

MEMORANDUM

TO: Paul F Miner
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FROM: Matthew J. Traum

RE: Impact of Proposition 208 on State Campaign Finance Laws

September 11, 1997

In the November election of 1996, the electorate of the State of California passed Proposition 208, an initiative statute that sets new rules for financing political campaigns. Effective January 1, 1997 this proposition restricts by law the amount of money that a candidate for state office may solicit in contributions and how much may be spent on a California political campaign.

According to California's Fair Political Practices Commission, the new statute changes state election finance laws in the following ways:

Candidates will be asked to accept a "spending limit" on their campaigns which will be dependent on which office they are running for. The gubernatorial candidates may spend \$6,000,000 the primary and an additional \$8,000,000 for the general election. Candidates for other statewide office may spend \$1,500,000 for the primary and an additional \$2,000,000 in the general election. Candidates pursuing state legislative offices may spend \$300,000, if they are seeking a Senate seat, and \$150,000, if they are seeking an Assembly seat, in the primaries and then an additional \$400,000 and \$200,000 respectively for the general elections.

Candidates who decide to accept the voluntary spending limits before their primaries must file a statement or they cannot accept any campaign contributions. After the primaries are over, candidates who initially declined to accept voluntary spending limits, but who did not exceed the primary spending limits of the primary may then file a statement accepting the terms of voluntary spending limits for the general election within 14 days after the primary.

The benefits of accepting spending limits are intended both as incentive and a protection to candidates. Candidates who comply may legally accept more contribution money than those who do not comply, and in addition, the state will provide a free statement in the ballot pamphlet sent to voters as well as a designation in the pamphlet that the candidate agreed to honor spending limits.

In the event that a complying candidate is running against a non-complying opponent, if the opponent raises or spends 75% of the set legal spending limit for the office, then the allowable limit for the complying candidate is increased by three times in a non-statewide race and doubled for a statewide race. In addition, the complying candidate is allowed to receive unlimited contributions from his or her political party. Moreover, the same protections apply if the non-complying candidate exceeds the legal independent expenditure spending limit by 25% in a statewide race or by 50% in a non-statewide race.

Contributions to candidates are also limited by Proposition 208. Should a candidate choose not to agree to spending limits, he or she may only accept from individual contributors \$500 for a statewide election, \$250 for a legislative race in a district with 100,000 in population, and \$100 for local races in districts with less than 100,000 people. Should the candidate agree to observe spending limits, then he will be allowed to accept from individual contributors \$1000 for statewide elections, \$500 for legislative district races of over 100,00 residents, and \$250 for local races in districts smaller than \$100,00. Whereas previous to 1997 there were no contribution limits save for during special elections.

As with previous laws regulating campaign contributions, individuals, businesses, and political organizations may contribute to candidates up for election. However, Prop 208 limits contributions by political action committees to \$500 per calendar year; whereas before 1997 a PAC contribution limit did not exist. In addition, individual contributions made to PACs cannot be earmarked for a specific candidate.

Regardless, a small contributor committee, that is a committee made up of at least 100 individuals which accepts less than \$50 per year per contributor, may donate \$1000 annually to campaigns.

Also, political parties may donate only 25% of the total applicable spending limit to a candidate per campaign per calendar year whereas there was no previous limit; save for in special elections.

Furthermore, the total amount that any candidate may receive in contributions from groups other than individuals, political parties, or small contributor committees is 25% of the spending limit.

Regardless, candidates are still allowed to contribute as much of their personal funds to their campaigns as is desired, so long as the optional spending limits are not surpassed.

In no case may governmental appointee to an officeholder contribute to the officeholders who appointed them; this stipulation includes CSU Trustees and UC Regents.

There has been no legislative change on the policy of officials accepting gifts. State and local officials, candidates, and designated employees may not accept honoraria and may

not receive gifts in excess of \$290 per year. Exceptions apply for personal friends, family members, informal materials, and certain payments for travel.

Before 1997, there was no regulation to police bundled or aggregated contributions. However Proposition 208 treats contributions from entities controlled by another entity as if they came from the same source. Also, all payments made by a person that is “established, financed, maintained, or controlled” by any business entity, labor organization, association, political party, or any person or group or persons are considered to be made by that entity. Moreover, contributions made to a candidate through the intermediary are treated as contributions from the contributor and the intermediary for the purposes of the contribution limit unless the intermediary is the candidate or candidate’s eligible representative, or a volunteer hosting a fund-raiser away from his or her place of business.

In terms of loans and fine payments, the old statutes left no limitations, but now Proposition 208 prevents candidates from lending their own campaign more than \$50,000 if they are running for Governor (or \$20,000 if they are running for a Legislative position). Although there is no language preventing regular bank loans, all personal extensions of credit that are outstanding for thirty days are treated as contributions applicable to contribution limits.

Should a candidate remain in debt from a pre-1997 campaign, he may continue to collect contributions to retire his or her debt, and these funds do not count against contribution limits for elections taking place after January 1, 1997. In addition, a candidate may collect funds to pay for attorney fees, fines for litigation, or administrative action relating to an alleged violation of state or local campaign, disclosure, or election laws; a recount or contested election; or an audit or tax liability. However, these funds do fall under the restrictions of Proposition 208 campaign contributions and do count towards the spending limit as part of a candidate’s current campaign.

Prop 208 also has language concerning contributions to political parties. Where no limits existed before, Prop 208 limits the amount of money that can be contributed to committees of the same political party to \$5000 per year, and it also cuts the total two year aggregate contribution of an entity or individual to political parties and candidates combined to \$25,000.

The newly established timeline on fundraising, effective January 1, 1997, restricts candidates from accepting contributions until 12 months before the primary or regular election for statewide offices. In the case of an election in a district with less than 1,000,000 residents, candidates may only accept contributions 6 months before the primary or regular election. In no case may candidates accept contributions more than 90 days after their withdrawal, defeat, or election to office.

Proposition 208 adds statute to existing law regarding post election surplus campaign funds. After 90 days of a candidate’s withdrawal, defeat, or election to office he must

dispose of his or her surplus campaign funds. He may deposit up to \$10,000 of surplus funds into his or her officeholder "expense account", and the remaining money may be distributed to a political party, returned to the contributors on a pro rata basis, or returned to the general fund. The expense account is represented in Proposition 208 as an account for the officeholder's general governmental expenses, with contributions limited to \$250 per contributor and \$10,000 aggregate per calendar year. According to Proposition 208, under no circumstances may a candidate transfer contributions to another candidate's funds, but a candidate may contribute his or her own personal funds to another candidate for elective office

Proposition 208 requires additional public disclosure of all campaign contributions. Before Proposition 208, there was no prohibition on depositing campaign contributions if the contributor did not supply the full information. After passage of Proposition 208, donated sums of \$100 or more cannot be deposited unless the full disclosure information is provided in terms of name, address, occupation, and employer of the contributor.

Further, although Proposition 208 imposes no limit on contributions to ballot measure committees, advertisements for or against ballot measures must identify the top two donors that have given \$50,000 or more; In addition, the name of any committee in support or opposition of a ballot measure must identify their major donors who contribute \$50,000 or more.

Independent committees in support of or opposing candidates are now more public and more restricted under Proposition 208. Before Proposition 208, a donation of \$1000 or more required reporting within 24 hours after it is accepted, but the new law states that a candidate accepting a contribution of \$1000 or more must notify all candidates running for the same office 24 hours before it is deposited.

In addition, committees making independent expenditures of more than \$1000 cannot accept contributions over \$250 per election. However several expenditures are not considered independent and will be counted as contributions to a candidate; specifically, expenditures made by a political party, expenditures made by a person who has contributed \$100 or more per election to the candidate, and expenditures made by a candidate or officeholder supporting another candidate of the same political party running for the same legislative body.

Additionally, the term "lobbyists" is redefined by Proposition 208 as any individual who receives \$2000 or more in economic consideration in a calendar month or whose principal duties as an employee are to communicate directly or through his or her agents with any state official for the purpose of influencing legislative or administrative action. As with the pre 1997 statute, lobbyists are prohibited from giving gifts larger than \$10 monthly to elected officials, but an addition in Proposition 208 prevents registered lobbyists from making contributions to candidates or officeholders in governmental agencies or bodies that they are authorized to lobby.

Proposition 208 increases penalties for violations and allows for more stringent enforcement. For example, administrative and civil fines for disobeying campaign finance mandates are \$5000 per violation, an increase of \$3000 over the previous regulation. In addition violators of Proposition 208 as well as anyone who aids and abets them are at risk of being brought up on misdemeanor charges by the FPPC.

Proposition 208 includes a statute on slate mailers, declaring that candidates and measures that paid to appear in the mailer be designated with dollar signs.

Proposition 208 does not nullify local contribution laws, disclosure requirements, or prohibitions that are more stringent than itself, and any charter city that establishes voluntary spending limits with public matching funds may set contribution limits from persons to candidates of \$500 per election. Also, the language of the bill prohibits legislative amendments to many portions, expenditure limits, and disclosure thresholds. Although the amendment of other sections is governed by current law.