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Proposition 19: Did “Failure” Build Larger Success?

by

Mike Males, PhD

**Senior Research Fellow, Center on Juvenile and Criminal Justice
Content Director, YouthFacts.org**

Introduction

In November 2010, Proposition 19 lost in the midterm election by 700,000 votes out of 10 million cast. This proposition was the latest of two dozen initiative efforts in California beginning in 1966 to propose limited legalization of marijuana for personal use (California Secretary of State, Elections Division, 2010). Its electoral achievement exceeded that of any previous marijuana measure except the 1996 proposition authorizing medical use. Center on Juvenile and Criminal Justice reports and blogs discuss marijuana policy extensively (Enty, 2010; Shelden, 2010; Macallair & Males, 2010; Males, 2010).

Even in losing, Proposition 19 succeeded in several important ways. It received an impressive 46.5% of the vote amid relatively unfavorable electoral demographics. The initiative's popularity in polls also prompted the legislature to enact a preemptive reform that reduced simple marijuana possession to a citation for all ages. Senate Bill 1449 (California Legislature, 2010), will be more effective in reducing arrests than passage of Proposition 19 itself would have been (see Table 1).

Table 1. Effects on marijuana arrests: Proposition 19 versus SB 1449

Actual marijuana arrests, 2009: 78,172		
	<u>Reduction under Proposition 19:</u>	<u>Reduction under SB 1449</u>
Possession, age 21+, <1 oz	- 30,538	- 30,538
Possession, age <21, <1 oz	30,626	- 30,626
<u>Felonies, 1 oz+</u>	<u>17,008</u>	<u>17,008</u>
<u>Net arrests</u>	<u>47,634</u>	<u>17,008</u>
Arrest reduction	-39%	-78%

Sources for arrest numbers: see Macallair and Males (2010); Criminal Justice Statistics Center (2010).

Both measures retained criminal penalties for felony offenses (sale, manufacture, possession of 1 ounce or more). SB 1449 retained the penalty of an infraction carrying a maximum \$100 fine, similar to that for jaywalking, for small-quantity marijuana possession for all ages. This reform should eliminate the 150 adult imprisonments and the unknown number of juvenile incarcerations every year for misdemeanor possession, contributing to Governor Jerry Brown's stated goal of reducing prison populations by 40,000. In contrast, Proposition 19 would have legalized over-21 simple marijuana possession outright while retaining under-21 possession as a criminal offense. Table 1's estimates are conservative, since Proposition 19 also would have legalized growing small amounts of marijuana for personal use, potentially reducing the demand for marijuana supply and consequent felony arrests. Reducing arrests for manufacturing, sales, and large-quantity possession promises to forestall future imprisonments for marijuana felonies, which now total around 1,300 per year, in turn alleviating severe racial disparities in marijuana imprisonment (California Department of Corrections and Rehabilitation, 2009; Males, July 30, 2010).

Proposition 19 shifted the political center dramatically toward legalization. This shift was timely, given law enforcement's increasing preoccupation with increasing marijuana possession arrests even as all other criminal offenses, including for drugs, were dropping (see Macallair & Males, 2010). The question is how to build on these shifts in the climate to reduce arrests and imprisonments for low-level, non-violent drug offenses, including those involving nonviolent supply.

Proposition 19: Electoral Patterns

Campaign committees

The California Secretary of State’s campaign finance filings lists three major committees formed to support Proposition 19, three major ones opposed, and several minor committees (see Table 2). Their expenditures and cash on hand as of the latest filings indicated approximately \$1.6 million had been spent on the issue. Even incomplete filings by Proposition 19 proponents (as of two weeks before the election) show proponents raised nearly four times more money for the campaign and had outspent opponents (whose filings are complete for the entire election period) by a 3-1 margin.

Table 2. Campaign committees and spending for and against Proposition 19

<u>Proposition 19:</u>	<u>Expenditures</u>	<u>Cash on hand</u>
<u>Proponents (as of October 21, 2010)</u>		
Yes on 19, Tax Cannabis 2010 (cannabis providers supported by the Drug Policy Action Committee)	\$964,000	\$226,000
Drug Policy Action Committee to Tax and Regulate Marijuana	\$217,000	\$226,000
Students for Sensible Drug Policy	\$11,000	\$89,000
Credo Victory Fund (no report)		
TOTAL SUPPORT	\$1,192,000	\$541,000
<u>Opponents (as of January 18, 2011)</u>		
Public Safety First	\$338,000	\$500
Associated General Contractors		
Issues Political Action Committee (12/31)	\$81,000	\$33,000
Nip it in the Bud	\$4,000	\$0
Citizens against Legalizing Marijuana; Committee Against Legalization of Marijuana; Crusades for Patients Rights (no reports)		
TOTAL OPPOSED	\$423,000	\$34,000

Source: California Secretary of State (2011)

Political issues

For both sides, the biggest funder was from out of state. Opponents received contributions from 292 donors; 13% of their total funding came from outside California. The chief contributor to opponents was \$50,000 (one eighth of their total funding) from Julie Schauer, an art history teacher at Northern Virginia Community College in Vienna, Virginia. Documents reviewed failed to reveal the reason Ms. Schauer objected to marijuana legalization in California. Additionally, several law enforcement groups led by the California Narcotics Officers and California Police Chiefs Associations donated considerable sums to opponents.

The traditional anti-legalization theme was voiced by Office of National Drug Control Policy Director Gail Kerlikowske, who visited California two weeks before the vote to blame the State’s “liberal attitudes toward marijuana” as the reason “47% of Californians receiving treatment for marijuana abuse are younger than 18, compared with 28% in the rest of the nation”

(Hoeffel, 2010). Kerlikowske's and other opposition points were critiqued in detail in CJCJ blogs (Males, October 20, October 17, March 23, 2010).

Another major opposition funder was the California Association of General Contractors, whose \$81,000 in spending was based on the stated concern that even though Proposition 19 "purports to specify that employers would retain existing rights to address consumption of marijuana that impairs an employee's job performance... it is unclear how the measure would impact existing drug testing programs and employer's rights (Ackerman, 2010, 4)." Business opponents elaborated in the *Official Voter Information Guide*:

According to the California Chamber of Commerce, the facts are that Proposition 19 creates special rights for employees to possess marijuana on the job, and that means no company in California can meet federal drug-free workplace standards, or qualify for federal contracts. The California State Firefighters Association warns this one drafting mistake alone could cost thousands of Californians to lose their jobs (California Secretary of State, Elections Division, 2010).

Opponents focused on "several huge mistakes in writing this initiative" they argued "will have severe, unintended consequences" for employers (California Secretary of State, Elections Division, 2010). Opponents claimed that bus and trucking companies and school districts would be prohibited "from requiring their drivers to be drug-free" when a driver "arrives for work with marijuana in his or her system" or an employee with a marijuana dispensing "license" seeks to sell marijuana at work on the same basis as food or other legal items. The specter of hundreds of millions of federal dollars lost to schools, colleges, and contractors who would fail to meet national drug-free school and workplace guidelines was cited as the chief motivator for widespread opposition to Proposition 19 by major business organizations and political leaders. Opponents further noted that Proposition 19, like existing law, failed to specify what constituted DWS ("driving while stoned"). Current prohibition dictates zero blood cannabis content.

One unexpected opponent was the California Cannabis Association, which represents medical marijuana dispensaries, along with some large-scale marijuana growers (Coolican, 2010). Both feared the initiative's local regulation framework and legalization of small-scale personal marijuana growing (plots of up to 25 square feet) and processing (up to one ounce) would jeopardize their business interests. It seems unlikely that this opposition cost Proposition 19 more than a few tens of thousands of votes. Humboldt and Mendocino, unlike pro-19 neighboring counties, did vote against the initiative by narrow margins, and precinct totals indicate the "no" vote was heaviest in rural, marijuana growing areas. On the other hand, the six precincts encompassing "Oaksterdam," Oakland's medical marijuana enterprise district, approved Proposition 19 by a 70% margin, slightly larger than the pro-19 vote in the city as a whole (68%).

Proposition 19's proponents received \$2.7 million in funding from 1,762 mostly-small donors, of which approximately \$1 million apparently was spent to gather signatures to qualify the initiative for the ballot, \$1.2 million was spent on the electoral campaign through October 16, 2010, and \$540,000 remained on that date as cash on hand. Around 19% of proponents' funding was listed as from out of state. Proponents' initial reports showed the largest asset was \$2 million from international financier and democracy advocate George Soros. However, Yes on 19's most recent campaign finance report instead lists the biggest contribution as \$2.1 million from S.K. Seymour of Oakland's Oaksterdam University and Affiliated Entities, which accounted for more than three-fourths of total funding. Six-figure donations were also received from national drug

policy reformers Peter B. Lewis, Sean Parker, and Philip Harvey. Reliable funding from several large donors has enabled marijuana legalization proponents to substantially outspend opponents in recent years.

Proponents largely ignored opponents' novel points concerning workplace safety and focused on standard legalization points. Proponents' arguments are critiqued in several CJCJ blogs (Males, November 23, March 23, March 19, 2010). Proponents did refer to Proposition 19's apparently unequivocal provision that "the existing right of an employer to address consumption that actually impairs job performance by an employee shall not be affected":

This Act shall not be construed to affect, limit or amend any statute that forbids impairment while engaging in dangerous activities such as driving, or that penalizes bringing cannabis to a school enrolling pupils in any grade from kindergarten through 12, inclusive (California Secretary of State, Elections Division, 2010).

Parsing the issue, Proposition 19 did preserve employers' right to penalize marijuana use, as well as impairment, at work. However, the initiative could be construed to require employers and authorities to devise tests that demonstrated not just employee marijuana use, but actual impairment—or, in the worst case, to wait for a mishap attributable to marijuana intoxication—before penalties could be invoked. In contrast, existing law allows an employer to punish an individual simply for possessing or using marijuana at or outside of work even if no evidence of impaired job performance can be shown. Since the initiative allowed compatible amendments by simple majority vote in the legislature, proponents countered that implementation measures could be designed flexibly to address any contingencies.

Electoral issues

Even given opponents' unusually effective employer/workplace arguments advanced against Proposition 19 along with traditional drug-war points, the initiative proved remarkably popular. It passed in 12 counties (including three populous ones) and received 48% of the vote in crucial Los Angeles, Contra Costa, and Santa Clara counties and a surprising 47% in conservative San Diego. It lost most heavily in 16 generally Republican Central Valley, Sierra Front, and Imperial Valley counties where the initiative garnered 32% to 40% of the vote. Of the central counties, only Alpine, Solano, Mariposa, Plumas, Sierra, and Yolo, the last the site of the University of California, Davis, provided 45% or more support (California Secretary of State, Statement of Vote, 2010).

As Appendixes A and B indicate, the challenge is not devising reforms that sell marijuana legalization to conservative voters and lobbies. The CNN Election Center (2010) exit poll, excerpted in Appendix A, depicts the most significant predictor of a "yes" vote on Proposition 19 was not the traditional bellwethers of race, income, education level, or even gender, but the overlapping ones of age (young) and ideology (liberal).

Appendix B shows the results of a simple regression analysis that combined the vote by county for Democrat Barack Obama and for Proposition 5 (expanding treatment for drug-related offenses) in the 2008 presidential election to predict what each county's vote for Proposition 19 should have been in 2010. The predicted vote estimated by this standard mathematical technique was then compared to each county's actual vote for the initiative. While both predictors turned

out to be strongly correlated with the actual vote by county for Proposition 19, the most precise by far was the vote on Proposition 5.

The comparison (summed up in the Odds Ratios column) shows that even though more conservative Sierra and Sacramento Valley counties, along with San Diego, were opposed to Proposition 19, they voted for the initiative in considerably higher numbers than predicted. Additionally, several liberal counties adjacent to the Bay Area, led by Santa Cruz, Marin, Alameda, and Sonoma also produced more votes for the initiative than expected. At the other end, several normally liberal counties led by Imperial, Humboldt, Mendocino, and Santa Barbara recorded distinct undervotes for Proposition 19, and San Francisco showed only average support. This undervote appears to have reflected low turnout among young voters in those counties and, in north coast areas, opposition by existing marijuana growing enterprises.

Implications

The main reason the initiative lost, then, was not conservative opposition, but the lack of liberal enthusiasm. That lack of enthusiasm was not demonstrated in votes by race, income, or education level, and only marginally by gender (women comprised a smaller part of the electorate in 2010 than in 2008, and while more liberal on most issues, were less likely than men to support Proposition 19). Unlike on other issues, white (European American) men were more likely to take a progressive position on Proposition 19. Efforts to increase female, minority, and low-income voting, while beneficial for progressive causes in general, would not help achieve marijuana legalization.

Rather, the biggest problem for Proposition 19 by far was that younger voters failed to turn out in 2010, especially in pivotal Los Angeles, San Bernardino, Fresno, Kern, and other counties where Latinos predominate. The simplest way to increase young-voter participation is to take advantage of a natural trend: because progressive issues benefit from high turnouts, it is more effective to propose initiatives on presidential election ballots, not in off-year or special elections. Even so, if voters under age 40 had voted in 2010 in their 2008 proportions, the initiative would have received 200,000 more votes—48.5% of the total vote—but still would have lost by 300,000 votes. Maintaining younger-voter proportions at presidential-election levels is not enough.

In the 2008 election, CNN's exit poll found that 55% of white 18-29 year-olds cast ballots, compared to around half of African and Asian and 40% of Latino Americans. Interestingly, exit polls showed younger Latinos were twice as likely to vote as older Latinos in 2008, indicating considerable youth leadership in these communities. Marijuana legalization and drug reform benefit from higher turnouts among liberal and urban (especially Bay Area) voters, which can be accomplished by increasing electoral participation by all races of younger people to more closely match levels found among the older constituencies that tend to oppose progressive reforms.. Strategies to encourage more young people to vote are treated in a variety of sites (see CIRCLE, 2010) and should be considered as well in the draft of the next legalization proposal. Conversely, opponents of legalization would be advised to concentrate on turning out older voters, especially in nonurban, inland counties.

Conclusion

With respect to political issues, the drafters of California's next (26th) effort to legalize marijuana will need to address federal workplace and state medical marijuana dispensary standards, tasks

that will become much clearer when current litigation is resolved. There may be no feasible legalization scheme that preserves the interests of large, existing marijuana growers. In fact, one potentially beneficial pro-consumer, anti-cartel, anti-violence aspect of marijuana legalization would be to reduce the power of large suppliers by decentralizing marijuana production.

That does not mean a legalization initiative is the proper vehicle to revolve every controversial question, including “driving while stoned” standards that are likely to prove controversial. For example, impairment, including DWS, could be addressed by providing for a broad-based, scientific panel to devise safety standards. Issues that directly affect marijuana policy need to be tackled directly while leaving open the flexibility for compatible legislation and regulation to address future developments. Some interest-group opposition can be mollified, but the fact remains that most law enforcement groups, national agencies, politicians, and older, rural, and more conservative voters are likely to remain intractable opponents of drug-law reform. Beyond clarifying some key provisions, expending great effort to convince opponents is less likely to be productive than turning out younger supporters in larger numbers.

Legalization measures benefit greatly from the fact that California’s marijuana climate today is considerably different than that of the past. That small-quantity marijuana possession by Californians of all ages is now a simple infraction rather than a criminal offense provides a much more favorable platform on which to build further reforms addressing low-level growing, supply, and private use. New opposition arguments and electoral patterns revealed by the campaign provide vital information for the next go-around. Far from failing, then, Proposition 19 turned out to be the most important watershed to date paving the way to successful marijuana policy reform.

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Appendix A: Demographics of the Proposition 19 vote

3,895 Respondents Demographic (% of voters)	Proposition 19 vote		Percent of total voters		
	Yes	No	2008	2010	Change
Actual vote (all voters)	47%	54%	13,743,177	10,300,392	-3,442,785
Vote by Sex					
Male	49%	51%	46%	49%	+6%
Female	44%	56%	54%	51%	-6%
Vote by Race					
White	47%	53%	63%	60%	-6%
African-American	48%	52%	10%	11%	+2%
Latino	46%	54%	18%	22%	+8%
Asian	40%	60%	6%	5%	-2%
Other	49%	51%	3%	3%	0%
Vote by Age					
18-24	65%	35%	11%	7%	-8%
25-29	53%	47%	9%	5%	-8%
30-39	52%	48%	17%	13%	-8%
40-49	46%	54%	22%	21%	-2%
50-64	46%	54%	25%	34%	+18%
65 or Over	34%	66%	15%	20%	+10%
Vote by Income					
Under \$30,000	50%	50%	15%	16%	+2%
\$30-50,000	45%	55%	16%	19%	+6%
\$50-75,000	45%	55%	20%	19%	-2%
\$75-100,000	45%	55%	17%	17%	0%
\$100-200,000	50%	50%	23%	20%	-6%
\$200,000 or More	47%	53%	9%	9%	0%
Vote by Education					
No High School	41%	59%	3%	4%	+2%
H.S. Graduate	41%	59%	15%	14%	-2%
Some College	47%	53%	33%	31%	-4%
College Graduate	47%	53%	33%	33%	0%
Postgraduate	49%	51%	16%	19%	+6%
Vote by Ideology					
Liberal	70%	30%	25%	27%	+4%
Moderate	46%	54%	44%	40%	-8%
Conservative	28%	72%	30%	33%	+6%
Vote for President in 2008 (actual)					
Obama	57%	43%	60%	57%	-6%
McCain	29%	71%	36%	33%	-6%
Other	N/A	N/A	4%	6%	4%
Did not vote	47%	53%	0%	4%	+8%
Vote for Governor					
Brown	60%	40%	na	53%	
Whitman	34%	66%	na	42%	
Vote by Size of Place					
Urban	49%	51%	na	42%	
Suburban	45%	55%	na	54%	
Rural	N/A	N/A	na	3%	
Vote by Region (actual)					
Coastal California	53%	47%	9%	10%	1%
Central Valley/Inland	39%	61%	20%	21%	+2%
Bay Area	52%	48%	19%	20%	0%
Los Angeles County	48%	52%	25%	23%	-3%
Southern California	41%	59%	27%	27%	0%

Source: CNN Election Center (2010)

Appendix B. County ranking by actual vs. expected vote on Proposition 19

County	Total 2010 votes cast	Proposition 19 vote Actual	Proposition 19 vote Predicted*	Actual minus Predicted (O.R.*)	Total vote change 2010 vs 2008
Counties whose vote for Proposition 19 was higher than expected:					
Alpine	559	59.9%	48.5%	0.129	-16.1%
Del Norte	8,141	49.8%	42.5%	0.080	-11.4%
Mono	4,419	56.8%	49.5%	0.080	-16.5%
Marin	111,999	62.3%	56.2%	0.065	-14.6%
Modoc	3,794	42.0%	36.0%	0.064	-13.2%
Sierra	1,836	45.3%	40.0%	0.056	-4.2%
Plumas	9,267	45.4%	40.2%	0.055	-13.8%
Calaveras	19,663	43.5%	38.3%	0.054	-12.3%
Sonoma	180,938	55.2%	50.1%	0.054	-16.9%
Amador	16,282	41.2%	37.0%	0.044	-9.4%
Santa Cruz	95,735	64.1%	59.9%	0.043	-20.3%
Lassen	9,326	42.7%	39.8%	0.030	-15.1%
Tuolumne	22,408	43.8%	41.0%	0.028	-14.8%
San Luis Obispo	105,405	51.5%	48.8%	0.028	-15.7%
Siskiyou	18,366	46.2%	43.5%	0.028	-10.2%
Mariposa	8,197	45.9%	43.5%	0.025	-12.2%
Contra Costa	344,014	48.9%	46.8%	0.022	-19.5%
Napa	46,407	50.0%	47.9%	0.022	-17.5%
Lake	20,763	49.9%	47.8%	0.021	-16.2%
Yolo	59,551	49.1%	47.5%	0.016	-21.3%
Alameda	456,314	56.3%	55.3%	0.010	-20.5%
Ventura	260,115	45.1%	44.2%	0.009	-19.6%
El Dorado	77,370	40.4%	39.5%	0.008	-13.1%
San Diego	905,359	47.1%	46.6%	0.006	-21.5%
Inyo	6,975	45.4%	44.9%	0.005	-14.7%
San Benito	15,989	48.0%	47.7%	0.003	-14.7%
San Mateo	218,450	51.6%	51.3%	0.002	-22.4%
Monterey	99,049	51.5%	51.3%	0.002	-18.8%
Nevada	45,816	44.5%	44.3%	0.002	-14.1%
Placer	142,572	37.1%	37.0%	0.001	-13.7%
<u>Orange</u>	<u>872,104</u>	<u>42.3%</u>	<u>42.3%</u>	<u>0.000</u>	<u>-19.4%</u>
"Higher" counties	4,187,183	48.2%	47.0%	0.012	-19.3%
State Totals	9,976,822	46.5%	46.5%	0.000	-21.6%
Counties whose vote for Proposition 19 was lower than expected:					
San Francisco	276,124	63.6%	63.9%	-0.003	-21.4%
San Bernardino	434,951	41.7%	42.2%	-0.005	-23.1%
Santa Clara	508,661	48.3%	49.1%	-0.008	-17.7%
Los Angeles	2,248,919	48.0%	48.9%	-0.009	-26.6%
Shasta	64,773	38.8%	39.9%	-0.011	-16.1%
Riverside	482,727	42.3%	43.5%	-0.012	-22.5%
Merced	47,575	38.2%	39.4%	-0.012	-22.5%
Solano	117,987	45.8%	47.0%	-0.012	-22.9%
Sacramento	420,041	41.5%	42.8%	-0.013	-18.2%
Stanislaus	120,094	37.2%	38.8%	-0.016	-22.1%
San Joaquin	157,671	39.4%	41.5%	-0.021	-20.3%
Kern	172,744	35.2%	37.6%	-0.023	-23.4%
Madera	33,724	36.6%	39.0%	-0.024	-17.0%
Glenn	7,968	34.4%	37.1%	-0.026	-16.4%
Yuba	16,306	39.6%	42.2%	-0.026	-21.0%
Santa Barbara	131,196	51.9%	55.0%	-0.030	-20.1%
Butte	75,787	42.2%	45.3%	-0.031	-19.5%
Tehama	20,200	36.5%	40.3%	-0.036	-14.8%
Tulare	81,206	33.7%	37.7%	-0.038	-19.5%
Colusa	5,174	31.8%	35.7%	-0.038	-16.4%
Fresno	199,092	36.2%	40.4%	-0.040	-23.5%
Sutter	25,157	35.0%	39.2%	-0.041	-19.6%
Kings	26,416	33.1%	38.6%	-0.052	-22.5%
Trinity	5,581	40.4%	47.6%	-0.067	-10.7%
Humboldt	50,846	46.5%	55.9%	-0.086	-16.7%
Mendocino	31,852	46.7%	56.7%	-0.091	-17.3%
<u>Imperial</u>	<u>26,867</u>	<u>32.4%</u>	<u>45.8%</u>	<u>-0.119</u>	<u>-28.0%</u>
"Lower" counties	5,789,639	45.3%	46.8%	-0.015	-23.1%

Source: California Secretary of State, Statement of Vote (2010) [calculations made by author]



About the Author

Mike A. Males, Ph.D., Senior Research Fellow, Center on Juvenile and Criminal Justice

Mike A. Males is a Senior Research Fellow at Center on Juvenile and Criminal Justice and content director at www.YouthFacts.org. He has contributed research and writing to numerous CJCJ reports, including the "The Color of Justice, an Analysis of Juvenile Adult Court Transfers in California," "Drug Use and Justice: An Examination of California Drug Policy Enforcement," and "The Impact of California's Three Strikes Law on Crime Rates."

Dr. Males has a Ph.D. in social ecology from U.C. Irvine and formerly taught sociology at U.C. Santa Cruz. With over 12 years of experience working in youth programs, his research interests are focused on youth issues like crime, drug abuse, pregnancy and economics. He is the author of dozens of articles and four books, the latest of which are *Teenage Sex and Pregnancy; Modern Myths, Unsexy Realities* (Praeger, 2010), and *Kids and Guns: How Politicians, Experts, and the Press Fabricate Fear of Youth* (Common Courage Press, 2000). Recent articles and op-eds have appeared in the *New York Times*, *The Los Angeles Times*, *The American Journal of Public Health*, *The Lancet*, *Journal of School Health*, and *Scribner's Encyclopedia of Violence in America*.

For more information please contact:

Center on Juvenile and Criminal Justice
440 9th Street
San Francisco, CA 94103
(415) 621-5661
cjcj@cjcj.org
www.cjcj.org



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