LEAGUE OF WOMEN VOTERS® OF CALIFORNIA

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BALLOT MEASURE RECOMMENDATION & LOCAL LEAGUE TOOKIT
MARCH 5, 2024, PRIMARY ELECTION
Public Recommendation Online at bit.ly/LWVCBallotRecs

Prop 1: Mental Health Care and Addiction Treatment Reform & Bonds to Build Places for Treatment and Supportive Housing

Although California has a critical need to resource better mental health and addiction services and to address our crisis of homelessness, the League of Women Voters of California opposes Proposition 1 for a number of important reasons. While the additional housing resources offered through Prop 1 are sorely needed, they do not outweigh its flaws.

The bond portion of the measure was rushed through the legislature with last-minute amendments that opened the door to funding involuntary treatment in locked facilities. The rushed nature of these amendments precluded substantive debate and ignored arguments from diverse community-based organizations and health care and civil rights advocates. These groups contend that community-based care is more effective than institutionalization and that incentivizing institutionalization will both lead to worse health outcomes and curtail individual liberties.

Furthermore, Prop 1 does not increase the overall funding for mental health services for counties - the bond money is to build treatment units and supportive housing. Under the changes this measure makes to the Mental Health Services Act, more of the money received by counties must be used for housing of a certain group of patients and for intensive, personalized support services like assistance finding employment and accessing educational opportunities. This reallocation reduces the funds available for other mental health services that counties currently offer to patients, like treatment, crisis response, and outreach. It has the overall effect of reducing counties' ability to set priorities based on local needs for mental health services. Any variances that may allow counties to spend more or less on specific categories would increase their administrative costs and do not erase the lack of flexibility they would have to meet specific needs.

Finally, budgetary decisions should be made by the legislature, not by earmarking funds through ballot initiatives. Earmarking restricts the counties and the state from redirecting funds to alternative models of care that may arise in the future, or to other emerging and essential needs.

VOTE NO ON PROP 1

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Analysis for Local League Internal Use

Current and Proposed Law

In November 2004 Proposition 63, a voter approved initiative, established the Mental Health Services Act (MHSA). The MHSA provides funds to county mental health programs (CMHPs) to expand services and allocate funding. Its intent is to provide creative programs and integrate service plans for mentally ill children and adults through a 1 percent income tax on personal income above $1 Million.[1]

The money raised from those taxes is used to treat and prevent mental illness, and to provide drug and alcohol treatment to people with mental illness. Most of this money goes to counties. Counties make choices about how to provide services. They use the money for things like outpatient care, crisis response teams, preventative programs, and other services. The MHSA Fund is required to distribute 19 percent to Prevention and Early Intervention (PEI) programs and 76 percent to adult/older adult and children's systems of care. The law also specifies how MH community services should be organized. Community Services and Supports (CSS) is the largest funding category and provides the counties with significant discretion.

Proposition 1[2] is a combination of two bills, SB 326 (Eggman) which would amend the Mental Health Services Act and AB 531 (Irwin) which would authorize $6.38 billion in bonds to fund the construction of places for mental health care and drug or alcohol treatment and supportive housing for homeless people with behavioral health challenges like mental health, drug, or alcohol issues. A portion of the money for this will be set aside for veterans. More of the MHSA tax money would go to the state and less to counties. Counties will have to spend more of their MHSA money on housing and intensive, personalized support services like assistance finding employment and accessing educational opportunities. This leaves less money available to spend on treatment, crisis response, and outreach than counties currently offer. Counties would be able to spend MHSA money on drug and alcohol treatment for anyone who needs it - not only people with a mental illness. The measure also expands the meaning of services by changing "mental health" to "behavioral health," reflecting the expanded use of funds for substance use disorder treatment services.

Prop 1 would direct counties to allocate a large percentage of their revenue from the MHSA to Full-Service Partnerships (FSPs) and housing assistance. It breaks down allocation in the following way:

- 35% of revenue goes toward FSPs such as Assertive Community Treatment, Substance Use Disorder Treatment and Employment Service.

[1] See LAO report on the MHSA.

[2] See Official Voter Information Guide and LAO Analysis of Prop 1 of 2024.

- 30% of revenue goes toward housing interventions like rental and operating subsidies and family housing for children and youth. Half of that is required to be for individuals with chronic homelessness.
- 30% of revenue goes toward behavioral health service and support with the majority of that allocated to early intervention.
- 5% of revenue goes toward population-based mental health substance use disorder prevention (this may not include services to individuals).

The bond money would be allocated as follows:

- $1.065B for permanent supportive housing for ***veterans*** who are homeless, chronically homeless, or at risk of homelessness
- $922 M for permanent supportive housing projects for persons who are homeless, chronically homeless, or are at risk of homelessness,
- $2.893B to increase capacity for short-term crisis stabilization, acute and subacute care, crisis residential, community-based behavioral health residential in the least restrictive and least costly settings.
- $1.5 B to counties and cities for the same purposes

In addition, it provides that the projects funded will be subject to a streamlined, ministerial review if they meet certain criteria.

League of Women Voters of California: Reasons for Opposition

Eleventh Hour Amendments

Prop 1 is a measure driven by Governor Newsom, who initially emphasized that the funding would be for unlocked, voluntary, community-based treatment facilities - as is evidenced from this since-deleted press release.[3] Until September 11, the language of AB 531 (the bond portion of Prop 1) read "the bonds would fund the development of an array of voluntary, unlocked, community-based treatment and residential care settings." On September 11, three days before the bill's deadline for passage, "voluntary" and "unlocked" were struck from the bill. The Behavioral Health Continuum Infrastructure Program (BHCIP) is the vehicle that will be used to distribute the funding, and it permits locked treatment.

Disability Rights California opposed the underlying legislation and requested a veto, writing:

> We oppose SB 326 and AB 531 due to the rush to enact these bills without allowing sufficient time for engagement, discussion, and consideration. Regrettably, last-minute amendments to AB 531 undermine its original intent. We have serious concerns about the expansion of institutional

[3] It should be noted that we believe that press releases issued by the Governor are a matter of public record and should not disappear from a government website, as this one has, without explanation. Other press releases that do not mention the promise of unlocked facilities remain on the site.

> care that AB 531 could facilitate. We are also concerned by the significant reduction in the allocation of funding for community-based mental health services under SB 326. Combined, these two bills represent a shift away from community- based services and towards an institutional model of care.

The ACLU shared these concerns, writing:

> Most people with mental health conditions and substance use disorders, and those experiencing houselessness, can live independently in the community in housing with the right, voluntary supports. We must prioritize investing our finite resources in voluntary housing units and services. Otherwise, we risk institutionalizing individuals who do not require that level of care, and keeping individuals in those settings longer than necessary, simply because that is the only placement available. This presents serious civil rights and constitutionality concerns.[4]

The coalition emerging to oppose Prop 1 has reportedly claimed:

> This ballot measure will reduce our state's ability to provide accessible and effective care for BIPOC, LGBTQIA+, and other marginalized communities…Proposition 1 was largely designed by government administrators without community input and without our consent. It was often a rushed and chaotic process. This measure fundamentally fails to honor the baseline disability justice principle of "nothing about us, without us."

The League of Women Voters of California believes that officials should make decisions openly and provide broadly publicized, convenient opportunities for participation by the public in the process. Forcing Prop 1 through with major last-minute changes is an object lesson in the danger of passing legislation without ensuring that the people most directly impacted have a seat at the table. This problem is magnified when those most directly impacted are from marginalized groups who encounter impediments accessing the corridors of power.[5]

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[4] "The Americans with Disabilities Act mandates that people with mental health conditions have a right to access treatment and services in the most integrated setting appropriate (42 U.S.C. §§ 12131-12134). The U.S. Supreme Court applied this mandate to hold that the unnecessary institutionalization of individuals with disabilities in hospitals or other locked facilities is discrimination prohibited by the ADA (Olmstead v. L.C., 527 U.S. 581, 597 (1999))."

[5] Position on Inter-Governmental Relationships; Position on Citizen's Right to Know/Citizen Participation

Furthermore, our national position on Individual Liberties allows us to oppose major threats to basic constitutional rights. While nothing in Prop 1 directly implicates the Fourteenth Amendment due process and Eighth Amendment protections afforded to people with mental illness, it could make it easier to institutionalize people in violation of their civil rights. We do not take a position here on the relative advantages or disadvantages of institutionalization, but we do believe that there was insufficient legislative consideration regarding its potential to damage the health and welfare of people with behavioral health problems.[6]

Reduction of Funds for Mental Health Services

Prop 1 shifts MHSA allocations from core mental health services provided by counties to new housing interventions and standalone substance use disorder treatment. The revised allocations will decrease the funds available for counties to provide outpatient services, crisis response, prevention services, and outreach.[7] These reductions will impact all Californians, but most significantly historically unserved and underserved populations.
An irony is that by siphoning off funding for upstream health care to pay for a mandated minimum of housing spending, the problem of homelessness may increase. The bond money that is included in Prop 1 is to be used to build treatment units and supportive housing – not to fund core services.

The League of Women Voters of California's Mental Health position supports "an adequately funded mental health care system that provides...(for) the acutely, chronically and seriously mentally ill of all ages." The national position on healthcare, which explicitly includes behavioral health, calls for adequate healthcare funding, urges expanded community participation in policy debates, notes the importance of equitable distribution of care, and supports efforts to treat behavioral health problems and decrease the stigmatization of, and normalize, behavioral health problems and care.[8]

The League of Women Voters of California does not support robbing Peter to pay Paul. California has a desperate need for counties to both continue their current work under the MHSA and to expand it to housing interventions and substance use disorder

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[6] A recent international survey of the medical literature noted that: "Coercive measures in mental health care, including involuntary admission (IA), are a significant infringement of human rights and autonomy. Their effectiveness for treating people with mental health conditions (PMHCs) is debatable, and they can have negative effects on therapeutic alliance, quality of life, and self-esteem. Involuntary admission has been criticized as a violation of international human rights treaties, and those who experience it are more likely to experience shame, self-stigma, and poorer recovery outcomes. However, in cases of severe danger to self or others, involuntary admission may be justified and associated with improved psychosocial functioning and better motivation for treatment in some patients."

[7] LAO Report *Mental Health Services Act Proposed Restructuring of the MHSA Funding Categories and Impacts on County Spending*.

[8] LWVUS Position on Healthcare; LWVC Mental Health Position

treatment. Prop 1 does not provide adequate funding for California's needed mental health care system. Instead, it reduces the funds available for mental health services that counties currently offer to patients and has the overall effect of diminishing counties' ability to set priorities based on local needs for mental health services. While counties may apply to a state agency to spend more or less on specified categories, and small counties (under 200,000 population) may also apply for variances, these steps will increase counties' administrative costs and do not erase the lack of flexibility they would have to meet specific needs.

Earmarking

Proposition 63, the Mental Health Services Act of 2004, established an earmarked tax from a highly volatile revenue source. Proposition 1 introduces more earmarking by reducing the flexibility the counties have in how to spend these funds. The Legislative Analyst's Office has issued a series of reports pointing out that counties may have to reduce other services to comply with the proposed changes being put before the voters. It suggested that the legislature should consider whether statewide behavioral outcomes will be improved by shifting focus to the homeless. The ACLU argues that SB 326 will "put at risk critical new efforts in California to reduce contact with law enforcement and criminal systems for people in mental health crisis." Specifically, the concern is that it will reduce funds available for outpatient mental health services and crisis response teams.

Currently MHSA funds can and are used for Full-Service Partnerships. These services are expensive – about $13,000 annually per client in Los Angeles 2010-2016 and $18,000+ in 2020-2021. Ten years from now, a different model for service delivery may be shown to be more effective, at which point it would require another proposition to allow it.

The League of Women Voters of California's position on State and Local Finances is opposed to this kind of ballot-box budgeting.[9] Budgetary decisions should be made by the legislature, not by earmarking funds through ballot initiatives. Earmarking restricts the counties and the state from redirecting funds to alternative models of care that may arise in the future, or to other emerging and essential needs.

[9] LWVC Position on State and Local Finances: h. Each fund or tax "earmarked" for a specific purpose containing an automatic sunset date and provisions for mandatory government body review and reauthorization; i. Adoption of designated "earmarked" funds and taxes only in those situations where social benefit significantly outweighs the loss of flexibility.