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ELECTED OFFICIALS. DISQUALIFICATION
FOR LIBELOUS OR SLANDEROUS
CAMPAIGN STATEMENTS.

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Elected Officials. Disqualification for Libelous or Slanderous Campaign Statements

Official Title and Summary Prepared by the Attorney General

ELECTED OFFICIALS. DISQUALIFICATION FOR LIBELOUS OR SLANDEROUS CAMPAIGN STATEMENTS. LEGISLATIVE CONSTITUTIONAL AMENDMENT. Adds a section to the Constitution providing that no person who is found liable in a civil action for making libelous or slanderous statements against an opposing candidate during an election campaign shall retain the seat to which elected where it is judicially found that: (1) the libel or slander was a major contributing cause in the defeat of an opposing candidate and (2) the statement was made with knowledge that it was false or with reckless disregard of whether it was false or true. Contains other provisions. Summary of Legislative Analyst's estimate of net state and local government fiscal impact: Adoption of this measure would have no direct fiscal effect on the state or local governments. If, however, a successful candidate were disqualified from assuming or holding office as a result of the measure, local governments could incur additional costs if an election had to be held to fill the vacancy. These costs could be significant if the election did not coincide with a regularly scheduled election.

Final Vote Cast by the Legislature on ACA 74 (Proposition 20)

Assembly: Ayes 75
Noes 0

Senate: Ayes 29
Noes 5

Analysis by the Legislative Analyst

Background

The first amendment to the Federal Constitution guarantees the right of free speech. Article I of the State Constitution contains a similar provision. Neither Constitution, however, protects a person who makes libelous or slanderous statements. Libel and slander are broadly defined as untrue written or oral communications which have a natural tendency to injure a person's reputation, either generally or with respect to his or her occupation. Anyone so injured may file a lawsuit against the person alleged to have committed the libel or slander. Under certain circumstances, however, spoken and written communications are considered "privileged" and therefore exempt from civil liability. This is true of communications that occur in connection with legislative, judicial or other official proceedings.

Under current law, libel or slander actions are given "special precedence" (that is, priority consideration) by the court system over other civil actions. The penalty levied against a person found to have made a libelous or slanderous statement is a monetary award, payable to the injured party.

Proposal

This measure adds to the State Constitution a provision that would prevent any successful candidate for the U.S.

Senate, the U.S. House of Representatives, a state elective office or a local elective office in California from holding that office, if

- that person is found in a civil action to have made a libelous or slanderous statement against an opposing candidate during the course of the election campaign.
- the libelous or slanderous statement was a major contributing cause in the defeat of the opposing candidate, and
- the statement was made with actual knowledge that it was false or with reckless disregard of whether it was false or true.

The measure specifies that the vacancy in the public office shall occur only after the trial court decision has become final. Vacancies created as a result of this measure would be filled in the manner provided by existing law.

Fiscal Effect

Adoption of this measure would have no direct fiscal effect on the state or local governments.

If, however, a successful candidate were disqualified from assuming or holding office as a result of the measure, local governments could incur additional costs if an election had to be held to fill the vacancy. These costs could be significant if the election did not coincide with a regularly scheduled election.

Text of Proposed Law

This amendment proposed by Assembly Constitutional Amendment 74 (Statutes of 1982, Resolution Chapter 181) expressly amends the Constitution by adding a section thereto; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO ARTICLE VII

SEC. 10. (a) No person who is found liable in a civil action for making libelous or slanderous statements against an opposing candidate during the course of an election campaign for any federal, statewide, Board of Equalization, or legislative office or for any county, city and county, city, district, or any other local elective office shall retain the seat to which he or she is elected, where it is established that the libel or slander was a major contributing cause in the defeat of an opposing candidate.

A libelous or slanderous statement shall be deemed to have been made by a person within the meaning of this section if that person actually made the statement or if the person actually or constructively assented to, authorized, or ratified the statement.

"Federal office," as used in this section means the office of United States Senator and Member of the House of Representatives; and to the extent that the provisions of this section do not conflict with any provision of federal law, it is intended that candidates seeking the office of United States Senator or Member of the House of Representatives comply with this section.

(b) In order to determine whether libelous or slanderous statements were a major contributing cause in the defeat of an opposing candidate, the trier of fact shall make a separate, distinct finding on that issue. If the trier of fact finds that libel or slander was a major contributing cause in the defeat of an opposing candidate and that the libelous or slanderous statement was made with knowledge that it was false or with reckless disregard of whether it was false or true, the person holding office shall be disqualified from or shall forfeit that office as provided in subdivision (d). The findings required by this section shall be in writing and shall be incorporated as part of the judgment.

(c) In a case where a person is disqualified from holding office or is required to forfeit an office under subdivisions (a) and (b), that disqualification or forfeiture shall create a vacancy in office, which vacancy shall be filled in the manner provided by law for the filling of a vacancy in that particular office.

(d) Once the judgment of liability is entered by the trial court and the time for filing a notice of appeal has expired, or all possibility of direct attack in the courts of this state has been finally exhausted, the person shall be disqualified from or shall forfeit the office involved in that election and shall have no authority to exercise the powers or perform the duties of the office.

(e) This section shall apply to libelous or slanderous statements made on or after the effective date of this section.

Argument in Favor of Proposition 20

In recent years political smearing and outright lying have come to dominate campaigns in California. Candidates are spending less and less time discussing important issues and their own qualifications and more and more time telling falsehoods about their opponents.

The reason is obvious. In this era of million-dollar campaigns the stakes are high and treachery is often effective.

As a result, voters have become turned off by the negative and sometimes deceitful tactics that political candidates use to get elected.

Proposition 20 is the only major political reform on the ballot since Proposition 9, the Political Reform Initiative, in 1974.

Proposition 20 will make candidates for political office think twice before telling a lie.

Proposition 20 is a simple and strong solution to this unacceptable campaign tactic: If you lie or slander your opponent and he or she can prove you lied in court, then you will be thrown out of office.

Under current law that can't happen.

Current law only allows a defeated candidate to sue the victor for libel to recover monetary damages, even if the courts decide that the winner lied to defeat his opponent. But the voters are still left with a politician who lied to get elected. That's not right.

There is no other profession where persons can lie about themselves or their competitors and keep their jobs or continue to do business.

Proposition 20 in no way inhibits an individual's right to free speech. You can say what you want, when you want, and however you want.

But, if a political candidate knowingly tells a lie, with

reckless disregard for the truth, and it is a major contributing cause to the defeat of the opponent as determined by a jury, the candidate forfeits his or her office.

Dishonest campaigns cheat the voting public just as surely as a dishonest business practice, dishonest medical practice, or any other dishonest professional practice.

Even more though, dishonest campaigns threaten the very heart of our democratic system. They rob the people of their right to make an informed, intelligent decision. They twist and render meaningless our precious American act of voting.

Proposition 20 will be a deterrent not only to candidates, but to campaign managers as well. Many campaign managers will use any tactic available to get their client elected to office, including lying, because their reputations are enhanced, and therefore their fees increase and eventually their income goes up.

Californians demand honesty and integrity in the doctors, lawyers, architects and businessmen they call upon for service. They also demand it of their elected officials, but sometimes those officials are more concerned about winning than honesty and integrity.

Proposition 20 will impose the ultimate political penalty on candidates who lie to get elected: loss of that office they so desperately desire.

Proposition 20 will force candidates to be accountable for their printed and published statements.

I urge you to vote yes on Proposition 20 and help stop the unethical practice of lying about a political opponent.

ART AGNOS

Member of the Assembly, 16th District

Rebuttal to Argument in Favor of Proposition 20

Proposition 20 should have been labeled the INCUMBENT PROTECTION ACT of 1984.

This measure is supposed to stop politicians from telling lies about each other (*as if anything could*).

Why did the top professional politicians in the state, the incumbent legislators, *overwhelmingly approve this measure*? Why did no incumbent politician come forward to write an opposition argument?

Incumbents generally avoid any mention of their challengers, while newcomers must challenge the record of incumbents. Under this measure campaigns will be turned around, with challengers put on the defensive. Whenever an incumbent is defeated, the results of the election will be in question until any trials (and appeals) are completed.

How will Proposition 20 work? How will a jury determine that any alleged libel or slander contributed to the defeat of a candidate?

Presumably, a large number of voters would have to

testify how they voted and why, to determine whether the alleged slander was a major contributing factor. Since those who volunteered to testify on behalf of the candidates would be suspect, random voters would have to be subpoenaed *against their will*.

SUCH TRIALS WOULD MEAN THE END OF THE SECRET BALLOT IN CALIFORNIA. Any voters could be forced to reveal for whom they voted and why.

This year 98 out of 100 incumbent legislators are running for reelection. They are not an endangered species and don't deserve special protection.

Vote NO on Proposition 20.

DAVID BERGLAND

Libertarian Party Candidate for President

JOSEPH FUHRIG

*Libertarian Party Candidate for Congress,
5th District, San Francisco*

ROBERT DAPRATO, M.D.

*Libertarian Party Candidate for Assembly,
16th District, San Francisco*

Elected Officials. Disqualification for Libelous or Slanderous Campaign Statements

20

Argument Against Proposition 20

Proposition 20 is a political Trojan Horse. It presents itself as a measure to clean up campaigns. But the hidden intent of the measure is to shelter incumbents from serious political challenge.

Proposition 20 will be used by incumbents as a threat to opponents who would pursue active campaigns. It violates the long-held American tradition of freedom of speech in political races.

It is interesting to note that opponents of this measure *were not able to get any incumbent legislator to write an argument against it.* It is just another so-called campaign reform measure to help incumbents.

Instead of challenging the record of incumbents, newcomers will be faced with the threat of lawsuits and eventual removal from office if they campaign too vigorously.

Incumbents, who rarely attack their challengers anyway, will not be greatly affected by this law. But serious political challengers rely on being able to point out negative aspects of their opponents. Political campaigns will be completely turned around, with challengers put on the defensive, fearing legal reprisals for their campaign rhetoric. This will have a particularly chilling effect on minority and poor challengers, who will decline to run, fearing costly lawsuits, however groundless.

The basic issue is one of free speech. It is a long-held American tradition that libel and slander laws seldom apply to political rhetoric. To change that now would move us closer to a one-party system and away from increased competition in our political structure. We should encourage the most vigorous debate and expression in campaigns.

Proposition 20 assumes that most California voters are stupid and uninformed. It assumes that they cannot distinguish between fact and fabrication in political campaigns.

We believe that ALL VOTERS SHOULD BE ALLOWED AS MUCH INFORMATION AS POSSIBLE TO MAKE THEIR CHOICES. Any attempt to regulate political literature and speeches is a move against our cherished First Amendment freedoms and toward totalitarianism.

Let's keep elections free and open to all people and ideas.

Vote NO on Proposition 20.

DAVID BERGLAND

Libertarian Party Candidate for President

JOSEPH FUHRIG

Libertarian Party Candidate for Congress, San Francisco

ERIC GARRIS

Member, Libertarian Party State Executive Committee

Rebuttal to Argument Against Proposition 20

Proposition 20 is the only "dirty" campaign reform measure to come along in years.

The Libertarian Party opposes the measure because they believe it protects incumbents and hinders a candidate's freedom of speech.

Politicians, though, should not be allowed to get away with lying as a form of free speech.

California voters are fed up with candidates who lie and mislead them to get elected. If Proposition 20 is enacted, a winning candidate who lies can be removed from office.

That can't happen now.

Proposition 20 will not protect incumbent politicians or hinder a candidate's freedom of speech. Any candidates can say what they want, when they want, and about whom they want.

However, if a winning candidate lies or deliberately smears an opponent, and it can be proved in a court of law

that the lie or smear contributed to the defeat, then the winning candidate can be removed from office.

The numbers of people seeking elective office in California are increasing every year. The competition for these positions has forced some candidates and their campaign managers to say anything, including lying, to get elected.

Under present California law, the defeated candidate can only sue for libel to receive monetary damages and the voters are stuck with a politician who used dishonest tactics to get elected. Proposition 20 will change that.

If you believe that political candidates should be forced to tell the truth, if you are tired of politicians lying and smearing to get elected, then I urge you to support Proposition 20.

ART AGNOS

Member of the Assembly, 16th District