

Proposition 89: Political Campaigns. Public Financing. Corporate Tax Increase. Contribution and Expenditure Limits. Initiative Statute.

Board Recommendation (10/13/06):

OPPOSE

Rationale:

This \$200 million annual tax increase on financial institutions and incorporated businesses, including small businesses, would pay for negative candidate campaign advertisements and gifts of up to \$25 per person for campaign purposes. If a candidate's opponent opts out of public financing and that opponent spent more in private funds than the amount of public funds available, additional public funds would be provided to the candidate on a dollar for dollar basis. This measure would allow a candidate for Governor to receive up to \$60 million for his or her campaign using public dollars. This measure creates 56 pages of confusing election rules that will not accomplish the objectives promised by proponents. Furthermore, Prop 89 would be subject to constitutional challenge, and most likely found unconstitutional.

Background:

The California Nurses Association proposed "The Clean Money and Fair Elections Act" to "Take a stand against the power of special interests and lobbyists in California Government." In order to accomplish this goal, Prop. 89 focuses on providing public funds for candidates running for state office, and putting new restrictions on existing contribution and expenditure limits.

Existing Limits on Political Contributions: Proposition 34

Currently, there are set limits on political contributions. These limits depend on two factors: 1) The office being sought, and 2) The person or group giving the donation.¹ Proposition 34, passed in the November 2000 general election, marks the last time these limits were changed, and currently governs donations given to candidates. Candidates running for state office collect donations from many different sources. These include private individuals, corporations, political parties, labor unions, non-profit groups, and other organizations. State law controls the maximum amount of money that each person or group is allowed to donate. For example, an individual can give up to \$3,300 to a candidate running for state Assembly. A political party however, has no contributions limits.²

In November 2000, Proposition 34 was supported by SDCTA because it made revisions to a previous measure (Proposition 208) that sought for tougher limits on campaign contributions and expenditures. SDCTA originally opposed Proposition 208 because its "onerous provisions would favor wealthy candidates over candidates with moderate incomes. This fact could lead to pressure for public financing of election campaigns to "balance" the playing field which is clearly against the SDCTA's philosophies." While a

¹ LAO Prop 89 Summary

² LAO Prop 89 Summary

lawsuit was filed against Proposition 208, Proposition 34 was supported by voters, once again amending the Political Reform Act and setting more reasonable campaign spending limits. Proposition 89 has come before voters asking for public financing of campaigns, a measure SDCTA feared 10 years ago.

Independent Expenditures

Donations don't always have to be given directly to the candidate. Many individuals and organizations choose to make independent expenditures. This can be done with or without the cooperation or coordination of the candidate. The most common independent expenditures include television and radio commercials, along with newspaper advertisements. The amount of money that can be spent on or contributed to independent expenditures is unlimited.

Committees

A committee is another means by which a contributor can donate money. As with independent expenditures, the money doesn't go directly to a candidate. Instead, the committee collects contributions from various people and organizations, and then decides which candidate or cause to support or oppose. While there are limits as to the amount of money a committee can donate to a candidate, there are no limits as to the amount of money a committee can contribute to independent expenditures or political parties.

Propositions

Currently, there are no limits on contributions given, collected, or spent for and against state ballot measures.

Monitoring and Enforcement of State Finance Laws

State campaign finance laws call for any individual or group involved in money given, received, and spent on political campaigns, to directly report all transactions to the Secretary of State. Once reported, the Secretary of State makes all information available to the public by posting it on the internet. The Fair Political Practices Commission is in charge of enforcing these laws. Fines are to be handed down to candidates violating election laws.

Proposal:

The official language that will appear on the ballot before San Diego County voters reads as follows:

Should eligible candidates for state elective offices receive public campaign funding that is supported by new taxes on corporations and financial institutions, and should contribution limits be imposed on candidates that do not receive public campaign funding?

Political Campaigns. Public Financing. Corporate Tax Increase. Contribution and Expenditure Limits. Initiative Statute.

- Provides that candidates for state elective office meeting certain eligibility requirements, including collection of a specified number of \$5.00 contributions from voters, may voluntarily receive public campaign funding from Fair Political Practices Commission, in amounts varying by elective office and election type.
- Increases income tax rate on corporations and financial institutions by 0.2 percent to fund program.
- Imposes new limits on campaign contributions to state-office candidates and campaign committees, and new restrictions on contributions by lobbyists, state contractors.
- Limits certain contributions and expenditures by corporations.³

Key Provisions

- **Requirements to Receive Money:** Proposition 89 places three requirements on candidates in order to receive public funds:
 - 1) A candidate must collect a certain number of \$5 donations and signatures prior to a primary election. The amount of money and number of signatures required varies, and are based on the office being sought. For example, a candidate running for State Assembly would need a minimum of 750 \$5 donations, while a candidate running for Governor would need 25,000 \$5 donations⁴ (Figure 1).

Proposition 89: Public Financing Provisions for Major Party Candidates				
Office	Initial Steps		Public Financing Available	
	NUMBER OF \$5 CONTRIBUTIONS	MAXIMUM START-UP CONTRIBUTIONS	PRIMARY ELECTION	GENERAL ELECTION
Assembly	750	\$10,000	\$250,000	\$400,000
Senate	1,500	20,000	500,000	800,000
Board of Equalization	2,000	30,000	250,000	400,000
Statewide officials	7,500	75,000	2,000,000	2,000,000
Governor	25,000	250,000	10,000,000	15,000,000

FIGURE 1⁵

2) A candidate must not receive private campaign funding. However, there are two exceptions. First, candidates are allowed to collect start-up money to get their campaign off the ground, but no more than \$10,000 to \$250,000 depending on the office being sought. This can be done no sooner than 18 months prior to the primary election.⁶ Second, a candidate can receive private donations from political parties, subject to certain limitations.

³ Official Voter Information Guide

⁴ LAO Prop 89 Summary

⁵ LAO Prop 89 Figure 3

⁶ LAO Prop 89 Summary

3) A candidate who receives public funding is required to take part in public debates prior to the election.

- Additional Public Funds:** The amount of money that a candidate originally receives would increase if the candidate’s privately funded opponent spends more. This would be done on a dollar for dollar basis, and would extend to independent expenditures. For example, if independent expenditures were made in support of an opponent, a participating candidate would receive additional funds. The amount of additional money a candidate would be eligible to receive is limited, depending on the office being sought.⁷ If elected, candidates who received public funding will be eligible to receive continued public funds for expenses while in office. Members of the Legislature would receive \$50,000 per year while other state officials would be given \$100,000 annually.⁸
- Lower Campaign Contributions:** If a candidate chooses not to receive public funding, new limits would be put in place as to the amount of money that can be received from individuals, corporations, and other organizations. The new limits would be lower than current limits (Figure 2).

Campaign Contribution Limits for Privately Funded Candidates (For Each Election)						
	Individual, Group, or Corporation		Small Contributor Committee		Political Party	
	CURRENT	PROPOSITION 89	CURRENT	PROPOSITION 89	CURRENT	PROPOSITION 89 ⁹
Assembly	\$3,300	\$500	\$6,700	\$2,500	No limit	\$20,000
Senate	3,300	500	6,700	2,500	No limit	40,000
Board of Equalization	5,600	500	11,100	2,500	No limit	20,000
Statewide officials	5,600	1,000	11,100	2,500	No limit	200,000
Governor	22,300	1,000	22,300	2,500	No limit	750,000

⁹Amounts shown are for general elections. Primary election limits are between one-half and two-thirds of the amounts shown. Political party limits would apply to both privately and publicly funded candidates.

FIGURE 2⁹

- Contributions would be restricted for State Ballot Measures, Independent Expenditures, and Committees:** New limits would be placed on donations allowed towards candidates’ efforts to support or oppose a measure. Corporate donations would also be limited in support or opposition of ballot propositions. New limits would also be placed on annual contributions to independent expenditures, political parties, committees, and candidates themselves (Figure 3).

⁷ LAO Prop 89 Analysis

⁸ LAO Prop 89 Analysis

⁹ LAO Prop 89 Figure 4

Other Changes Under Proposition 89		
	Current	Proposition 89
Candidate-Related Contributions		
• Total annual contribution to an independent expenditure committee to support or oppose a candidate.	No limit	\$1,000
• Total annual contributions to political parties for candidate-related expenditures.	\$27,900	7,500
• Total annual contributions to all types of committees for candidate-related expenditures.	No limit	15,000*
Ballot Measure Contributions		
• Contributions for or against a ballot measure where a candidate is significantly involved.	No limit	\$10,000
• Contributions for or against a ballot measure by a corporation.	No limit	10,000
*Contributing more than \$7,500 is allowed only for independent expenditures.		

FIGURE 3¹⁰

- **Limiting Lobbyist and State Contractor Activity:** The measure would make it illegal for lobbyists to contribute to political parties and committees. They are currently prohibited from donating to candidates. In certain instances, it would also make it illegal for any entity or individual receiving state contracts to contribute any money to candidates, political parties, and committees.
- **Who's eligible to receive public funds?** State elected officials covered by Proposition 89 include Governor, Lieutenant Governor, Attorney General, Secretary of State, Treasurer, Controller, Insurance Commissioner, Superintendent of Public Instruction, Legislature (40 Senators and 80 Assembly Members), and the Board of Equalization Members (4).¹¹

Fiscal Impact:

Corporate and Financial Institution Tax Increase

The tax rate for corporations would increase from 8.84% to 9.04%. Financial institutions would see an increase from 10.84% to 11.04%.¹² This would represent an increase of 0.2% for both groups.

\$200 Million Annually in Increased Revenues

Beginning in 2007, the tax increases are projected to bring in over \$200 million annually in increased revenues. Smaller revenues would be achieved through the collection of the initial \$5 contributions required for a candidate to receive public funding, and fines levied against violators of election laws (fines are currently deposited into the state's General Fund-General fund revenues would be reduced by about \$1 million).¹³ The majority of the funds would go towards the public financing of political campaigns for state office candidates.

¹⁰ LAO Prop 89 Figure 5

¹¹ LAO Prop 89 Figure 2

¹² LAO Prop 89 Analysis

¹³ LAO Prop 89 Analysis

Initial Costs, New Annual Spending, and Spending Limits

A minimum of \$3 million annually would be earmarked for administrative costs. This is an estimate that includes voter education. In addition, there would be a one-time expenditure (amount unknown at this time) for computer systems and preliminary voter education. The remaining money would go to the candidates who choose to participate in public funding.

The measure calls for the state to hold a maximum of \$900 million at any one time for public financing purposes (adjusted every two years for inflation).¹⁴ Any surplus would be dispersed into the state's General Fund. The total amount of money spent could not exceed the amount of money taken in by the measure.

The total amount of money given to candidates in one election cycle would vary from election to election and would depend on many different factors. These include: 1) The number of candidates accepting public funds, and 2) The amount of money spent by candidates not receiving public financing (which would determine the level of any additional public funds).¹⁵ As long as there isn't an unforeseen increase in candidates running for office, there should be a sufficient amount of funding available for all candidates.

The Constitutionality of Proposition 89

In June of 2006, the United States Supreme Court handed down a ruling in *Randall v. Sorrell* that has major implications on Proposition 89. In the ruling, the Supreme Court was asked to look at an initiative out of Vermont (extremely similar to Proposition 89) that called for expenditure and contribution limits in political campaigns. The Court ruled that the expenditure limits violated the 1st Amendment of the U.S. Constitution, specifically focusing on free speech rights. In reaching its conclusion, the Court cited the 30 year precedent of *Buckley v. Valeo*, where the U.S. Supreme Court ruled that there cannot be expenditure limits for political speech for individuals and groups because it would cause "substantial restraints on the quantity of political speech."¹⁶ The 2006 Court explained that Vermont's "expenditure limits are not substantially different from those at issue in *Buckley*. Nor is Vermont's primary justification for imposing expenditure limits significantly different from Congress' rationale for the Buckley limits: preventing corruption and its appearance."¹⁷ This is exactly the same reason Proposition 89 was proposed. In presenting the measure, the California Nurses association explained, "We have a crisis of corruption in our government marked by scandal after scandal...it is time for Californians to clean up this corruption"¹⁸ Proposition 89's primary justification for imposing expenditure limits is almost identical to Vermont's. Vermont's expenditure limits were ruled unconstitutional.

In looking at the contribution limits proposed in Vermont, the Court ruled that they were too restrictive. Proponents of Proposition 89 will point out that the Vermont initiative was

¹⁴ LAO Prop 89 Analysis

¹⁵ LAO Prop 89 Analysis

¹⁶ *Buckley v. Valeo*, 1976

¹⁷ *Buckley v. Valeo*, 1976

¹⁸ Proponents argument, Official Voter Guide

overruled simply because of the low dollar amount on the contribution limits. However, this is not the case. The Court explains, “ This conclusion was reached not merely on the low dollar amounts of the limits themselves, but also on the substantial restriction on the ability of candidates to raise the funds necessary to run a competitive election, and on the ability of political parties to help their candidates get elected.”¹⁹ Proposition 89 would restrict candidates from raising the funds necessary to run a competitive election in California. California voters have already decided how far these limits should go by voting for and approving Proposition 34 in 2000. If Proposition 89 passes, the ability of political parties to help their candidates get elected would take a significant blow. Annual contribution limits to political parties would drop from \$27,900 to a mere \$7,500²⁰. The amount of money available for a party to give to a candidate would take a staggering hit. *Randall* and *Buckley* show us that it is likely that the Courts won’t allow this to happen.

Proponents of Proposition 89 will also point out that the limits in the Vermont initiative were much lower than the limits in this measure. They will argue that because California’s limits would be a great deal higher than those proposed in Vermont, the measure is constitutional. Besides the fact that the dollar amount isn’t the only determining factor of the legality of the measure (as pointed out in the previous paragraph), this argument would be neutralized by the significant difference in the number of people in each state. While Proposition 89 limits would be higher than Vermont’s in dollar amounts, they are incredibly smaller in relation to the quantity of voters California candidates would have to reach.²¹

It is important to point out that the decision reached in *Randall* was a plurality decision, not a majority decision. If the same issue was to come before the Supreme Court again, *Randall* would not be precedent, but rather a persuasive opinion, meaning the Court could follow *Randall’s* ruling, but would not be required to. However, it is also important to recognize that the Justices on the Court have not changed since the *Randall* decision, and don’t appear to be changing anytime soon. Therefore, the outcome would most likely be similar to *Randall*.

Arguments of the Proponents:

Your “Yes” vote will:

- 1) Help level the playing field and make our elections more fair and competitive-so that candidates with the best ideas have a chance to win, even if they are not rich or well connected to wealthy special interest groups and lobbyists.
- 2) Require candidates to adhere to strict spending limits and reject special interest contributions in or to qualify for public financing.
- 3) Ban contributions to candidates by lobbyists and state contractors.
- 4) Set limits on outside, so-called “independent” campaign committees created by big contributors to influence elections.
- 5) Limit to \$10,000 the amount corporations can spend directly on ballot measure campaigns.

¹⁹ *Randall v. Sorrell*, 2006

²⁰ LAO Prop 89 Summary

²¹ Peter Schrag, [Prop 89: California Nurses’ Clean Money Dream](#), Sacramento Bee.

- 6) Restrict contributions by corporations, unions, and individuals to \$500 for candidates for state Legislature, \$1,000 to candidates for statewide office
- 7) Establish tough penalties, including jail time and removing candidates from office that break the law.²²

Signors/ Supporters for the arguments in support of Proposition 89

- Deborah Burger, RN, California Nurses Association
- Harvey Rosenfield, Founder, Foundation for Taxpayer and Consumer Rights
- Susan Lerner, Executive Director, California Clean Money Campaign
- Rick Hasen, JD, PHD, Constitutional law expert
- Phil Angelides, Democratic Candidate for Governor
- League of Women Voters of California
- California Common Cause
- California Teamsters

Arguments of the Opponents:

- Proposition 89 increases taxes to pay for negative campaigns.
- Proposition 89 contains a \$200 million tax increase and gives that money to politicians to spend on their negative TV ads and junk mail.
- Proposition places virtually no limits on how the politicians spend their taxpayer-financed campaign funds.
- Proposition 89 won't stop wealthy candidates. It puts no limits on wealthy candidates who try to buy California elections.
- Under Proposition 89, a politician using taxpayer funds and running against a wealthy candidate can get up to ten times the normal taxpayer money to run his campaign. A candidate for Governor could qualify for up to \$200 million of taxpayer money to run his or her campaign.
- Proposition 89: It's unconstitutional! James Hall, past Chairman of the California Fair Political Practices Commission says: "Proposition 89 is unconstitutional, unfair, and won't work."
- The United States Supreme Court recently found the contribution and expenditure limits in a similar measure from Vermont unconstitutional because they limit free speech and violate the First Amendment.
- We already have campaign limits. Californians have already passed a campaign finance reform law, Proposition 34, which strictly limits contributions to candidates.
- Proposition 89 is unfair to small businesses, nonprofits, and groups representing working Californians.²³

²² Voter information guide, SOS

²³ Voter information guide, SOS

Signors for the Arguments in Opposition to Proposition 89

- Larry McCarthy, President, California Taxpayers' Association
- Betty Jo Toccoli, Chair, California Business Roundtable
- James M. Hall, Former Chair, California Fair Political Practices Commission
- Allan Zaremberg, President, California Chamber of Commerce
- California Teachers Association
- National Tax Limitation Committee
- National Taxpayers Union
- California Chamber of Commerce
- California Republican Party