. Adds Additional Funding Each Fiscal Year For “Arts Education”

Arts education is defined as “includ[ing], but is not limited to, instruction and training supplies, materials and arts educational partnership programs, for instruction in: dance, media arts, music, theater, and visual arts, including folk art, painting, sculpture, photography, and craft arts, creative expression including graphic arts and design, computer coding, animation, music composition and ensembles, and script writing, costume design, film, and video.”⁴⁸ Proposition 28 focuses on the funding of art education programs. Subsection b of Proposition 28 mandates that the state continuously appropriate an additional amount equal to 1% of “total state and local revenues received by local education agencies in the preceding fiscal year” included in “the calculation of the minimum funding guarantee” established by the California Constitution.⁴⁹

To determine how much each local education agency⁵⁰ will receive, it is helpful to think about it in two parts. For the first part, “70 percent of the funding appropriated in subdivision (b) times the school’s enrollment in the prior fiscal year, divided by the total statewide enrollment in the prior fiscal year of local education agencies.”⁵¹ The second part focuses on local education agencies that are likely to traditionally receive lower funding. For the second part, “30% of funds provided in subdivision (b) times the school’s enrollment of economically disadvantaged pupils in the prior fiscal year, divided by the total statewide enrollment of economically disadvantaged students in the prior fiscal year of local education agencies.”⁵² Schools that serve preschool students are also included. “For schools serving preschool pupils, the school’s enrollment of economically disadvantaged pupils shall be deemed to equal the preschool’s enrollment times the same percentage of pupils that are economically disadvantaged at the closest elementary school site within the preschool’s local education agency, if applicable.”⁵³

The two parts mentioned above determine the *overall* amount of funding a local education agency will receive. There are requirements regarding *how* that money must be spent. In local education agencies with an enrollment of 500 or more pupils, 80% of the funds must be expended to employ certified or classified employees to provide arts education instruction, and the remaining funds can be used for training, supplies, and materials, and arts education partnership programs.⁵⁴ The California Department of Education can waive this requirement “for good cause shown” upon written request from the principal of a school site.⁵⁵

⁴⁸ Cal. Proposition 28, *supra* note 3 at § 8821(a).

⁴⁹ *Id.* at § 8820(b).

⁵⁰ *Id.* at 8821(d) (defined as “K-12 school districts, county offices of education, charter schools, and the California school for the blind and the California school for the deaf.”).

⁵¹ *Id.* at § 8820(c)(1).

⁵² *Id.* at subd. (c)(2).

⁵³ *Id.*

⁵⁴ *Id.* at subd. (g)(1).

⁵⁵ *Id.* at subd. (g)(5).

B. Differences Between Proposition 28 and Proposition 98

Proposition 28 is a minimum guarantee of 1% of the local and state revenues that local education agencies receive under Proposition 98.⁵⁶ If passed, this money will go towards arts education.⁵⁷ Schools will be required to publish reports showing the utilization of the funds and how the funding directly benefited the students. Proposition 28 allows school principals or program directors on site to determine how funds are spent.⁵⁸

Proposition 98 established formulas to allocate minimum funding to schools and the focus was largely on the funding of all California schools.⁵⁹ Even though the purpose of Proposition 98 was to create equality in funding, Proposition 28 takes a step further and focuses on students from communities of color because those communities do not receive adequate funding.⁶⁰

Proposition 98 amended the California Constitution to guarantee a larger funding on K-14 education.⁶¹ Proposition 98 has been adjusted twenty-four times. These adjustments included shifting property tax revenue to schools and community colleges to provide more of the state General Fund, shifting property tax revenue away from schools to backfill local governments for the loss of other revenues, and counting certain funds as loans.⁶² Proposition 98 is a minimum guarantee for public education funding K-14 general education.⁶³ Proposition 98 does not specify an area, such as arts and education, but applies to all general education needs. If passed, Proposition 28 would fund arts education from the General Fund without creating a new revenue source.⁶⁴ Proposition 28 is an additional earmark for education funding, but this earmark is specifically focused on arts education.

IV. **DRAFTING ISSUES**

A. Severability

Section 8822(a) of Proposition 28 states that “if any provision of this Act or application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or application or the Act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.”⁶⁵

Under California law, there is a test to determine if an invalid section of a statute or ballot initiative is severable.⁶⁶ A severability clause “calls for sustaining the valid part of the

⁵⁶ Cal. Proposition 28, *supra* note 3 at subd. (b).

⁵⁷ *Id.* at subd. (g)(4).

⁵⁸ *Id.*

⁵⁹ See *Prop 13 and Prop 98*, *supra* note 10 (describing the tests currently in place in California).

⁶⁰ See Cal. Proposition 28, *supra* note 3 (findings describing the need for arts education funding).

⁶¹ *Prop 13 and Prop 98*, *supra* note 10.

⁶² *Proposition 28*, *supra* note 1.

⁶³ *Prop 13 and Prop 98*, *supra* note 10.

⁶⁴ Cal. Proposition 28, *supra* note 3 at § 1(E)(3).

⁶⁵ *Id.* at § 8822(a).

⁶⁶ *California Redevelopment Assn. v. Matosantos*, 53 Cal.4th 231, 270 (2011).

enactment.”⁶⁷ It is crucial that “the invalid provision must be grammatically, functionally, and volitionally separable.”⁶⁸ For grammatical separability, it depends on if the invalid parts “‘can be removed as a whole without affecting the wording’ of what remains.”⁶⁹ For functional separability, it will depend on if “the remainder of the statute ‘is complete in itself.’”⁷⁰ Finally, volitional separability depends on “whether the remainder ‘would have been adopted by the legislative body had the latter foreseen the partial invalidation of the statute.’”⁷¹ The last step requires trying to understand the intent of the voters of the ballot initiative, which can be a difficult task. Practically, how does a court determine the intent of 22 million⁷² voters? Do they look at a proposition’s advertising, the wording of the proposition, do they require testimony? Courts have used all of those indicators.⁷³ Further, do any of those things actually reflect what a voter was thinking when they chose to support a particular proposition? Those questions do not have great answers, but it is important to realize that determining the intention of a voter is a difficult task.

Though Proposition 28 states that invalidity of one section will not affect other provisions or the application of Proposition 28, that statement is not conclusive. If a section were to be found invalid, a court would go through the test described above to determine how, if at all, the invalidity would impact the remainder of Proposition 28. Other than the severability section of Proposition 28, there does not appear to be anything that would be considered invalid.

B. What Does “Good Cause” Mean?

In local education agencies with an enrollment of 500 or more pupils, 80% of the funds are to be expended to employ certified or classified employees to provide arts education instruction, and the rest of the funds are to be used for training, supplies, materials, and arts education partnership programs.⁷⁴ The California Department of Education can grant a waiver to a school principal upon a showing of “good cause.”⁷⁵ This poses a question of what will happen if a school has adequate funding and is not granted a waiver. Based on the phrasing, it is likely schools will be required to hire staff members. Is a local education agency forced to hire instructors to use the 80% of funds? Would the local education agency be limited to the 20% allocation for materials? Because “good cause” is not defined in the initiative, there is no clear answer to these questions.

While “good cause” does not have a definition in Proposition 28, California courts provide some guidance. When courts are determining “the meaning of ‘good cause’ in a particular context, the courts utilize common sense based upon the totality of the circumstances,”

⁶⁷ California Redevelopment Assn. v. Matosantos, 53 Cal.4th 231, 271 (2011).

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² 60-Day Report of Registration, SECRETARY OF STATE, <https://elections.cdn.sos.ca.gov/rot/60day-general-2022/historical-reg-stats.pdf> (Sept. 9, 2022).

⁷³ People’s Advocate, Inc. v. Superior Court, 181 Cal.App.3d 316, 332 (3d Dist. 1986); California Redevelopment Assn. v. Matosantos, 53 Cal.4th 231, 270 (2011).

⁷⁴ Cal. Proposition 28, *supra* note 3 at § (g)(1).

⁷⁵ *Id.* at subd. (g)(5).

which ‘include[s] the purpose of the underlying statutory scheme.’⁷⁶ Generally, “good cause includes reasons that are fair, honest, in good faith, not trivial, arbitrary, capricious, or pretextual, and reasonably related to the legitimate needs, goals, and purposes.”⁷⁷ The court stated that “good cause” is a factual exploration and it should not be “enshrined in legal formalism.”⁷⁸ That being said, so long as a local education agency can show good cause for an exception, and the exception aligns with the purpose of this proposition, it is likely to be granted.

V. CONSTITUTIONAL AND STATUTORY ISSUES

This proposed addition of state funding for arts education does not appear to be in conflict with the federal constitution or any existing state or federal statute. A state constitutional consideration is that “[t]he additional funding would be considered a payment above the constitutionally required amount of funding for public schools and community colleges.”⁷⁹ While not a constitutional issue, there is a constitutional consideration that in future budgets this mandatory spending could take away money from other state funded programs. This is part of the opponent’s argument.

VI. PUBLIC POLICY CONSIDERATIONS

A. Proponent’s Arguments

Proposition 28 will help fund art and music programs at California’s K-12 schools. Many schools had this funding cut in previous years.⁸⁰ The Los Angeles Times Editorial Board argues the proposal would help low-income schools receive funding for art and music programs when these programs are the most likely to be cut.⁸¹ Proponents also argue that “arts and music instruction could help address the mental health crisis facing California’s youth as they recover from the pandemic.”⁸²

Proponents argue that it is okay the funds will come from the General Fund because “voters must act where state and local leaders have failed.”⁸³ They cite that on top of overwhelming support for arts education by the general public⁸⁴ that “studies have also linked it to improved attendance, better scores on standardized tests and higher college aspirations.”⁸⁵ Finally, proponents argue that Proposition 28 is crucial because it concentrates on low-income schools in ways that existing state education funding does not.⁸⁶

⁷⁶ Tanguilig v. Valdez, 36 Cal.App.5th 514, 527-528 (1st Dist. 2019).

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Proposition 28, supra* note 1.

⁸⁰ The Times Editorial Board, *Endorsement: Yes On Proposition 28. All Kids Deserve Quality Arts And Music Education*, THE LOS ANGELES TIMES, <https://www.latimes.com/opinion/story/2022-09-08/endorsement-yes-on-proposition-28-all-kids-deserve-quality-arts-and-music-education> (Sept. 8, 2022).

⁸¹ *Id.*

⁸² *Prop 28: Guarantee Funding For Arts And Music Education*, CALMATTERS, <https://calmatters.org/california-voter-guide-2022/propositions/prop-28-arts-education/> (last visited Sept. 23, 2022).

⁸³ The Times Editorial Board, *supra* note 80.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

B. Opponent's Arguments

As of September 23, 2022, there is no registered opposition to Proposition 28,⁸⁷ but there are vocal opponents, such as the Santa Cruz Sentinel Editorial Board.⁸⁸ They argue that education funding in California has reached a record high while “student enrollment is at the lowest point in two decades.”⁸⁹ Opponents argue that Proposition 28 would “lock in more state funding for schools,” despite high funding and low enrollment.⁹⁰ Because this money is coming from the General Fund rather than a new revenue source, it could deplete the General Fund and make it harder “to pay down the debt before the inevitable next economic downturn.”⁹¹ This is part of the reason the Los Angeles Times Editorial Board originally opposed Proposition 28.⁹² Opponents argue that rather than mandate funds be spent in a certain way; the control should be left up to the local school boards.⁹³ Opponents do not want to tie the hands of the Legislature with mandatory funding. Additionally, opponents argue passing this proposition “would lead to budget cuts in core education programs like reading, writing, and arithmetic.”⁹⁴

C. Amending Proposition 28

Proposition 28 contains a provision that allows the Legislature to amend the chapter, if adopted, “to further its purposes by a bill passed in each house by rollcall vote entered into the journal, two-thirds of the membership of each house concurring.”⁹⁵ Because Proposition 28 gives the Legislature the power to amend, there is potential the funding percentage could increase from 1%. It is unlikely the percentage could decrease as the amendments must be “to further [the proposition’s] purposes.”⁹⁶ This also leaves open the possibility to amend the 80/20% funding structure. So long as an amendment is consistent with the purpose of Proposition 28, and the Legislature has the votes, those amendments will take effect.

Proposition 28’s funding can be impacted if the Legislature suspends Proposition 98.⁹⁷ However, due to the recent fiscal surplus in California and state contributions to the Proposition 98 fund, it is unlikely Proposition 98 will be suspended in the near future. However, if the fiscal state in California changes, the Legislature does have a mechanism to adjust the impacts of Proposition 28 in a limited way.⁹⁸

⁸⁷ *Id.*

⁸⁸ Santa Cruz Editorial Board, *Reject Latest Ballot Box Budgeting: No On Prop. 28*, SANTA CRUZ SENTINEL, <https://www.santacruzsentinel.com/2022/09/13/editorial-reject-latest-ballot-box-budgeting-no-on-prop-28/> (last visited Sept. 23, 2022).

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² The Times Editorial Board, *supra* note 80.

⁹³ Santa Cruz Editorial Board, *supra* note 88.

⁹⁴ Carl DeMaio, *Prop 28 Adds A Costly Earmark To CA's Troubled State Budget: Vote No*, 600KOGO NEWSRADIO, <https://kogo.iheart.com/featured/the-demaio-report/content/2022-07-20-prop-28-adds-a-costly-earmark-to-cas-troubled-state-budget-vote-no/> (last visited Sept. 23, 2022).

⁹⁵ Cal. Proposition 28, *supra* note 3 at § 8822 (c).

⁹⁶ *Id.*

⁹⁷ Cal. Proposition 28, *supra* note 3 at § 8820(h).

⁹⁸ Cal. Proposition 28, *supra* note 3 at § 8820(h).

VII. CAMPAIGN FINANCE

A. Proponents

As of September 20, 2022, \$9.9 million was spent in support of Proposition 28.⁹⁹ Some proponents include Californians for Arts and Music Education in Public Schools, former Superintendent of Los Angeles Unified School District (“LAUSD”) Austin Beutner, former U.S. Secretary of Education Arne Duncan, and LAUSD.¹⁰⁰ The Los Angeles Times Editorial Board, who originally opposed the measure, now supports Proposition 28.¹⁰¹

B. Opponents

As of September 23, 2022, \$0 has been spent in opposition to Proposition 28 and no official registered opposition.¹⁰² One public opponent is Carl DeMaio, the chairman of Reform California.¹⁰³

VIII. FISCAL CONSIDERATIONS

A. Impact

If passed, Proposition 28 would “increase and stabilize funding for arts and music education... year after year.”¹⁰⁴ The funds are required to be primarily spent on “certified or classified employees to provide arts education.”¹⁰⁵ If passed, Proposition 28 will accomplish these goals “without raising taxes.”¹⁰⁶ This will increase state costs about \$1 billion annually, beginning in 2023, for arts education in public schools.¹⁰⁷

If Proposition 28 passes, the State Department of Education will receive funds from the General Fund.¹⁰⁸ These funds will be “equal to one percent (1%) of the total state and local revenues received by local education agencies in the preceding fiscal year that is included in the calculation of the minimum funding guarantee established by Sections 8 and 8.5 of Article XVI of the Constitution, excluding the appropriation made pursuant to this act.”¹⁰⁹ Allocations will then be made to local education agencies based on the formulas discussed above.

⁹⁹ Alexander Nieves et al., *California Ballot Tracker: Interest Groups Prepare For Expensive 2022 Fights*, POLITICO, <https://www.politico.com/interactives/2022/california-ballot-measures-propositions-guide-2022/> (last visited Oct. 5, 2022).

¹⁰⁰ *Id.*

¹⁰¹ The Times Editorial Board, *supra* note 80.

¹⁰² Alexander Nieves et al., *supra* note 99.

¹⁰³ Carl Demaio, *supra* note 94.

¹⁰⁴ Cal. Proposition 28, *supra* note 3 at § 1 (E)(1).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at § 1(E)(3).

¹⁰⁷ *Proposition 28*, *supra* note 1.

¹⁰⁸ Cal. Proposition 28, *supra* note 3 at § 8820(b).

¹⁰⁹ Cal. Proposition 28, *supra* note 3 at subd. (h).

B. Modifications

The California Legislature can reduce the annual appropriation if the California Legislature suspends the operation of Proposition 98 by the enactment of an urgency statute pursuant to subdivision (h) of Section 8 of Article XVI of the [California] Constitution.¹¹⁰

C. Sunset Date

There is no apparent sunset date. “Commencing with the first fiscal year following the enactment of this Act, *and for each fiscal year thereafter*, there shall be continuously appropriated without regard to fiscal years from the General Fund.”¹¹¹ (emphasis added).

IX. CONCLUSION

Proposition 28 mandates a minimum 1% appropriation of “annual funding to K-12 public schools, including public charter schools, to supplement arts education programs for pupils attending such schools.”¹¹² This will commence during the first fiscal year following enactment.¹¹³ The funds are calculated through a formula that, in part, considers “economically disadvantaged students” in the local education agency.¹¹⁴ There are guidelines education agencies must follow after appropriation of money, including, for local education agencies with enrollment of 500 or more pupils, a large percentage used to employ certified instructors.¹¹⁵

Proponents argue this funding will help support student gains in arts education, particularly in districts where programs have been reduced or cut.¹¹⁶ Proponents argue that this funding could benefit California students, particularly those in low-income schools, in numerous ways.¹¹⁷ Proponents also argue it is time for voters to take action where the state and local governments have failed on this issue.¹¹⁸ Opponents argue that this mandatory funding creates uncertainty for other state funded programs.¹¹⁹ Opponents argue Proposition 28 creates uncertainty in times where there is not a surplus budget.¹²⁰ Opponents argue that this decision ties the hands of the Legislature and should be left to the local school boards to decide.¹²¹

A “YES” vote for Proposition 28 means the state will provide additional funding, from the General Fund, specifically for arts education in public schools. Because the funding comes from the General Fund, a “yes” vote will not raise taxes.

¹¹⁰ *Id.*

¹¹¹ *Id.* at subd. (b).

¹¹² *Id.* at subd. (a).

¹¹³ *Id.* at subd. (b).

¹¹⁴ *Id.* at subd. (c).

¹¹⁵ *Id.* at subd. (g).

¹¹⁶ The Times Editorial Board, *supra* note 80.

¹¹⁷ CalMatters, *supra* note 78.

¹¹⁸ Santa Cruz Editorial Board, *supra* note 88.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

A “**NO**” vote for Proposition 28 means the state will not provide additional funding, from the General Fund, specifically for arts education in public schools. The funding for arts education in public schools “will continue to depend on state and local budget decisions.”¹²²

¹²² *Proposition 28, supra* note 1.