

“Political Reform Act of 1974: California Fair Elections Act of 2008”

January 2010

Board Recommendation:**OPPOSE****Rationale:**

The San Diego County Taxpayers Association has a long history of opposition to utilizing public funds for public office campaigns.¹ An increased charge on lobbyists would be used to fund the campaigns of qualified candidates for the Secretary of State office in 2014 and 2018 of up to \$1 million per candidate for primary elections and up to \$1.3 million for general elections. These funds could be spent on negative ad campaigns and gifts of up to \$25 per person for campaign purposes. Additionally, if a non-participating candidate outspends the original amount allocated to the participating candidate, they may have access to up to four times the original allocation amount. While there is a provision that states that if there are insufficient funds to provide for candidates, each candidate would endure a proportionate decrease in their allocated funds, it is also important to note that the Legislature would have the power to direct money from the General Fund to support campaigns. Because non-participating candidates do not face campaign spending limitations, they may out-spend participating candidates beyond the limitation of the Fair Elections Fund, thereby depleting the fund. This statutory amendment allows for an inappropriate use of taxpayer dollars, especially at a time when California is facing severe financial problems.

Introduction

Assembly Bill 583 (AB 583) proposes to enact a “pilot project” for publicly funded campaigns by creating a fund for the 2014 and 2018 Secretary of State elections through changes in the Government Code. Only qualified candidates for the Secretary of State position would be eligible for public campaign dollars. Campaigns of participating candidates would be funded through a fee on lobbyists registered with the State of California, qualifying contributions from candidates seeking public funding, and voluntary donations. If approved by voters, AB 583 would commence on January 1, 2011 and sunset in 2019.

On June 8, 2010, voter will read:

“CALIFORNIA FAIR ELECTIONS ACT. Creates a voluntary system for candidates for Secretary of State to qualify for a public campaign grant if they agree to strict spending limits and no private contributions. Each candidate demonstrating enough public support would receive the same amount. Participating candidates would be prohibited from raising or spending money beyond the grant. There would be strict enforcement and accountability. Funded by voluntary contributions and by an annual fee on lobbyists, lobbying firms and lobbyist employers.”

Proponents argue that making public dollars available for candidates seeking state office would curb spending on campaigns for public office and also reduce the reliance that candidates have on major financial supporters, who then demand access or special consideration when the candidate is elected to office.² Opponents say tax dollars are better spent on highway infrastructure, schools, and health care and note the

¹ SDCTA opposed Proposition 40 in 1984, Proposition 131 in 1990 and Proposition 89 in 2006.

² California Clean Money Campaign. Accessed 1/7/2010. Available: <http://www.caclean.org/problem/>.

stark failure of Proposition 89 in 2006, a very similar measure that achieved only 25.7% votes in favor statewide.³

Title: “Political Reform Act of 1974: California Fair Elections Act of 2008”

Jurisdiction: State

Type: Statutory amendment

Vote: Simple majority

Proponents: Passed in the Assembly and Senate and approved by Governor in 2008. Other proponents include: *California Clean Money Campaign, California Church IMPACT, California National Organization for Women, California Nurses Association, California Teamsters, CALPIRG, Common Cause, Consumer Federation of California, Consumer Watchdog, Consumers for Auto Reliability and Safety, Equal Justice Society, Friends Committee on Legislation, Gray Panthers California, League of Women Voters of California, Mexican America Legal Defense and Educational Fund, Planning and Conservation League, Sierra Club California, William C. Velasquez Institute, Wild Dog Productions*

Opponents: *AdvoCal, Cal-Tax, California Chamber of Commerce, California Family Council, California Manufacturers and Technology Association, California State Council of Laborers, Department of Finance, Howard Jarvis Taxpayers Association, Institute of Governmental Advocates, Wilke, Fleury, Hoffelt, Gould, Birney LLP.*

Background:

Prior Legislation

Under the Political Reform Act of 1974 a public officer is prohibited from expending or accepting any public money for the purpose of seeking elective office.⁴ Passage of AB 583 (Hancock) would repeal that prohibition and enact the California Fair Elections Act of 2008, which would allow candidates for Secretary of State in the 2014 and 2018 general election to utilize public funds for campaign financing. Senate Bill (SB) 1169 in 1999, referred to as “campaign finance reform,”⁵ failed in committee and would have offered matching funds to legislative candidates who agreed to abide by voluntary expenditure ceilings imposed by the bill. AB 190 in 2001 died in the Assembly policy committee. In 2003, Assemblymember Hancock, the sponsor of AB 583, had proposed AB 2949 which would have provided public funds to candidates who collected a specified number of \$5 contributions and would have applied to all state elective offices.

Additionally, ballot qualified forms of proposed public financing of campaigns have been proposed in California since at least 1984 with Proposition 40, which in part sought to provide public funding for candidates for state offices to match the dollar for dollar personal expenditures of their opponents. SDCTA opposed Proposition 40, which was defeated. Two years later, Proposition 131, which offered partial public funds to candidates who agreed to comply with limits on campaign spending, was also opposed by SDCTA

³ Ibid. Senate Rules Committee.

⁴ Elections Code, Division 20, Section 1, Legislative Counsel’s Digest of Proposed Addition of Chapter 7. Accessed December 15, 2009 from the Secretary State. Available: <http://www.sos.ca.gov/elections/2010-elections/ab-583-bill-20080930-chaptered.pdf>.

⁵ Senate Rules Committee Analysis of Assembly Bill 532. Accessed December 15, 2009 at http://info.sen.ca.gov/pub/07-08/bill/asm/ab_0551-0600/ab_583_cfa_20080820_112348_sen_floor.html.

and defeated by voters.⁶ Most recently, in 2006, SDCTA opposed and voters overwhelmingly rejected Proposition 89, “The Clean Money and Fair Elections Act” which proposed a tax on financial institutions and incorporated businesses to fund political campaigns of those running for state offices.

Public Campaign Financing in Other States

Other States have employed similar statutory changes to allow for publicly funded campaigns for state office. For example, the State of Arizona passed the Citizens Clean Elections Act in 1998. Similar to AB 583, candidates qualify for funding by collecting a certain number of \$5 donations. However, Arizona’s fund is funded by voluntary contributions, qualifying contributions from candidates seeking public campaign funding, and a 10% surcharge on civil penalties and criminal fines. In Arizona, the percentage of people running as participating candidates rather than as traditional candidates has increased from 26% of the primary candidates in 2000 using clean elections funding to 65% in 2008.⁷ Once passed, Arizona’s Citizens Clean Elections Act was **challenged by the** Institute for Justice (*Lavis v. Bayless*), arguing that the Act would compel some individuals, against their will, to pay for the political speech of others.⁸ The Supreme Court of Arizona ruled that the surcharges that fund the Citizens Clean Election Act are constitutional.⁹

Current Law

Under current law:

1. “No public officer shall expend and no candidate shall accept any public moneys for the purpose of seeking elective office.”¹⁰
2. Each lobbying firm and lobbyist employer is required to file a maximum of \$25 per year to register with the State.¹¹

Proposed Law

Proposed changes to the Government Code include:¹²

1. Repeal of Section 85300 of the Government Code, which prohibits candidates for elective office from accepting public dollars.
2. Creation of a Fair Elections Fund. The Fair Elections Fund would be funded primarily from state lobbyist¹³ registration fees (nonrefundable), which would be increased from \$25 per year to \$350 per

⁶ California Ballot Pamphlet. 1990 General Election. November 6. Pg. 32. Accessed 1/7/2010. Available: http://traynor.uchastings.edu/ballot_pdf/1990g.pdf.

⁷ Citizens Clean Elections Commission. Accessed 1/12/2010. Available: <http://www.azcanelections.gov/about-us/funding.aspx>.

⁸ Institute for Justice. Arizona Campaign Finance. Accessed 1/12/2010. Available: http://www.ij.org/index.php?option=com_content&task=view&id=1317&Itemid=165.

⁹ Supreme Court of Arizona. *Lavis v. Bayless* (2002). Accessed 1/12/2010. Available: http://www.supreme.state.az.us/opin/pdf2002/CV-02-0215-PR_101102.pdf.

¹⁰ Government Code, Title 9, Chapter 5, Article 3, Section 85300. Accessed December 15, 2009 and available: <http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=gov&codebody=&hits=20>.

¹¹ Government Code, Title 9, Chapter 6, Article 1, Section 86102. Accessed December 15, 2009 and available: <http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=gov&codebody=&hits=20>.

¹² Elections Code, Division 20, Section 1, Proposed Addition of Chapter 7. Accessed December 15, 2009 from the Secretary State. Available: <http://www.sos.ca.gov/elections/2010-elections/ab-583-bill-20080930-chaptered.pdf>.

year (a 1300% increase), contributions from the Voters Fair Elections Fund (described below), and qualifying contributions from candidates seeking to become certified as participating candidates. The Fund would be administered by the Fair Political Practices Commission. The primary purpose of the Fund would be to finance campaign expenses for qualified candidates for the office of the Secretary of State for both the primary and general elections of 2014 and 2018.

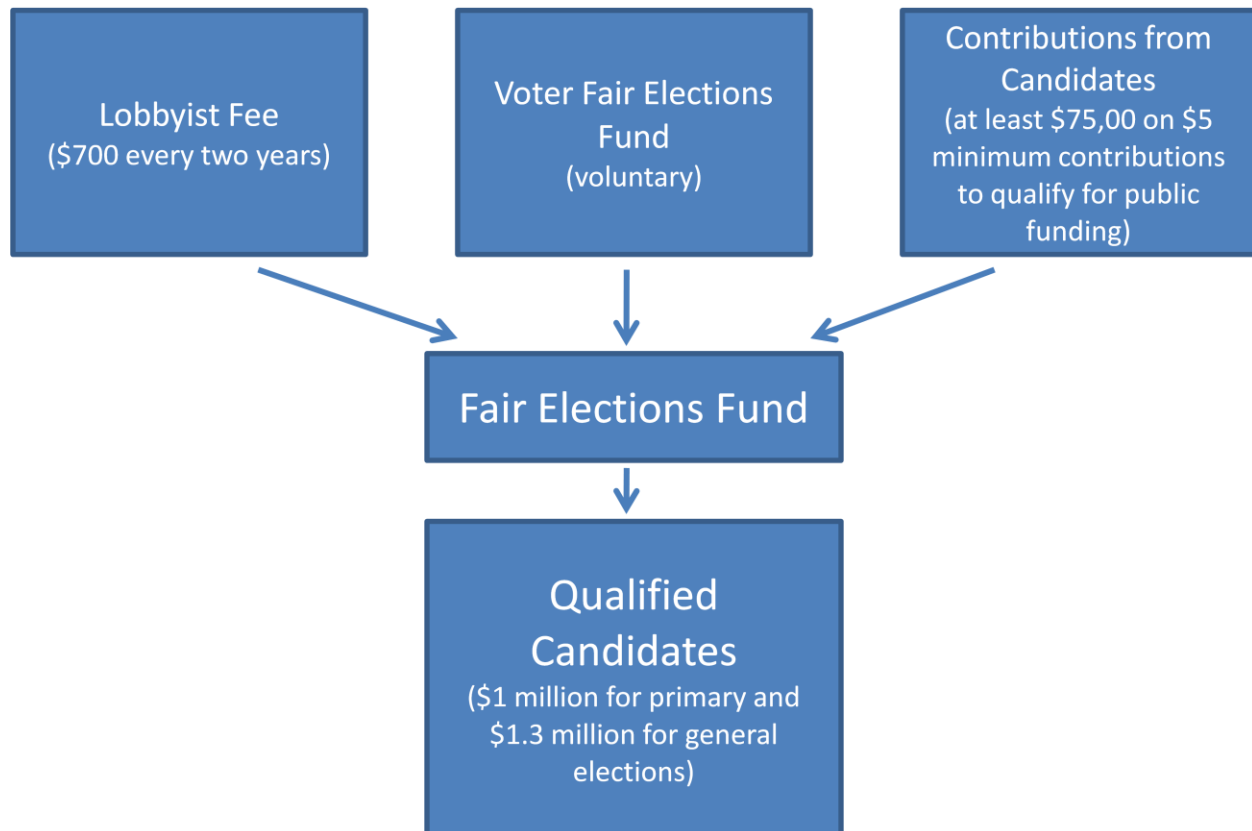
3. Creation of a Voters Fair Elections Fund. This fund would allow individuals to designate a contribution to the Voters Fair Elections Fund from any excess in their tax liability. These funds, with the exception of reimbursement to the Franchise Tax Board and State Controller, would then be allocated to the Fair Elections Fund. The Voters Fair Election Fund would remain in effect only until January 1 of the fifth taxable year following its first appearance on personal income tax returns.
4. Qualifications of Candidates. An office-qualified candidate qualifies as a participating candidate for the *primary* election if they:
 - a. Agree to comply with the Fair Elections Act.
 - b. Collect at least \$7,500 qualifying contributions of at least \$5 each.
 - c. Sends receipts for all contributions and a check equal to the total amount of the contributions to the county registrar.

A candidate qualifies with the general election campaign if they have the highest number of votes in their respective party and have won their party's nomination.

5. Fair Elections Benefits. Qualified candidates would receive one million dollars (\$1,000,000) in campaign financing benefits for a primary election and one million three hundred thousand dollars (\$1,300,000) for general, special, or special runoff election. These benefits would be funded through the Fair Elections Fund and the Voters Fair Elections Fund. Candidates may not accept any private contributions from any source other than their political party. Candidates may receive up to four times the base amount the base amount of Fair Elections funding to match the expenditures of nonparticipating candidates.

Figure 1: Proposed Public Campaign Financing Process

¹³ "Lobbyist" means any individual who receives two thousand dollars (\$2,000) or more in economic consideration in a calendar month, other than reimbursement for reasonable travel expenses, or whose principal duties as an employee are, to communicate directly or through his or her agents with any elective state official, agency official, or legislative official for the purpose of influencing legislative or administrative action.



Analysis

- AB 583 would act as a “pilot” in campaign finance reform for Secretary of State elections in 2014 and 2018. The bill has a sunset of Jan. 1, 2019.¹⁴
- \$25 of the proposed \$700 bi-annual registration fee for filing as a lobbyist with the State would be deposited into the General Fund to be used for administrative costs associated with lobbyist registration. The use of this portion of funds, which accounts for about 3.5% of the total proposed registration fee, is “used for purposes of Article 1 (commencing with Section 86100) of Chapter 6 of Title 9 of the Government Code.” However, Article 1 only describes the maximum registration fee; it does not specify how that money is to be spent.
- Candidates who qualify for public funding for their campaigns must demonstrate that they have achieved the required \$7,500 of at least \$5 contributions by
- Candidates who utilize public dollars to finance their campaigns would be prohibited from accepting private contributions from any source other than the candidate’s political party.¹⁵ If the candidate accepts money from its political party, the aggregate amount can be no more than five percent of the original Fair Elections funding for that election (between \$50,000 - \$100,000 for primary elections and \$65,000 - \$260,000 for general elections).

¹⁴ Senate Rules Committee Analysis of Assembly Bill 532. Accessed December 15, 2009. Available: http://info.sen.ca.gov/pub/07-08/bill/asm/ab_0551-0600/ab_583_cfa_20080820_112348_sen_floor.html.

¹⁵ Ibid. Senate Rules Committee Analysis of Assembly Bill 532.

- Candidates may also collect and spend “seed money” (contributions of no more than \$100 per person collected during the “exploratory period,” or period beginning 18 months before the primary election and ending on the last day of the “qualifying period,” or period when candidates are permitted to collect contributions to qualify for Fair Elections funding (270 days before the primary election, ending at least 90 days before day of primary election).
- In calendar year 2006, Debra Bowen, the current California Secretary of State, spent approximately \$1.5 million on her campaign. Her opponent, Bruce McPherson, spent \$2.4 million in the same period.¹⁶ Currently there are over 1,000 lobbyists, approximately 400 lobbying firms and over 2,500 lobbyist employers registered at the State of California. If each were charged the \$350 fee, approximately \$1.3 million would be raised for the Fair Elections Fund annually.
- There are no campaign restrictions placed on non-participating candidates.
- “Qualified candidates” (candidates seeking nomination from a non-office-qualified party) would receive 20% of the base amount that an office-qualified¹⁷ (candidate seeking nomination from an office-qualified party) would receive. In general elections, this percentage would increase to 25%.

NOTE: If a qualified candidate wants to have access to the same amount of funding as an office-qualified candidate, they may do so by collection twice as many of the \$5 contributions to demonstrate wide support. A candidate who completes this task is then known as a “performance qualified candidate”.

Policy Implications

- A benefit of passage of AB 583 would be a determination of whether candidates for all state elective offices should have access to public funding for campaign purposes.
- While presumably the current lobbyist registration fee of \$25 every two years is used to support administrative costs associated with the registration process, and therefore passage of AB 583 would maintain this support, it is unsettling that this General Fund contribution isn’t more clearly defined in terms of its purpose.
- There is potential for increased administrative burdens due to the effective decrease of lobbyist registration fees from “no more than \$25 per year” to \$25 every two years.
- Receipts for each qualifying contribution must be submitted to the county registrar of voters in the county that the candidate files his or her declaration of candidacy, who will then forward these materials to the Fair Political Practices Commission. No additional funding is provided to support this additional administrative burden on local governments.
- The purpose of utilizing public dollars to fund campaigns is to manage increasing campaign expenditures. Because higher expenditures on campaigns is correlated with an increased chance of winning the election, there may be also be a correlating narrowing of viable candidates to office to those who are independently wealthy or who gain large contributions from donors who then expect favors once the candidate is elected. Passage of AB 583 would test whether an effective limit on campaign expenditures and public support for such expenditures would address these issues.¹⁸

¹⁶ From Secretary of State Cal-Access records. Accessed 1/7/2010. Available: <http://cal-access.ss.ca.gov/Campaign/Candidates/>.

¹⁷ An office-qualified party is a political party whose gubernatorial or Secretary of State nominee received 10% or more of votes in the last election.

¹⁸ Ibid. Arguments in Support of AB 583.

- Because passage will likely use public dollars to finance campaign expenses, the Legislature would be taking money away from other core services such as healthcare and education.¹⁹
- Passage of the measure would burden lobbyists with financing campaigns.
- In 2006, a total of seven (7) candidates ran in the primary election for the California Secretary of State. A total of six (6) candidates ran in the General Election that year. If all of the candidates qualified for public funding (which requires at least 1,500 people to submit at least a \$5.00 contribution to the candidate), a total of \$14.8 million could have been spent on the campaigns of candidates for that office. Whereas a minimum of \$52,500 of this figure would have been dedicated to the Fair Elections Fund by the candidates themselves, the bulk of the rest of the funding would come from the fee on lobbyists and voluntary donations. If the fund is insufficient to fund all of the candidates, all candidates will have their funding proportionately reduced. The Legislature may still decide to direct revenue from the General Fund into the Fair Elections Fund.
- Because there are no restrictions on non-participating candidates for expenditures on campaigns, it is possible that a very successful fundraiser or independently wealthy non-participating candidate may outspend the participating candidate beyond the limits of the Fair Election Fund, thereby draining the Fair Elections Fund.
- If the candidate were to collect funds from a private party, they will be charged with a misdemeanor offense and will not be allowed to register as a lobbyist at the State or run for office for five years after their conviction. The State will prosecute any candidate in violation of this statute. Prosecution of candidates in violation could trigger high legal costs, which would be borne by taxpayers.

¹⁹ Ibid. Arguments in Opposition to AB 583.