

October 22, 2015

Hon. Kamala D. Harris
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Ashley Johansson
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative related to elections and political spending (A.G. File No. 15-0057, Amendment No. 1).

Background

The Political Reform Act. Many individuals, groups, and businesses spend money to support or oppose state and local candidates or ballot measures. California's Political Reform Act of 1974 (the act), an initiative adopted by the voters, established the state's limits and disclosure requirements related to political spending. The act applies to state and local candidates, ballot measures, and officials, but does not apply to federal candidates or officials. Over the years, voters have amended the act. For example, Proposition 73 in 1988 amended the act to generally prohibit the use of public funds to pay for campaigns.

Fair Political Practices Commission (FPPC). The FPPC (1) enforces the requirements of the act, including investigating alleged violations and (2) provides administrative guidance to the public by issuing advice and opinions regarding FPPC's interpretation of the act. In addition to other penalties provided by law, the act specifies that any person who knowingly or willfully fails to report properly or unlawfully contributes, expends, gives or receives money for political spending is guilty of a misdemeanor punishable by a fine of the greater of \$10,000 or three times the amount of the money related to the violation. This fine was established by voters in the original act and was repealed and then reestablished by voters in November 2000 (Proposition 34). The act specifies that prosecution for violating the act must commence within four years from the date on which the violation occurred.

Right to Vote and Run for Office. Citizens of the United States who are registered to vote in California generally may vote in California elections or be considered as a candidate for elective office in the state. The State Constitution directs the Legislature to (1) define residence of the state and to "provide for registration and free elections," (2) prohibit improper practices that affect elections, and (3) provide for the disqualification of voters who are mentally incompetent or imprisoned or on parole for the conviction of a felony. State statutory law, therefore, prohibits

some citizens from voting, registering to vote, or running for elective office. For example, (1) a person who a court has determined is incompetent to stand trial cannot vote or register to vote and (2) a person convicted of a misdemeanor under the act may not be a candidate for elective office for four years following the conviction.

Proposal

The measure makes changes to state statutory law related to elections and political spending. It makes no changes to the Constitution. We discuss these changes below.

Allow Public Funds to Pay for Campaigns. The measure would repeal the existing provision of law that prohibits the use of public funds to pay for campaigns and direct the Legislature to “enact and amend laws to implement the public financing of elections.”

Increase Maximum Fine for Violations of the Act. The measure would require the maximum fine imposed for violating the act to be “indexed to inflation from the date last changed until the date of conviction.” The measure does not specify (1) which index should be used to estimate inflation or (2) the date when the fine under existing law was last changed.

Extend Timetable for Prosecuting Violations of the Act. Under the measure, individuals could be prosecuted for violating the act within four years from the date on which the violation was discovered. This means that individuals could be prosecuted many years after the date on which the violation occurred.

Affect Voting Rights. The measure would amend the act to specify that “every citizen shall have the equal freedom to vote” and that elections should be “fair enough that any citizen is able to effectively run for public office.”

Fiscal Effects

Use of Public Funds to Pay for Campaigns. The fiscal effect of allowing candidates for elective office to use public funds to pay for campaigns cannot be estimated and depends on the future actions of the Legislature, if any, to establish limits and other criteria for publicly funded campaigns. Depending on these future actions, costs to state and local governments could be significant.

Changes Related to Violations of the Act. The FPPC likely would incur increased ongoing costs related to investigating and prosecuting violations of the act that occurred more than four years in the past. In addition, the courts would experience increased costs related to court proceedings to hear these cases. These increased costs could potentially exceed \$1 million annually. Any increased costs would be offset by increased revenues resulting from higher maximum fines and any fines collected from convictions for violations that occurred more than four years in the past. The magnitude of these offsetting revenues depends, for example, on how the measure would be interpreted with regards to when the \$10,000 maximum fine was last changed by the voters—1974 (when the fine was established) or 2000 (when voters repealed and reestablished the fine). For example, after adjusting for inflation using the Consumer Price Index, the maximum fine in 2016 under the measure could be about \$48,000 if 1974 were considered the year the fine was last changed or about \$14,000 if 2000 were considered the year the fine was last changed.

Changes to Voting Rights. The measure would not amend the Constitution and would not repeal existing statutory law that limits citizens' rights to vote and run for elective office. To the extent that this measure results in more Californians being eligible to vote and run for elective office, different decisions could be made in the future by voters and other decision makers. These decisions could result in different budgetary results for state and local governments than otherwise would have occurred. These fiscal effects are not known.

Administrative Costs. The FPPC and local governments would incur one-time administrative costs to update informational materials. These costs likely would be minor.

Summary of Fiscal Effects. This measure would have the following major fiscal effects:

- Potentially significant state and local government costs to provide public funds to pay for campaigns and other unknown fiscal effects.
- Increased state and local government costs—possibly exceeding \$1 million annually—to administer amended campaign laws, offset by increased fine revenue.

Sincerely,

Mac Taylor
Legislative Analyst

Michael Cohen
Director of Finance