

# Los Angeles Times

## Prop. 25 is the real deal

Despite opponents' claims, the initiative's aim is merely to allow legislative passage of the state budget by a simple majority vote.

By George Skelton, Capitol Journal

From Sacramento

It's the oldest and most successful strategy for fighting ballot measures: Argue that a proposal "is not what it seems."

Don't necessarily argue against the merits of the measure's intent. That's often a weak case.

Instead, strive to confuse. Point to "drafting flaws." Warn of "unintended consequences."

As in:

*This proposition purports to offer free apple pie. You may like apple pie. But don't be fooled. This is not apple pie. It's a crab apple tart.*

The tart tactic is in play by business interests and conservative ideologues against Proposition 25 on the November ballot. The initiative is sponsored by public employee unions and endorsed by the League of Women Voters.

The measure would reduce the Legislature's herculean vote requirement for budget passage from a two-thirds to a simple majority. The two-thirds hurdle is the single biggest cause of dysfunction in the state Capitol.

Just two other states — Arkansas and Rhode Island — require a two-thirds budget vote. California is the only state that mandates a two-thirds vote for both budgets and taxes.

Prop. 25 would retain the two-thirds vote for tax increases.

It also would decree that if legislators didn't pass a budget by the rarely met June 15 constitutional deadline, they'd forfeit all salary and expense reimbursements for each day they dallied.

"This is a clear, simple reform," says campaign manager Richard Temple.

Not so fast, contend opponents. It's not what it seems.

They argue that Prop. 25 also could allow tax increases to be passed on a majority vote.

Now it starts to get confusing.

The opposition's thesis is that if a tax hike funded a budget appropriation, it could be approved on a majority vote. That's because

of a clause in the measure that states: "Notwithstanding any other provision of law ... bills providing for appropriations related to the budget may be passed [by] a majority."

Prop. 25 is "a fraud on the voters," says opposition attorney Steve Merksamer, a long-time initiative lawyer for business interests. "It's misleading."

Nonsense, counter the supporters. Right in the proposition's "purpose and intent" section it reads: "This measure will not change the two-thirds vote requirement for the Legislature to raise taxes."

But Merksamer says that is superseded by the "notwithstanding any other provision" language.

"Unbelievable and incorrect," responds Prop. 25's attorney, veteran Democratic and initiative lawyer Lance Olson. The routine "notwithstanding" clause was included to differentiate between budget and non-budget appropriations, Olson says.

"Courts look at the intent language and at the intent of the voters. Can you imagine a court saying, 'No matter what voters meant ...?' No court would do that."

The legislative analyst, in a Prop. 25 overview to be included in the official voter information guide, tells the public that the measure's intent is to leave the two-thirds tax vote unchanged.

And the tentative ballot label that voters will see, written by Atty. Gen. Jerry Brown, proclaims that the measure "retains [the] two-thirds vote requirement for taxes." Don't be surprised if Merksamer challenges that in court.

Opponents also claim to have found another flaw in the proposal: It would deny voters the right to repeal budget-related acts through the referendum process. They essentially don't have that right now.

But, critics argue, at least the bills currently require a two-thirds vote. That trade-off — making a bill hard to pass but exempting it from voter repeal — no longer would exist. Money bills would be easier to

pass and still couldn't be repealed.

Then there's a third claim that seems far-fetched: On a majority vote, legislators could boost their per diem pay to compensate for lost wages when budgets were late.

And then they'd face mass recall.

"They're trying to scare people into contributing [money] to the 'no' side," says Prop. 25 spokesman Richard Stapler.

If a Legislature ever did try to play games like the ones the opponents assert, Stapler adds, someone "would go to a judge faster than you could say 'lawyer.' And the Legislature would be on the losing end."

"The things they talk about are so absurd they're laughable."

But one legitimate concern of opponents is that legislators could merely pass a bogus, half-baked budget by the deadline to preserve their pay, then slumber into summer in stalemate on a real deal. That would be unconscionable if only a majority vote were needed.

Yet, almost anything would be better than the current system of minority-party tyranny and insufferable gridlock.

Vendors are stiffed. Bond ratings fall. And state spending actually rises.

In the mid-1990s, a bipartisan citizens commission concluded: "There is no evidence [the two-thirds vote] does anything

to slow the increase in state spending. Instead, it encourages horse trading [and] pork-barrel legislation.... Stories abound of 'buying' votes to reach the two-thirds."

Business interests benefit from the horse trading. Skilled lobbyists broker the needed GOP votes to open tax loopholes and provide other goodies for their clients. They love the two-thirds vote.

So do Republican legislators. It makes them relevant as hostage-takers.

The latest nonpartisan Field poll shows that likely voters overwhelmingly support the measure, 65% to 20%. This includes 58% of Republicans.

But opposition strategist Rick Claussen logically surmises that this is because the proposal would punish legislators financially if they failed to pass an on-time budget. "A lot of Republicans think 'My God, this is exactly what I've wanted to do,'" he says.

"We've got to convince them this is a sham" — crab apple.

But it's actually apple pie — just what it seems.

*George Skelton can be reached at [george.skelton@latimes.com](mailto:george.skelton@latimes.com).*

July 26, 2010