

**Proposition 30:
Tax on Income Above \$2 Million for Zero-Emission Vehicles and
Wildfire Prevention Initiative**

Initiative Statute Amendment

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I. EXECUTIVE SUMMARY

Proposition 30 is a proposed initiative statutory amendment that will increase personal income tax by 1.75% on income above \$2 million to meet California's climate change goals through cleaner transportation and mitigating catastrophic wildfires.¹

The additional tax revenue will create the Clean Cars and Clean Air Trust Fund ("CCCATF").² The CCCATF will be allocated into three sub-funds: the Zero-Emission Vehicle ("ZEV") Infrastructure Investment Plan Sub-Fund; the ZEV and Clean Mobility Sub-Fund; and the Wildfire Greenhouse Gas Emissions Reduction Fund.³ The CCCATF revenues will allocate 35% to the ZEV Infrastructure Investment Plan Sub-Fund, 45% to the ZEV and Clean Mobility Sub-Fund, and the remaining 20% to the Wildfire Greenhouse Gas Emissions Reduction Sub-Fund.⁴

The proposed tax will end on January 1, 2043, or on January 1 in any year after 2030, where three consecutive years of emission reductions are at 80% below 1990 levels of greenhouse gases in California.⁵

A **YES** vote on Proposition 30 means supporting an increase in personal income tax above \$2 million by 1.75% to generate revenue for ZEV vehicles, ZEV infrastructure, and wildfire prevention and suppression programs.⁶

A **NO** vote on Proposition 30 means opposing an increase in personal income tax on income above \$2 million at 1.75%, that will fund ZEV vehicles, ZEV infrastructure, and wildfire prevention and suppression programs.⁷

II. THE LAW

A. Background

1. *California Personal Income Tax*

California collects tax on personal income earned by each resident.⁸ The state personal income tax rate for income over \$2 million is 13.3%.⁹ In 2021, state personal income tax raised \$130 billion in revenue to help pay for education, prisons, health care, and other public sector

¹ Cal. Proposition 30 § 1, <https://oag.ca.gov/system/files/initiatives/pdfs/21-0037A1%20%28Electric%20Vehicle%20Funding%20%29.pdf>, (last visited Oct. 17, 2022)

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.* at § 2

⁶ *Proposition 30*, BALLOTPEdia, [https://ballotpedia.org/California_Proposition_30,_Tax_on_Income_Above_\\$2_Million_for_Zero-Emissions_Vehicles_and_Wildfire_Prevention_Initiative_\(2022\)](https://ballotpedia.org/California_Proposition_30,_Tax_on_Income_Above_$2_Million_for_Zero-Emissions_Vehicles_and_Wildfire_Prevention_Initiative_(2022)), (last visited Oct. 17, 2022)

⁷ *Id.*

⁸ *Proposition 30*, LEGISLATIVE ANALYST'S OFFICE, <https://lao.ca.gov/ballot/2022/Prop30-110822.pdf>, (last visited Oct. 17, 2022)

⁹ BALLOTPEdia, *supra* note 6.

expenditures.¹⁰ The federal income tax rate for income over \$2 million is 37%.¹¹ Proposition 30 will increase the state income tax rate for income over \$2 million to 15.05%.¹²

2. Zero-Emission Vehicles and Clean Air

California leads the nation in its commitment to aggressively phasing out gas-powered vehicles to reduce greenhouse gas emissions.¹³ Since 1990, California has implemented ZEV programs to encourage and require ZEV adoption.¹⁴ The California Air Resources Board (CARB) works closely with the California Energy Commission (“Energy Commission”) and other state agencies to ensure that the transition to ZEVs is successful.¹⁵ Some of CARB’s responsibilities include setting the state’s air quality standards, measuring progress in reducing pollutants, such as greenhouse gases, and verifying automakers’ emission compliance.¹⁶ Regarding ZEVs, the Energy Commission oversees the energy infrastructure necessary for the transportation sector to transition to low-carbon and zero-emission technologies.¹⁷

The state’s existing ZEV plan is the Zero-Emission Vehicle program. This program is part of a package of coordinated standards called Advanced Clean Cars.¹⁸ Through Advanced Clean Cars, CARB controls smog-causing pollutants and greenhouse gas emissions from transportation.¹⁹ The first Advanced Clean Cars regulation, Advanced Clean Cars I, was adopted in 2012 to address vehicle model years 2015-2025.²⁰ In 2022, CARB approved Advanced Clean Cars II to address model years 2026-2035.²¹ The main objectives of Advanced Clean Cars II are to maximize greenhouse gas emission reduction and accelerate the transition to ZEVs through increased stringency on the regulations’ requirements.²²

Aligned with Advanced Clean Cars II, the Clean Miles Standard sets additional requirements for the transportation sector, particularly for app-based rideshare companies, such

¹⁰ BALLOTPEDIA, *supra* note 6.

¹¹ *IRS provides tax inflation adjustments for the tax year 2022*, INTERNAL REVENUE SERVICE, <https://www.irs.gov/newsroom/irs-provides-tax-inflation-adjustments-for-tax-year-2022> (Nov. 10, 2021).

¹² CAPITOL WEEKLY, *Latest tax-the-rich ballot initiative splits Democrats (2022)*, <https://capitolweekly.net/latest-tax-the-rich-ballot-initiative-splits-democrats/>, (last visited Oct. 17, 2022).

¹³ *Governor Newsom Announces California Will Phase Out Gasoline-Powered Cars and Drastically Reduce Demand for Fossil Fuels in California's Fight Against Climate Change*, OFFICE OF GOVERNOR NEWSOM, <https://www.gov.ca.gov/2020/09/23/governor-newsom-announces-california-will-phase-out-gasoline-powered-cars-drastically-reduce-demand-for-fossil-fuel-in-californias-fight-against-climate-change/> (Sept. 23, 2020).

¹⁴ *Low-Emission Vehicle Program*, CALIFORNIA AIR RESOURCES BOARD, <https://ww2.arb.ca.gov/our-work/programs/low-emission-vehicle-program/about>, (last visited Oct. 17, 2022).

¹⁵ *Id.* at <https://ww2.arb.ca.gov/zero-emission-vehicle-zev-infrastructure-topics>

¹⁶ BALLOTPEDIA, *supra* note 6.

¹⁷ *Id.*

¹⁸ *Zero-Emission Vehicle Program*, CALIFORNIA AIR RESOURCES BOARD, <https://ww2.arb.ca.gov/our-work/programs/zero-emission-vehicle-program/about>, (last visited Oct. 17, 2022).

¹⁹ *Id.*

²⁰ *Advanced Clean Cars Program*, CALIFORNIA AIR RESOURCES BOARD, <https://ww2.arb.ca.gov/our-work/programs/advanced-clean-cars-program/about>, (last visited Oct. 17, 2022).

²¹ *Id.*

²² *Id.*

as Uber and Lyft.²³ Passed by the Legislature in 2018 and adopted by CARB in 2021, the Clean Miles Standard requires that app-based rideshare companies ensure that 90% of their vehicle miles are traveled with zero-emission vehicles by 2030.²⁴

In addition to the ZEV program and the Clean Miles Standard, Governor Gavin Newsom issued Executive Order N-79-20 in September 2020 that requires, by 2035, all new cars and passenger trucks sold in California to be zero-emission.²⁵ The executive order also requires that by 2045, all operations of medium- and heavy-duty trucks must be zero-emission where feasible.²⁶ The phrase “where feasible” is undefined; therefore, this may create an escape clause for those impacted by the Executive Order. In 2022, light-duty ZEVs have accounted for more than 16% of all new vehicle sales.²⁷ California also has 79,023 public and shared private electric vehicle charging stations, which is far less than necessary to achieve the state’s ZEV goals.²⁸ The Energy Commission projects that 1.2 million shared private and public chargers are needed to support the goals of Executive Order N-79-20.²⁹

Lastly, California has implemented a point-of-sale rewards program that makes electric vehicles more affordable to a broad group of customers.³⁰ Californians that purchase or lease an eligible new plug-in electric vehicle receive a price reduction of up to \$750 at the point of sale or lease through the California Clean Fuel Reward Program.³¹ The program has awarded more than \$319 million in rewards to more than 250,000 participants.³²

²³ *Clean Miles Standard*, CALIFORNIA AIR RESOURCES BOARD, <https://ww2.arb.ca.gov/our-work/programs/clean-miles-standard/about>, (last visited Oct. 17, 2022).

²⁴ BALLOTPEDIA, *supra* note 6.

²⁵ *Governor Newsom Announces California Will Phase Out Gasoline-Powered Cars and Drastically Reduce Demand for Fossil Fuel in California’s Fight Against Climate Change*, OFFICE OF GOVERNOR NEWSOM, <https://www.gov.ca.gov/2020/09/23/governor-newsom-announces-california-will-phase-out-gasoline-powered-cars-drastically-reduce-demand-for-fossil-fuel-in-californias-fight-against-climate-change/>, (last visited Oct. 17, 2022).

²⁶ *Id.*

²⁷ *New ZEV Sales in California*, CALIFORNIA ENERGY COMMISSION, <https://www.energy.ca.gov/data-reports/energy-almanac/zero-emission-vehicle-and-infrastructure-statistics/new-zev-sales>, (last visited Oct. 17, 2022).

²⁸ *Electric Vehicle Chargers in California*, CALIFORNIA ENERGY COMMISSION, <https://www.energy.ca.gov/data-reports/energy-almanac/zero-emission-vehicle-and-infrastructure-statistics/electric-vehicle>, (last visited Oct. 17, 2022).

²⁹ *Assembly Bill 2127 Electric Vehicle Charging Infrastructure Assessment*, CALIFORNIA ENERGY COMMISSION, https://www.energy.ca.gov/sites/default/files/2021-06/2021_CEC_AB2127_ExecutiveSummary_ADA.pdf, (last visited Oct. 17, 2022).

³⁰ *California Clean Fuel Reward surpasses 250,000 point-of-sale financial incentives for EV buyers*, CALIFORNIA AIR RESOURCES BOARD, <https://ww2.arb.ca.gov/news/california-clean-fuel-reward-surpasses-250000-point-sale-financial-incentives-ev-buyers>, (last visited on Oct. 17, 2022).

³¹ *Id.*

³² *Id.*

3. *Wildfire Prevention and Suppression*

The California Department of Forestry and Fire Protection (“CAL FIRE”) is the state agency responsible for wildfire prevention and suppression.³³ CAL FIRE’s fire prevention programs include vegetation management, fire planning, education, and law enforcement.³⁴ Within CAL FIRE, the Office of the State Fire Marshal (OSFM) provides fire safety where people live, work, and congregate by enforcing fire-related laws and codes.³⁵

B. Path to the Ballot

On November 4, 2021, proponent Joseph Wiedman filed the initiative.³⁶ The California Attorney General issued Proposition 30’s title and summary on January 10, 2022.³⁷ After receiving 990,608 valid signatures for the petition to place Proposition 30 on the ballot, the Secretary of State announced that the initiative had qualified for the November 2022 ballot on June 28, 2022.³⁸ Proposition 30 sponsors paid 2022 Campaigns, Inc. \$8,419,126.80 to collect 632,212 signatures needed to qualify for the ballot, totaling to a \$13.51 cost per required signautre.³⁹

C. External Factors

President Joseph Biden issued an Executive Order in August 2021 that set a nationwide target that half of all new vehicle sales in 2030 be zero-emission.⁴⁰ The Biden-Harris Administration has also effectuated more than \$700 million in investments from the private sector to manufacture more than 250,000 electric vehicle chargers each year.⁴¹

D. Proposed Law

The proposed initiative seeks to add one new section to the California Public Resources Code and another to the California Revenue and Taxation Code. These sections, described in detail below, explain the tax increase and how tax revenues will be allocated.

³³ *About Us*, CAL FIRE, <https://www.fire.ca.gov/about-us/#:~:text=CAL%20FIRE%20oversees%20enforcement%20of,as%20renewal%20of%20timber%20resources>, (last visited Oct. 17, 2022).

³⁴ *Id.*

³⁵ *Id.*

³⁶ BALLOTPEDIA, *supra* note 6.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *FACT SHEET: President Biden Announces Steps to Drive American Leadership Forward on Clean Cars and Trucks*, THE WHITE HOUSE, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/08/05/fact-sheet-president-biden-announces-steps-to-drive-american-leadership-forward-on-clean-cars-and-trucks/>, (Aug. 5, 2021).

⁴¹ *FACT SHEET: Biden-Harris Administration Catalyzes more than \$700 Million in Private Sector Commitments to Make EV Charging More Affordable and Accessible*, THE WHITE HOUSE, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/08/fact-sheet-president-biden-signs-executive-order-catalyzing-americas-clean-energy-economy-through-federal-sustainability/>, (Dec. 8, 2021).

1. *Addition of Section 1, Division 47 of the California Public Resources Code*

Proposition 30 will add Section 1, Division 47: Reduction and Mitigation of Major Sources of Greenhouse Gas Emissions to the California Public Resources Code. The proposed law shall be known as the "Clean Cars and Clean Air Act." The proposed law begins with an introduction to the Clean Cars and Clean Air Act. Greenhouse gas emissions from transportation and wildfires negatively impact California and directly pollute the air with particulate matter and smoke, worsening air quality.⁴² More than 90% of Californians breathe air with unhealthy levels of air pollutants at some point annually, and seven out of the ten smoggiest cities in the United States are in California.⁴³ This measure requires an equitable contribution from the state's highest-income earners to fund a public investment toward meeting California's climate change goals.⁴⁴ The initiative aims to reduce emissions from two of the state's most significant sources of greenhouse gas emissions—transportation and wildfires—with public investments in ZEVs and improvements in the prevention and suppression of wildfires.⁴⁵

a. *The Clean Cars and Clean Air Trust Fund*

The Clean Cars and Clean Air Act will create the CCCATF, established in the State Treasury.⁴⁶ The CCCATF has three sub-funds: the ZEV Infrastructure Investment Plan Sub-Fund, the ZEV and Clean Mobility Sub-Fund, and the Wildfire Greenhouse Gas Emissions Reduction Sub-Fund.

Figure 1 shows how the Fund will be allocated to the three sub-funds. Thirty-five percent of the funds will be allocated to the ZEV Infrastructure Investment Plan Sub-Fund. Forty-five percent will be allocated to the ZEV and Clean Mobility Sub-Fund, and twenty percent will be allocated to the Wildfire Greenhouse Gas Emissions Reduction Sub-Fund.⁴⁷

⁴² CAL. PROPOSITION 30, *supra* note 1.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ LEGISLATIVE ANALYST'S OFFICE, *supra* note 8.

Proposition 30 Uses Increased Revenue for ZEV Programs and Wildfire Activities

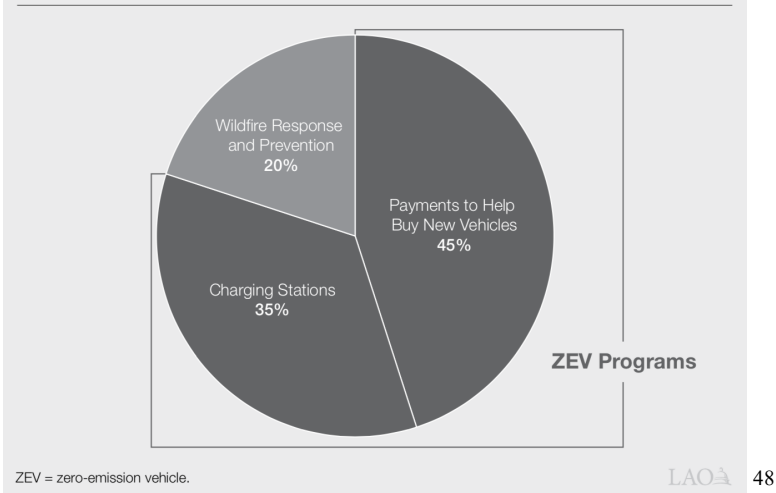


Figure 1

i. The ZEV Infrastructure Investment Plan Sub-Fund

The Energy Commission will distribute the ZEV Infrastructure Investment Plan Sub-Fund.⁴⁹ The sub-fund will be used to construct ZEV charging stations and fund certification programs for personnel to install them.⁵⁰ The sub-fund will also provide for public outreach to ensure that Californians know how to use incentives set forth by the CCCATF. The Energy Commission shall coordinate with the California Public Utilities Commission (CPUC) to plan and engineer the necessary infrastructure so that the electrical grid's reliability is not compromised.

Fifty percent of funds in the ZEV Infrastructure Investment Plan Sub-Fund shall be used solely for projects benefiting people in low-income and disadvantaged communities,⁵¹ Such projects will increase access for these communities to ZEV fueling infrastructure.⁵² The remaining funds will construct fueling stations in multi-family and single-family dwellings, fast-track permits and zoning for ZEV charging infrastructure, and convert available state-owned properties to sites for installing passenger ZEV fast-fueling infrastructure where feasible.⁵³

⁴⁸ LEGISLATIVE ANALYST'S OFFICE, *supra* note 8.

⁴⁹ CAL. PROPOSITION 30, *supra* note 1.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

ii. The ZEV and Clean Mobility Sub-Fund

CARB will distribute the ZEV and Clean Mobility Sub-Fund.⁵⁴ This sub-fund will make ZEVs accessible and affordable for all California residents through rebates and loans.⁵⁵ Fifty percent of the ZEV and Clean Mobility Sub-Fund will fund programs that benefit people in low-income and disadvantaged communities.⁵⁶ The remaining funds will provide financing for ZEV transit buses, a factory ZEV incentive program, assistance for agricultural workers to utilize zero-emission vanpools, and an increase in access to clean mobility options such as electric bikes, bike share, protected bike lanes, and transit passes.⁵⁷

iii. The Wildfire Greenhouse Gas Emissions Reduction Fund

CAL FIRE will distribute the Wildfire Greenhouse Gas Emissions Reduction fund. The sub-funds primary purpose is to ensure that state and local governments have sufficient firefighting capacity to reduce greenhouse gas emissions from wildfires while reducing air pollution.⁵⁸ Twenty-five percent of the funding will be allocated to the Office of the State Fire Marshal for wildfire suppression efforts and to improve the education and training in the fire service.⁵⁹ The remaining funds shall be used for wildfire prevention, suppression, and resistance.⁶⁰ Funds shall be used to retain, house, train, hire firefighters, and improve defensible spaces through home-hardening, focused on low-income communities.⁶¹

b. Administration and Accountability

The CCCATF is separate from the General Fund and shall not be borrowed.⁶² The California State Auditor will conduct a biennial audit of the programs receiving the CCCATF and will report findings to the Governor, Legislature, and the public online.⁶³ Further, the State Controller will conduct a performance audit and report it to the public every four years.⁶⁴

Programs will be budgeted annually from July 1 to June 30.⁶⁵ No more than five percent of the total funds per sub-fund may be used for administrative purposes; however, this does not include funds for public outreach.⁶⁶ Additionally, no funds may be used to allow public utility corporations to earn any profit off the public investments funded by this division.⁶⁷

⁵⁴ CAL. PROPOSITION 30, *supra* note 1.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

2. *Addition of Section 17044 to Chapter 2 of Part 10 of Division 2 of the Revenue and Taxation Code*

Proposition 30 adds Section 17044 to Chapter 2 of Part 10 of Division 2 of the Revenue and Taxation Code.⁶⁸ This addition imposes a tax rate of 1.75 percent on a taxpayer's taxable income over \$2 million.⁶⁹ Revenues from this tax will be deposited into the CCCATF.

3. *Sunset Clause*

The Clean Cars and Clean Air Act will be effective in the Revenue and Taxation Code until January 24, 2043, and in the Public Resources Code until June 30, 2043.⁷⁰ The differing sunset dates allow remaining funds to be spent until the close of the fiscal year. However, the Clean Cars and Clean Air Act will sunset earlier in both codes if, for three consecutive years, on or after January 1, 2030, the statewide GHG emissions are at least 80% below the statewide 1990 level of greenhouse gas emissions.⁷¹

4. *Amendment Clause*

The Legislature may amend the initiative by roll call vote in each house, with three-fourths of the membership concurring, provided that the statute is consistent with and furthers the initiative's purpose.⁷² The Legislature may also amend the percentage set aside for administrative purposes by the initiative (no more than 5%) by a roll call vote with two-thirds of the membership concurring.⁷³

5. *Severability Clause*

If any provisions of the initiative become invalid by any court decision, Proposition 30 includes a severability clause that allows all remaining valid portions of the act to remain.⁷⁴

III. **DRAFTING ISSUES**

Proposition 30 excludes General Fund revenues for the purposes of Section 8 of Article XVI of the California Constitution.⁷⁵ This section sets a minimum funding guarantee for education from the General Fund, as passed by Proposition 98 in 1988.⁷⁶ Therefore, the minimum funding

⁶⁸ CAL. PROPOSITION 30, *supra* note 1, at § 2.

⁶⁹ *Id.*

⁷⁰ CAL. PROPOSITION 30, *supra* note 1, at § 3.

⁷¹ *Id.*

⁷² CAL. PROPOSITION 30, *supra* note 1.

⁷³ *Id.*

⁷⁴ CAL. PROPOSITION 30, *supra* note 1 at § 4.

⁷⁵ CAL. PROPOSITION 30, *supra* note 1.

⁷⁶ *Proposition 98 Sets a Minimum Funding Guarantee for Education*, EdSource, <https://edsources.org/wp-content/publications/PolicyBriefR3.pdf> at pg. 1, (last visited Oct. 17, 2022).

guaranteed for education through Proposition 98 will not increase even as state tax revenues rise under Proposition 30.

Additionally, it is estimated that \$1.5 billion to \$3 billion of the spending required by Proposition 30 will count toward the State Appropriations Limit (SAL).⁷⁷ The SAL was established by Proposition 4 in 1979.⁷⁸ The measure changed the California constitutional spending limit, so that state and local government spending is capped at 1978-1979 levels, adjusted each year for changes in inflation or population change.⁷⁹ Proposition 30 increases tax revenues without increasing the SAL. If current state spending reaches the SAL, Proposition 30 requires the state to deduct an equal number of expenditures from other programs to allow for mandatory spending on the ZEV and wildfire programs established by the initiative.⁸⁰

IV. FISCAL EFFECTS

The tax increase will raise \$3.5 billion to \$5 billion annually.⁸¹ Proposition 30 does not account for inflation; this figure will grow over time.⁸²

Already, California spends hundreds of millions annually on ZEV programs. In the past year alone, the state has committed to spending \$10 billion over five years on incentivizing ZEV purchases and building ZEV infrastructure.⁸³ Proposition 30 will increase ZEV funding by \$2.8 billion to \$4 billion annually.⁸⁴

Regarding wildfire prevention and suppression programs, Proposition 30 will increase state funding from \$700 million to \$1 billion annually.⁸⁵ California spends \$2 billion to \$4 billion annually on wildfire activities, primarily for firefighting.⁸⁶

The fiscal effects of the initiative measure also extend to consumer utility costs. The initiative calls for the Energy Commission to consult with the CPUC to design and construct the necessary infrastructure to implement zero-emission technologies and to ensure that these activities do not affect the grid's reliability.⁸⁷ However, Proposition 30 does not address the implications of higher demand on California's energy grid.

In May 2021, the CPUC released a report titled *Utility Costs and Affordability of the Grid on the Future: An Evaluation of Utility Costs, Rates, and Equity Issues*. The report found that since

⁷⁷ LEGISLATIVE ANALYST'S OFFICE, *supra* note 6, at pg. 6.

⁷⁸ *How the Gann Limit Threatens Ongoing Investments for Californians*, CALIFORNIA BUDGET & POLICY CENTER, <https://calbudgetcenter.org/resources/qa-why-hitting-gann-limit-threatens-ongoing-investments-in-californians/>, (Jan. 2022).

⁷⁹ *Gann Limit*, CALIFORNIA DEPARTMENT OF EDUCATION, <https://www.cde.ca.gov/fg/ac/gl/>, (last visited Oct. 17, 2022).

⁸⁰ LEGISLATIVE ANALYST'S OFFICE, *supra* note 6, at pg. 6.

⁸¹ BALLOTPEdia, *supra* note 6.

⁸² CAL. PROPOSITION 30, *supra* note 1, at § 2.

⁸³ LEGISLATIVE ANALYST'S OFFICE, *supra* note 8, at pg. 6.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ CAL. PROPOSITION 30, *supra* note 1, at § 2.

2013, utility rates for consumers have increased by 37% at Pacific Gas & Electric Company, 6% at Southern California Edison, and 48% at San Diego Gas & Electric.⁸⁸ The report also found that energy bills will outpace inflation and become less affordable over time.⁸⁹ In order to accommodate zero-emission technology, the CPUC has identified that aggressive actions will be needed to minimize utility base rates to protect low-income ratepayers from rapid bill increases.⁹⁰ Conversely, the CPUC also identified that with a well-managed effort to move customers to electric homes and vehicles, energy bills for electric home and car owners could decrease by \$100 per month.⁹¹ However, this creates an equity concern for low and moderate-income homes, since there are relatively few low-cost financing options or subsidies.⁹²

V. CONSTITUTIONAL AND STATUTORY ISSUES

A. United States Constitution

The federal Clean Air Act prohibits states from enacting emission standards for new motor vehicles.⁹³ However, since 1968, California has requested various waivers annually to seek authorization to set its own emission standards, separate from those set by the United States Environmental Protection Agency (EPA).⁹⁴ These waivers never expire, however, new waivers may be requested to approve more stringent standards.⁹⁵ After California requests a waiver, the EPA publishes a notice for a public hearing and written comment in the Federal Register.⁹⁶ The EPA Administrator then reviews the comments. Once the comment period commences, the EPA Administrator may determine if the waiver shall be granted.⁹⁷

Through these waivers, other states may also adopt California's standards.⁹⁸ Sixteen states and the District of Columbia have adopted California's ZEV standards.⁹⁹ These states include Colorado, Connecticut, Delaware, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Virginia, Vermont, and Washington.¹⁰⁰

⁸⁸ *Utility Costs and Affordability of the Grid of the Future*, CALIFORNIA PUBLIC UTILITIES COMMISSION, https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/office-of-governmental-affairs-division/reports/2021/senate-bill-695-report-2021-and-en-banc-whitepaper_final_04302021.pdf (May 2021).

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ UNITED STATES CODE, Title 42, Chapter 85.

⁹⁴ *Vehicle Emissions California Waivers and Authorizations*, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/state-and-local-transportation/vehicle-emissions-california-waivers-and-authorizations>, (last visited Oct. 17, 2022).

⁹⁵ *California & the waiver: The facts*, CALIFORNIA AIR RESOURCES BOARD, <https://ww2.arb.ca.gov/resources/factsheets/california-waiver-facts>, (last visited Oct. 17, 2022).

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ UNITED STATES ENVIRONMENTAL PROTECTION AGENCY *supra* note 88.

⁹⁹ *States that have Adopted California's Vehicle Standards under Section 177 of the Federal Clean Air Act*, CALIFORNIA AIR RESOURCES BOARD, https://ww2.arb.ca.gov/sites/default/files/2022-05/%C2%A7177_states_05132022_NADA_sales_r2_ac.pdf, (May 13, 2022).

¹⁰⁰ *Id.*

In May 2021, seventeen Republican-dominant states filed a lawsuit against the Environmental Protection Agency ("EPA") for California's waiver to set its own vehicle emission standards.¹⁰¹ The lawsuit claims that by granting California's waiver rather than mandating that California follow the federal government's emission standards, EPA Administrator Michael Regan violated the equal sovereignty doctrine in the United States Constitution.¹⁰² While the lawsuit awaits a hearing, the United States Supreme Court recently restricted the EPA's authority to regulate carbon dioxide emissions from the utility sector in *West Virginia v. EPA*.¹⁰³ In *West Virginia v. EPA*, the conservative majority relied on the major questions doctrine to limit the EPA's authority to regulate climate emissions.¹⁰⁴ The major questions doctrine allows the Supreme Court to reject agency action when the underlying claim of authority concerns an issue of "vast 'economic and political significance'" and when Congress has not clearly given agencies the authority over that issue.¹⁰⁵ Major legislation on greenhouse gas emissions has not been passed by Congress since 2008 when the travesty of climate change was not yet realized.¹⁰⁶ Therefore, if litigation challenging California's waiver to set its own vehicle standards reaches the Supreme Court, it is likely that the Supreme Court would restrict the EPA's authority to issues these waivers, just as they limited the EPA's power to regulate emissions in *West Virginia v. EPA*.

B. State Constitution

California initiatives are bound by the single subject rule, which means that all provisions of a particular ballot proposition must be reasonably related to a single subject.¹⁰⁷ The single-subject rule is not violated if all parts of the initiative are reasonably germane to each other and the general purpose of the initiative.¹⁰⁸ Proposition 30 has not been challenged in the court of law on the single-subject issue. However, if passed, it is possible that the initiative will be challenged in court. Proponents of such litigation would likely argue that the two areas raised in Proposition 30, ZEVs and wildfires, are not reasonably related to a single subject. Opponents of such litigation will likely argue that the issues are reasonably germane to each other because they relate to the single subject of decreasing greenhouse gas emissions.

VI. PUBLIC POLICY ISSUES

Proponent and opponents of Proposition 30 have presented convincing public policy arguments. The proponents base their argument for Proposition 30 on clean air, expanding ZEV

¹⁰¹ Budryk, Zack, *Seventeen states sue EPA for letting California set vehicle standards*, THE HILL, <https://thehill.com/policy/energy-environment/3487755-seventeen-states-sue-epa-for-letting-california-set-vehicle-standards/>, (May 13, 2022).

¹⁰² *Id.*

¹⁰³ *West Virginia v. EPA*, _ U.S. _, 142 S.Ct. 2587 (2022); Babin, Madeline, *The Supreme Court's EPA Ruling Will Delay U.S. Climate Action*, COUNCIL OF FOREIGN RELATIONS, https://www.cfr.org/in-brief/supreme-court-epa-west-virginia-ruling-delay-us-climate-change-action?gclid=Cj0KCQjwnP-ZBhDiARIsAH3FSRdBubfO-pm2IDA8dyaKxkF9DkEyAALNZotchyW30drL60tnP7vL_aQaAp4oEALw_wcB, (July 6, 2022).

¹⁰⁴ *Id.*

¹⁰⁵ *The Major Questions Doctrine*, CONGRESSIONAL RESEARCH SERVICE, <https://crsreports.congress.gov/product/pdf/IF/IF12077>, (April 6, 2022).

¹⁰⁶ COUNCIL OF FOREIGN RELATIONS, *supra* note 97.

¹⁰⁷ *Raven v. Deukmejian*, 801 P.2d 1077 (Cal. 1990).

¹⁰⁸ *Id.*

infrastructure, ZEV affordability, and reducing catastrophic wildfires.¹⁰⁹ The opponents against Proposition 30 ground their argument on the proposition being a special interest carve-out and an unnecessary tax increase.¹¹⁰

A. Proponents

Proponents include the California Democratic Party, environmental groups, and private companies, such as Lyft and Lime.¹¹¹ Proponents argue that action is needed to prevent wildfires and reduce vehicle pollution because Californians deserve clean air.¹¹² In California, 1.2 million children have been diagnosed with asthma.¹¹³ Further, between 2020 and 2021, seven million acres of California's land were scorched by wildfires.¹¹⁴ One of the initiative's authors and Coalition for Clean Air Policy Director Bill Magavern stated, "We need to protect the health of Californians. California needs to step up to protect its own. The state is doing a lot to reduce harmful emissions, but the budget, even with the governor making the commitment he has, is insufficient to address these problems."¹¹⁵

Proponents also argue that more funding is needed to expand clean vehicle charging infrastructure to meet California's zero-emission goals.¹¹⁶ Proponents claim Proposition 30 will expand access to electric vehicle chargers for every Californian.¹¹⁷ With Proposition 30 funding, more than 500,000 apartments and homes will be equipped with electric vehicle chargers in the first year alone.¹¹⁸ Further, proponents also tout that Proposition 30 will help consumers and organizations afford electric vehicles.¹¹⁹ Proposition 30 will dedicate funding to making light-, medium-, and heavy-duty ZEVs more affordable through rebates, grants, and financial assistance.¹²⁰

Additionally, Proposition 30 will invest nearly \$1 billion annually in the prevention and control of wildfires.¹²¹ According to California Firefighter Association President Tim Edwards, "Wildfires in California are changing the way we live for the worse. The wildfires we are witnessing now have become a hazard to public health, ruining our air, endangering our watershed, and destroying homes and businesses. Cal Fire Firefighters support this initiative because it provides an immediate, reliable, and significant investment to prevent wildfires in our state so Californians will have clean air to breathe."¹²²

¹⁰⁹ BALLOTPEdia, *supra* note 6.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Californians deserve clean air*, YES ON 30 CLEAN AIR CA, https://yeson30.org/?gclid=Cj0KCQjwsrWZBhC4ARIsAGGUJup0lYfDxn7SjemC1YwyH8mdxPTzR_rXHK135TfZvqtIXLXqiUdSmflaAvWkEALw_wcB, (last visited on Oct. 17, 2022).

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ BALLOTPEdia, *supra* note 6.

¹¹⁶ YES ON 30 CLEAN AIR CA, *supra* note 113.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² BALLOTPEdia, *supra* note 6.

B. Opponents

Opponents include Governor Gavin Newsom, the California Republican Party, the California Teachers Association, the Howard Jarvis Taxpayer Association, and the California Chamber of Commerce.¹²³

Opponents contend that Proposition 30 is a corporate special interest carve-out for companies who must comply with the Clean Miles Standard.¹²⁴ Although the Clean Miles Standard requirements may be challenging to meet, opponents believe the obligation to meet this standard should be on the companies required to comply, such as Lyft.¹²⁵ Proposition 30 effectively shifts this obligation onto taxpayers.¹²⁶

Opponents also argue that California does not need another tax increase.¹²⁷ According to Howard Jarvis Taxpayers Association President Jon Coupal, "We already have some of the highest taxes in the country. A lot of the air pollution in Southern California could be eliminated by spending transportation dollars on freeway improvements to reduce traffic jams. If these proposals are really priorities, they should be paid for out of the existing General Fund."¹²⁸

VII. CAMPAIGN FINANCE

A. Proponents

There are three ballot measure committees in support of Proposition 30: "Yes on 30: Clean Air California," "Yes on 30: Working Families and Environmental Voters to Expose Greedy Billionaires and CEOs," and "California Environmental Voters Issues Committee."¹²⁹ Proponents have spent over \$47 million in support of the initiative.¹³⁰ Notably, the top donor is Lyft, who has contributed \$35,130,884.96.¹³¹

B. Opponents

The opposition is led by two ballot measure committees: "No on 30" and "No on 30 – Educators Opposed to Corporate Handouts."¹³² Opponents have spent over \$15 million in opposition to the initiative.¹³³

¹²³ BALLOTEDIA, *supra* note 6.

¹²⁴ NO ON PROP 30, <https://votenoprop30.com/>, (last visited Sept. 23, 2022).

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ BALLOTEDIA, *supra* note 6.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ 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) (on file with *California Initiative Review*).

¹³¹ BALLOTEDIA, *supra* note 6.

¹³² BALLOTEDIA, *supra* note 6.

¹³³ POLITICO, *supra* note 131.

VIII. CONCLUSION

Proposition 30 will effectively create a tax on annual income over \$2 million at 1.75% to fund an acceleration for a zero-emission vehicle future while also providing funding to wildfire prevention and suppression efforts.¹³⁴ The additional revenue generated from the new tax will be placed in Fund for ZEV incentives and infrastructure while funding prevention and suppression efforts for wildfires.

A **YES** vote on Proposition 30 means supporting a tax on personal annual income over \$2 million at 1.75% to fund zero-emission vehicle subsidies, infrastructure, and wildfire prevention and suppression, effective January 1, 2023.¹³⁵

A **NO** vote on Proposition 15 means opposing a tax increase on personal income over \$2 million annually for zero-emission vehicle subsidies, infrastructure, and wildfire prevention and suppression.¹³⁶

¹³⁴ CAL. PROPOSITION 30, *supra* note 1.

¹³⁵ BALLOTPEDIA, *supra* note 6.

¹³⁶ *Id.*