

MEMORANDUM

VIA EMAIL

TO: Funding the Next Generation

FROM: James Harrison & Ben Gevercer

DATE: August 30, 2023

RE: Updates on Measure J and Assembly Constitutional Amendment 13

This memorandum provides an update on two recent developments on local ballot measures that you should be aware of. First, the Court of Appeal published its decision upholding the L.A. County budget set aside ballot measure, Measure J. Second, the Legislature is considering placing a measure on the ballot that would require any ballot measure that raises the vote threshold for any local ballot measure be approved by that higher vote threshold. Please let us know if you have any further questions on either development.

I. Measure J

In *Coalition of County Unions v. L.A. County Board of Supervisors*, 93 Cal. App. 5th 1367 (2023), the Court of Appeal upheld Measure J, a L.A. County charter amendment that required the county to annually allocate at least ten percent of unrestricted revenues in the County's general fund to community investment and alternatives to incarceration and prohibited using the set-aside to fund carceral systems and law enforcement agencies.

The court of appeal first determined that Measure J complied with county charter provisions of the California Constitution and it was not preempted by state laws governing county budgets. The opponents of Measure J could still seek review by the California Supreme Court, but the deadline is September 6, 2023.

The court of appeal notably held that Measure J differed from the set-aside initiative struck down in *Totten v. Board of Supervisors*, 139 Cal. App. 4th 826 (2006) in several important ways. First, unlike Ventura County, L.A. County is a charter county, not a general law county. The State Constitution grants greater discretion over the management of a county's internal affairs to charter counties. Second, the initiative in *Totten* divested the Ventura County Board of Supervisors of most of its budgetary authority, whereas the LA County Board of Supervisors still maintains discretion over the county's spending and budget decisions. Measure J merely directs funds to broad categories of programs. Third, the funds set aside by Measure J are not subject to state mandate or needed for state-mandated

programs. Additionally, Measure J allows the Board of Supervisors to vote to reduce the set-aside if a fiscal emergency threatens the funding of state-mandated programs.

A few considerations can be gleaned from Measure J and *Coalition of County Unions*. The court reaffirmed that charter counties have greater flexibility when it comes to enacting ballot measures that are inconsistent with state law. Further, a properly crafted initiative can limit a Board of Supervisors' discretion in certain areas, but it depends on state legislation and regulation in that field. Caution should be taken when it comes to any diversion of authority from the Board of Supervisors to the electorate. Finally, the court will seek to uphold an initiative unless it clearly contradicts state law. The Court of Appeal stated that "voters cannot be deprived of the exercise of direct democracy on local matters merely because the state has a *theoretical* interest in the subject of the initiative—rather, the state must have *demonstrated* that interest legislatively."

This decision also creates new possibilities for set-aside initiatives so long as they comply with similar conditions as Measure J, such as avoiding conflict with any state-mandated programs by limiting the measure to unrestricted revenues and allowing the local government to vote to reduce the set-aside if a fiscal emergency threatens the funding of other state-mandated programs.

II. ACA 13

ACA 13 is a proposed constitutional amendment that would require any constitutional amendments that would raise the vote threshold above a majority for any local or state measure, be approved by that higher vote threshold. So, for example, if a proposed constitutional amendment would require that a special tax initiative receive a two-thirds vote for passage, that constitutional amendment would itself require a two-thirds vote. Additionally, ACA 13 would expressly authorize a local governing body to hold an advisory vote concerning any issue of governance for the purpose of allowing voters within the jurisdiction to voice their opinions on the issue. The measure would specify that an advisory question is approved only if a majority of the votes cast on the question are in favor.

The Legislative session ends in two weeks and the measure must still be passed by both houses. If passed by a two-thirds vote in both houses, the measure would be placed on the March 2024 primary ballot. If it passed and took effect, it would require that the Taxpayer Protection and Government Accountability Act receive a two-thirds vote to take effect.