

# **Proposition 15: Public Campaign Financing**

February 21, 2010 Meeting of the Forum, Unitarian Universalist Church of Palo Alto  
Led by Everett DePangher

## **Introduction**

In 1974, we approved Proposition 9 which established various regulations for the funding of state political candidates. Under Proposition 9 (titled the Political Reform Act of 1974) and subsequent regulations, state candidates raise money from various private and personal sources that are potentially subject to limits based on the type of source and the office being sought. Current law prohibits candidates from receiving public financing.<sup>1</sup>

## **Background**

The Legislature approved changes to Proposition 42-32 in the Assembly<sup>2</sup> and 21-18 in the Senate<sup>3</sup>, and the Governor signed them. However, because we had stipulated in Proposition 9 that any major changes to it must also receive our approval, we would need to sign off on this legislation by approving Proposition 15 for it to become law.

## **Changes to Secretary of State Races<sup>4</sup>**

One part of this proposal temporarily changes the way in which races for secretary of state are funded. The Secretary of State is a state constitutional officer, essentially a member of the gubernatorial cabinet. Unlike the federal Secretary of State, who is the official representation of the United States to other countries, the State Secretary of State functions much more like an actual organizational secretary, serving as our official record keeper. These duties include supervising the state's archives, business licensing, notaries public, and—perhaps most visibly—elections. The Secretary of State is chosen through a regular partisan election: each party selects its nominee in a primary election, and then the nominees and independent candidates run against each other in a general election.

This proposal would repeal the general ban on public funding and give candidates for secretary of state in the 2014 and 2018 elections an opportunity to receive almost complete public funding. After that, the system would return to the current rules.

Candidates could collect \$5 donations from individual voters who would have to sign forms certifying that they both were not reimbursed and also did not contribute to another contender. Any candidate who collected sufficient contributions would receive public funding payouts as listed in the table below. These dollar amounts would adjust for inflation over time.

---

<sup>1</sup> For more information on current law and regulations, see California Fair Political Practices Commission (FPPC), “California Contribution Limits” (online, available: <<http://209.63.210.75/bulletin/Contriblimit2008update.pdf>>, 15 February 2010).

<sup>2</sup> State Senate, “UNOFFICIAL BALLOT” (online, available: <[http://info.sen.ca.gov/pub/07-08/bill/asm/ab\\_0551-0600/ab\\_583\\_vote\\_20080830\\_0259PM\\_asm\\_floor.html](http://info.sen.ca.gov/pub/07-08/bill/asm/ab_0551-0600/ab_583_vote_20080830_0259PM_asm_floor.html)>, 4 February 2010).

<sup>3</sup> State Senate, “UNOFFICIAL BALLOT” (online, available: <[http://info.sen.ca.gov/pub/07-08/bill/asm/ab\\_0551-0600/ab\\_583\\_vote\\_20080829\\_0439PM\\_sen\\_floor.html](http://info.sen.ca.gov/pub/07-08/bill/asm/ab_0551-0600/ab_583_vote_20080829_0439PM_sen_floor.html)>, 4 February 2010).

<sup>4</sup> For the text of the proposal itself, see “Assembly Bill No. 583” (online, available: <<http://www.sos.ca.gov/elections/ballot-measures/pdf/ab-583-bill-20080930-chaptered.pdf>>, 19 February 2010).

| <b>Proposed Public Financing Requirements and Benefits</b>   |   |   |   |
|--|---|---|---|
| <b>Candidate type</b>  | <b>To qualify, the candidate must collect \$5 donations from this number of voters.</b> | <b>Primary election base public funding</b> | <b>General election base public funding</b> |
| Member of major party (party receiving 10%+ of the vote in the last election for Governor or Secretary of State) | 7,500   | \$1,000,000                                 | \$1,300,000                                 |
| Member of non-major party (track A)  | 3,750   | \$200,000                                   | \$325,000                                   |
| Member of non-major party (track B)  | 15,000  | \$1,000,000                                 | \$1,300,000                                 |
| Decline to state (DTS) candidate (an independent candidate)  | 15,000  | NA  | \$1,300,000                                 |

However, if a candidate who does not participate spends in excess of these amounts, then the government would give most opposing candidates who are publicly financed matching funds up to 400% of their base-level benefit. (The only exception to this is non-major party candidates who qualified under track A in the table above.)

For instance, a major party primary candidate who collected 7,500 \$5 donations would receive \$1,000,000. If an opponent spent \$3,600,000, then that participating candidate would receive an extra \$2,600,000 for an equivalent total of \$3,600,000. However, if the opponent spends \$5,700,000, then the participating candidate would only receive a total of \$4,000,000 (400% of the base amount). Non-participating candidates would have to submit prompt records of expenses above the participating candidates' baseline, and this, when applicable, would quickly trigger matching funds.

Also, expenses by independent entities (such as political action committees or political parties) of \$2,500 or more would also count toward matching funds if the expenditures explicitly advocated for a candidate and were made forty-five days before a primary and sixty days before a general election. However, comparable expenditures to defeat a candidate would subtract from the amount eligible for matching funds.

In exchange for this public funding, candidates who participate would agree to forgo most other fundraising opportunities, either private or personal. However, they would have a certain period of time during which they could setup their campaigns through limited regular fundraising. Toward the end of this window would be the time within which the candidates must collect all of their \$5 contributions. The specifics of this timeline are in the table below.

| <b>Timetable for Public Funding Qualification</b> |   |   |  |
|---|---|---|--|
| <b>Phases</b>                                     | <b>Description</b>  | <b>Duration for candidates seeking party nomination</b>   | <b>Duration for DTS (independent) candidates</b>                     |
| Exploratory Period                                | During this window, candidates seeking public funds could begin organizing their campaigns through regular fundraising, but these funds must be limited to \$100/person (including the candidates themselves) and cannot exceed a total of \$75,000 (inflation adjusted). | Begins 18 months before primary and ends 90 days before   | Begins 18 months before primary and ends 180 days into election year |
| Qualifying Period                                 | Candidates must collect their required \$5 donations within this window.  | 270 to 90 days before primary   | First 180 days of election year                                      |
| Access to Public Funding                          | During this time, candidates who received enough \$5 donations would have full access to their public funding allotment via a government debit account.   | Primary: the latter of (a) 120 days before primary or (b) when candidate submits enough \$5 donations; general: right after primary | Right after primary  |

### **Funding**

This public financing would come from the Fair Election Fund (FEF), a special fund created under this proposal. Revenue for the FEF would be from various locations:

1. *Lobbyist registration fees.* Currently, lobbying firms and employers that use state lobbyists can be charged a registration fee of up to \$25/lobbyist. This changes it to a biannual fee of \$700 (inflation adjusted) that must be paid by each lobbyist, lobbying firm, and employer of a lobbyist. As of November, 2009, there were registered 1,239 lobbyists, 383 lobbying firms, and 3,153 employers with lobbyists.<sup>5</sup> Each would be subject to this fee. \$25 would go to the General Fund, and \$675 to the FEF.
2. *Voluntary contributions through taxes.* State tax returns would list an option for taxpayers to make a special contribution to the FEF. However, if after the second year of doing this, less than \$250,000/year (inflation adjusted) was raised, the option would be removed from the tax form. Regardless, it would remain listed for no more than five years.
3. *\$5 contributions.* Candidates would not keep their \$5 donations but would submit them to the FEF in exchange for their payout.
4. *Other payments from candidates.* If after the exploratory period, a campaign has some of its up to \$75,000 (inflation adjusted) private funds remaining, the candidate must give them to the FEF.
5. *Return of extra funds.* Candidates receiving public funds who either dropped out or did not use them all must return extra money to the FEF.

---

<sup>5</sup> Andy Furillo, *Sacramento Bee*, "Lobbyists sue to block campaign-finance ballot measure," 8 November 2009 (online, available: <<http://www.sacbee.com/capitolandcalifornia/story/2313314-p2.html>>, 15 February 2010).

6. *Donations.* Individuals could contribute.

7. *Other sources.* The Legislature could appropriate other revenue.

If funds become insufficient in the FEF, then payouts to candidates would decrease proportionately. In such an event, candidates could use current fundraising rules to make up the difference.

### **Potential Implications for Other Races**

Proposition 15 states that rules for amending it will come from §81012 of the State Government Code, which says that the proposal “may be amended to further its purposes” without a popular vote by two-thirds of the Legislature and the Governor.

Exactly what constitutes a change to “further its purposes” is certainly open to interpretation. However, it may include expansion of public funding to races of than the Secretary of State’s. This is partially because throughout its text, Proposition 15 hints at a dormant applicability to other races. For instance, §91063 (a portion of this proposal) says that \$5 donations must come from a “voter of the district in which the candidate is running,” which is superfluous if applied only to a secretary of state candidate since the office is statewide. Likewise, §91099(b)(1) (another portion) states that Proposition 15 would also cover special elections although if the Secretary of State’s office becomes vacant, the replacement is appointed not elected.<sup>6</sup> However, other offices are subject to special elections. In addition, Proposition 15 includes broad statements affirming the value of public funding. Therefore, the text may suggest that this proposal anticipates expansion, and thus legislative action to broaden it would “further its purposes.”

This is speculative, and these issues may be litigated if Proposition 15 passes. Nevertheless, it is possible that approval of Proposition 15 would give the Legislature and Governor flexibility to expand public campaign funding.

### **Miscellaneous**

Proposition 15 also contains various other provisions. These include:

1. *Restrictions on ex-participants.* A nominee who received primary election public funding must continue to follow the proposal’s restrictions in the general election even if the nominee no longer receives funds.
2. *Record keeping.* A participating campaign must be prepared to submit reports on how the public funding was spent.
3. *Restrictions on types of expenses.* Public funds could not go toward legal costs regarding compliance with this proposal, compensation to the candidate or candidate’s family, cosmetic work on the candidate, gifts to other entities, or contributions to other campaigns or political groups.

---

<sup>6</sup> Christian Berthelsen, *San Francisco Chronicle*, “McPherson sworn in as secretary of state,” 31 March 2005 (online, available: <<http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2005/03/31/MNGRKC13PF1.DTL>>, 18 February 2010).

4. *Debate requirement.* Participating candidates would have to attend at least one primary and two general election debates.
5. *Ballot statement.* Participating candidates would receive a free two hundred fifty word statement and list of ten endorsements free in the state election pamphlet. Nonparticipating candidates, if interested, would have to pay. The government would also list the participating candidates on the internet.
6. *Noncompliance penalties.* If a candidate violated these rules, the candidate may have to return the public funding or be fined. Also, independent entities that violated reporting rules related to this proposal could be fined. Violations could also be a misdemeanor. For five years, anyone found guilty could not run for state office or be a government lobbyist or contractor.
7. *General election expenses incurred during primary.* If a candidate incurred contractual expenses during a primary for campaign services performed in the general election, those expenses would be considered general election expenses.
8. *Advertising must contain candidate disclosure.* Campaign advertisements would have to state clearly that the candidate has approved their use.
9. *Party contributions.* A participating candidate's party could still contribute money (or the cash value in gifts) up to 5% of the candidate's base payout without impacting the candidate's public funds.
10. *Other campaign accounts.* Participating candidates could continue raising private funds for certain other secondary campaign accounts. A candidate can maintain a separate legal defense fund but must disperse the money once the issue was resolved. An incumbent can have an account for expenses related to conducting public duties although the account could not take in more than \$50,000/year. A candidate could also open an inaugural ceremonies fund. Finally, if a candidate held debt from a prior, non-publicly funded campaign, the candidate could open a fund to pay it down. Private entities could contribute to any of these efforts but with no more than a combined total of \$500/year (including gift cash value).
11. *Overhead.* Administration of Proposition 15 could not cost more than 10% of FEF funds.
12. *Future amendments.* The Legislature could extend the expiration of this plan beyond 2018 or change the sections related to voluntary tax contributions by a majority vote and the Governor's signature. Other changes that are consistent with Proposition 15's purposes would require a two-thirds vote (see discussion above). Any more major changes would require a popular vote.

**Possible Incompatibility with Proposition 14**

Under California law, if two propositions pass simultaneously and are contradictory, then the one that received greater support supersedes the other to the extent that they disagree. On June 8, we will also vote on Proposition 14, a proposal to eliminate most partisan elections. Since Proposition 15 presupposes and explicitly regulates the current election system, it is unclear whether passage of Proposition 15 would, by implication, constitute our support for partisan elections continuing and thus contradict Proposition 14. If both pass, there may be litigation over the question of whether the two are contradictory or could be mutually reconciled.

2010 Everett DePangher. All rights reserved.