California State PTA Legislation Action Committee

REFERENDUM CHALLENGING A 2020 LAW PROHIBITING RETAIL SALE OF CERTAIN FLAVORED TOBACCO PRODUCTS
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The Basic Question that Will Be Posed to California Voters: Should SB 793, the law enacted by the California Legislature to prohibit the retail sale of certain flavored tobacco products, be approved and go into effect?

BACKGROUND
SB 793, which was signed into law in 2020, would prohibit a tobacco retailer, or any of the tobacco retailer’s agents or employees, from selling, offering for sale, or possessing with the intent to sell or offer for sale, a flavored tobacco product or a tobacco product flavor enhancer, as those terms are defined, except as specified. The law would make a violation of this prohibition an infraction punishable by a fine of $250 for each violation.

The opponents of SB 793 have qualified this referendum to ask voters to repeal that law.

Research shows that flavored tobacco, and specially flavored e-liquids for vaping promote tobacco use by California’s youth. Over 5.3 million kids in the U.S. now use e-cigarettes. 27.5% of high school students used e-cigarettes in 2019 compared to 11.3% in 2016. Flavors are driving the demand for use. 97% of youth e-cigarette users report using a flavored product, and 70% cite flavors as the reason for their use. SB 793 was introduced to reduce the incidence of children becoming addicted to nicotine.

WHAT IS A REFERENDUM? (reference - the Secretary of State’s Website)
https://www.sos.ca.gov/elections/ballot-measures/referendum
Article II, Section 9, of the California Constitution provides for the referendum process in California. Electors have the power to approve or reject statutes or parts of statutes, with the exception of urgency statutes, statutes calling elections, and statutes providing for tax levies or appropriations for usual, current state expenses. (Note from study committee: Electors = voters; statutes = laws passed by the legislature, signed by the Governor and Chaptered into law/statutes.)

Referenda can qualify for the statewide ballot up to 31 days before an election (unlike initiatives which must qualify 131 days before). Since July 2011, referendum measures only appear on general election ballots.

Once on the ballot, the law is repealed if voters cast more NO votes than YES votes on the referendum in question.

WHAT IS DIFFERENT ABOUT VOTING ON A REFERENDUM?
A referendum asks voters whether they want to approve or reject a law already passed by the Legislature and Chaptered. A YES vote means that they approve the law and want to keep it; a NO vote means they reject the law and want it repealed.
In other words, if approved by the voters (YES votes) this proposition would allow SB 793 to go into effect. If this proposition is rejected by voters (NO votes), SB 793 would not be able to move forward.

RELEVANT CALIFORNIA STATE PTA AUTHORITIES

Legislation Plank 11: To prevent, control or eliminate hazards to the health, safety and well-being of all children and youth.

RESOLUTIONS

E-CIGARETTES/VAPING, FLAVORED TOBACCO PRODUCTS AND YOUTH HEALTH
Adopted by the Statewide Annual Meeting Delegates June 2020

• That California State PTA and its units, councils and districts seek and support legislation and regulations to protect the public, especially youth, against the health risks associated with the use of tobacco products by prohibiting the sale, marketing, and distribution of flavored tobacco products and e-cigarettes, including components, accessories, and tobacco product flavor enhancers; and be it further

• That California State PTA and its units, councils, and districts encourage the education of all members of the school and larger community about the ill health effects and addictive nature of nicotine.

EDUCATION ON HAZARDS OF INVOLUNTARY SMOKING Adopted by Convention Delegates April 1987 Reviewed and deemed relevant APRIL 2018

• That the National PTA and its constituent bodies seek and support additional legislation to protect the rights of non-smokers; and be it further

• That the National PTA participate in media public service and campaigns to educate the public about the dangers of involuntary smoking and its effects on a child’s development.

TOBACCO ADVERTISING THAT TARGETS MINORS Adopted by Convention Delegates May 6, 1993 Reviewed by Board of Managers January 2013

• That the California State PTA, its units, councils and districts seek and support legislation, regulation and/or other state and local measures to restrict any tobacco advertising or promotion that tends to encourage tobacco experimentation or use by minors; and be it further

• That the California State PTA join with the California Department of Health Services, California Department of Education, state and local agencies, and other organizations in working toward the prohibition of tobacco advertising and promotion that targets minors;
SUPPORTERS AND OPPONENTS

Referendum Supporters (Advocates for a YES Vote):

“In this battle between California and Big Tobacco over the lives and health of our kids, nothing is more important than the truth: tobacco companies use candy flavors to hook kids on nicotine,” The Committee to Protect California Kids co-chair Malia Cohen said in a statement. “In the coming months, our coalition is going to make sure Californians know that their YES vote will protect kids from getting lured into nicotine addiction by the tobacco industry’s sweet, sugar-flavored lies.”

Supporting the campaign to keep and enact SB 793 are the following:

- Former New York Mayor, Michael Bloomberg who according to the Sacramento Bee has donated $667,000. to The Committee to Protect California Kids, (a coalition of groups that have gathered to defend a ban on flavored tobacco products in California).
- The Committee to Protect California Kids includes:
  - African American Tobacco Control Leadership Council
  - American Heart Association
  - American Lung Association
  - American Cancer Society Action Network
  - Parents Against Vaping E-Cigarettes
  - Campaign for Tobacco Free Kids.

“This is a battle between the people of California and Big Tobacco over the health, lives and future of our kids,” said Matthew L. Myers, president of Campaign for Tobacco-Free Kids, a health advocacy group that includes leaders of the American Cancer Society and American Heart Assn. “Big Tobacco is going to use every deceptive trick in their playbook just so they can continue to market and profit from hooking young kids on their candy-flavored products.”

Referendum Opponents: (Advocates for a NO Vote)

The California Coalition for Fairness is leading the campaign to repeal SB 793 by referendum. Beth Miller, the communications director for the California Coalition for Fairness, said that cigarette manufacturers were sponsoring the campaign.

According to the California Secretary of State website, the top three donors to the campaign repealing the ban, are:

1. RJ Reynolds Tobacco Company and its affiliates  
   (total donation to date: $10,313,747.61 – this is both cash & in-kind donations)
2. Phillip Morris USA and its affiliates  
   (total donation to date: $9,820,227.55 – this is both cash & in-kind donations)
3. ITG Brands  
   (total donation to date: $500,000.)

California Coalition for Fairness has stated that it “will focus on educating voters about why this law is unfair and goes too far. We agree that youth should never have access to any tobacco
products, but this can be achieved without imposing a total prohibition on products that millions of adults choose to use.” They went on to state as noted by Los Angeles Times Staff Writer, Patrick McGreevy, that the ban “…will hurt small, local businesses and jobs as products are pushed from licensed, conscientious retailers to an underground market, leading to increased youth access, crime and other social or criminal justice concerns for many California residents.”

Patrick McGreevy noted in an article dated January 22, 2021 that during the legislative debate regarding SB793 (Hill) the tobacco industry alleged in televised ads “that by exempting hookah, expensive cigars and flavored pipe tobacco from the ban, legislators gave “special treatment to the rich, and [singled] out communities of color” by outlawing the sale of menthol cigarettes.”

Partial List of Advocates for a NO Vote

1. California Coalition for Fairness
2. RJ Reynolds Tobacco Company and its Affiliates
3. Philip Morris USA and its Affiliates
4. ITG Brands
5. Swedish Match North America LLC

COMMENTS

PTA has actively been engaged in education and advocacy about the dangers of tobacco and tobacco products. As an organization we have supported efforts to prevent tobacco use among underage users. As a result of years of hard work led by CAPTA and other allies, effective anti-smoking campaigns and tobacco-use prevention programs have achieved large reductions in cigarette use by youth. Until recently, we were seeing the lowest rates in decades of tobacco product use among young people, but that trend has been reversing.

CAPTA actively supported SB 793 as a CAPTA priority bill as it moved through the legislative process. The language we supported is what was ultimately signed into law. It is that language which is the subject of this referendum effort.

Additionally, the following was sent to our membership as part of the “Advocacy Update” when it became clear that a recall effort had been filed. Essentially we promised to fight the recall when we wrote the following to our members: “Hopefully they will not succeed but if they do, we must be ready once again to fight for the health of the children and youth of California.”
“ADVOCACY UPDATE” SENT TO OUR MEMBERS September 2020

We did it!

SB 793, (Hill), the bill to outlaw the sale of flavored tobacco was signed into law by the Governor on August 28th. Thanks to all of you who called, wrote letters or completed the PTA online request to email your legislators. This was a hard-fought campaign and every one of you made a difference in the outcome. Because of you, beginning January 1, 2021, it will be illegal to sell flavored tobacco in California. This is the power of PTA.

But wait — our work may not be done. On August 31, a request for a referendum on SB 793 was submitted to the Secretary of State. The Attorney General gave it a title and on September 10 and it was approved to collect signatures. The group submitting has to collect 623,212 signatures by December 10, 2020. According to the Secretary of State website, “if the required number of registered voters sign this petition and the petition is timely filed, there will be a referendum challenging the 2020 law on the next statewide ballot after the November 3, 2020 general election.” This means the challenge would prohibit the law from being enforced unless the voters vote in favor of the law when the referendum is on the ballot. The next general election will most likely be 2022.

This referendum drive is funded by the tobacco industry. Hopefully they will not succeed but if they do, we must be ready once again to fight for the health of the children and youth of California. We will continue to follow this and keep you updated.

CONCLUSION/RECOMMENDATION

After study and analysis, the strength of relevant CAPTA authorities, and given the fact that the California State PTA strongly and actively supported SB 793 as a priority bill as it went through the legislative process and until it was signed by the Governor, the study committee recommends that the California State PTA support keeping SB 793 as signed into law and encourage voters to vote YES on the Referendum.

For clarity: As stated earlier, a “referendum” asks voters to decide on a law that was already passed by the Legislature, signed by the Governor and Chaptered. For a referendum, a YES vote means that you support the law (in this case SB 793) and want it to go into effect. A NO vote means you do not want the law to go into effect, that you want to repeal it.

The committee further recommends that

1) the California State PTA take an active role in the campaign to encourage voters to support keeping SB 793 and vote YES on the Referendum and authorize the campaign to include the name of the California State PTA in campaign materials, while retaining our right to review those materials before publication;

2) the California State PTA encourage Districts, Councils and Units to actively encourage voters to vote YES on the Referendum; and

3) the California State PTA make an extra effort to educate our members and voters in general on what a YES vote means and what a NO vote means to avoid confusion when voting.
RESOURCES:
https://ballotpedia.org/California_Flavored_Tobacco_Products_Ban_Referendum_(2022)
https://californiafightsflavors.org/
https://www.latimes.com/california/story/2021-01-22/california-flavored-tobacco-ban-blocked-
2022-ballot-referendum-qualifies
https://www.sos.ca.gov/elections/ballot-measures/qualified-ballot-measures