



September 9, 2016

Via fax and mail

The Honorable Governor Jerry Brown
c/o State Capitol, Suite 1173
Sacramento, CA 95814

Dear Governor Brown:

On behalf of the Center for Competitive Politics,¹ I urge you to veto Senate Bill 1107, which amends the Political Reform Act of 1974 to permit the State of California and its localities to subsidize candidate campaigns with Californians' tax dollars. Aside from concerns about the effectiveness of such programs, a more significant obstacle ought to stand in S.B. 1107's way: the Political Reform Act, as amended by voters in 1988, explicitly prohibits the creation of tax-financing programs in California without voter approval.

Article II, Section 10, of the California Constitution says the Legislature "may amend or repeal an initiative," but "only when approved" by the voters. The only exception to this requirement is if a voter-approved law "permits amendment or repeal," in which case the Legislature may skip voter approval. The Legislature's power to amend the Political Reform Act, originally passed by the voters in 1974, is strictly limited to amendments that "further [the] purposes" of the Act. All other amendments must be sent to the voters for approval.

In 1988, California voters approved the existing prohibition against tax-financing programs in their state. That law reads, in part, "No public officer shall expend and no candidate shall accept any public moneys for the purpose of seeking elective office."

This provision is directly contradicted by Section 2(b) of S.B. 1107, which states, "A public officer or candidate may expend or accept public moneys for the purpose of seeking elective office if the state or a local governmental entity establishes a dedicated fund for this purpose by statute, ordinance, resolution, or charter, and both of the following are true: (1) Public moneys held in the fund are available to all qualified, voluntarily participating candidates for the same office without regard to incumbency or political party preference. (2) The state or local governmental entity has established criteria for determining a candidate's qualification by statute, ordinance, resolution, or charter."

It defies all logic to find, as the Legislature does, that allowing the creation of tax-financing programs "furthers the purposes" of an Act which explicitly prohibits them. Under the California

¹ The Center for Competitive Politics is a nonpartisan, nonprofit 501(c)(3) organization that promotes and protects the First Amendment political rights of speech, assembly, and petition. It was founded in 2005 by Bradley A. Smith, a former Chairman of the Federal Election Commission. In addition to scholarly and educational work, the Center is actively involved in targeted litigation against unconstitutional laws at both the state and federal levels. For instance, we presently represent a nonprofit, incorporated educational association in a challenge to state campaign finance laws in Colorado. We are also involved in litigation against the state of California.

Constitution, voters have a right to be heard before a key provision of the Act they approved is overturned.

S.B. 1107's supporters have argued that polling demonstrates that Californians now support tax-financed campaign programs, in contrast to the decision of voters 28 years ago. But often biased opinion polls are not a replacement for casting ballots. If the public truly supports tax-financing, S.B. 1107's proponents should have no opposition to putting the issue on the ballot and letting the voters decide.

Indeed, the Legislature initially appeared poised to do exactly that. The version of S.B. 1107 that originally passed the Senate on May 31, 2016 asked voters to approve the bill. After failing to meet a legislative deadline to qualify S.B. 1107 for the November 6, 2018 ballot, however, the bill's sponsor amended the measure to remove that requirement and insert language simply asserting that S.B. 1107 "further the purposes of the Political Reform Act." It is clear from the timing of this June 30 amendment that the Legislature understood it was supposed to send S.B. 1107 to the voters and is now attempting an end run around both the voters and the California Constitution.

Moreover, Californians who voted to prohibit tax-financed campaign programs in 1988 – and who have repeatedly rejected initiatives to create tax-financing programs in the years that have followed – had good reasons for doing so. Ample academic research suggests that these programs do not succeed in their goals of improving government or reducing corruption. Research by the Center for Competitive Politics has found that statewide tax-financing programs in Arizona and Maine failed to decrease the number of registered lobbyists in those states, failed to reduce the plurality of legislators from the traditional backgrounds of business and law, failed to increase the number of women elected to legislative office, and failed to stimulate increased voter turnout. Additional research by the Center finds that tax-financing did not change the frequency with which legislators aligned with organized interests (in Connecticut) and uncovered numerous cases of waste, fraud, and abuse in tax-financing programs (in Arizona, Maine, and New York City).²

Regardless of debates about the merits of public financing among experts and policymakers, we should all agree that the Legislature cannot reverse a key provision of a law approved by voters. Under the Political Reform Act and the California Constitution, if tax-financing is to come to The Golden State, it must be the voters who bring it. In failing to submit S.B. 1107 to the voters, the Legislature has brazenly overstepped its authority.

Senate Bill 1107 amends the Political Reform Act in a manner that does not "further [the] purposes" of the Act. For that reason, it should be vetoed. For more information, I have enclosed a more detailed constitutional analysis representative of the Enrolled version of S.B. 1107 that was prepared for the California Fair Political Practices Commission and dated July 20, 2016.

Sincerely,



David Keating
President

² More information can be found in "Taxpayer-Financed Campaigns: A Costly and Failed Policy," Center for Competitive Politics. Retrieved on September 8, 2016. Available at: http://www.campaignfreedom.org/wp-content/uploads/2014/07/2014-07-16_Policy-Primer_Taxpayer-Financed-Campaigns.pdf (July 2014).