

# DRAFT -- Judicial FACE Proposal -- DRAFT

## Qualifying Contributions

### **Judicial FACE Proposal:**

Candidates for the Minnesota Supreme or Appeals Court who want to participate in the public funding program must first declare their intent to participate by filing this declaration with the Campaign Finance Board. Then, between January 1st of the election year and the end of filings for office (mid-July) participating candidates must collect their qualifying contributions.

In order to qualify, candidates must raise at least 250 contributions in amounts between \$5 and \$50 from eligible voters. They may not accept any contributions from PACs or those not eligible to vote in Minnesota. Candidates may contribute up to \$500 to their own campaign. Participating candidates may not spend more than \$10,000 in privately raised funds during the election cycle.

	<u># Needed</u>	<u>Minimum \$</u>	<u>Private Funds Spending Limit</u>
Supreme & Appeals	250	\$1,250	\$10,000

### **Rationale:**

*Our understanding at this point is that judicial candidates currently do little to no fundraising in non-election years. We'd like to keep it this way, if possible, which is why we're prohibiting candidates from raising funds in non-election years.*

*Having qualifying contributions between \$5 and \$50 will make it feasible for individuals to help a candidate qualify, regardless of their means, but will also allow candidates to collect enough money to get their campaign off the ground. We chose 250 as the number of contributions that they had to collect because it seemed high enough to screen out those who really shouldn't be running, but low enough that it would be possible to qualify without having to spend too much time focused on raising funds or having to pander to special interest groups.*

*Allowing candidates to spend up to \$10,000 raised in private funds will allow them to get a good start on their campaign, and will mean that the public is only paying for 90% of their campaign.*

## Spending Limits & Subsidy Payments

When candidates have collected the required number of qualifying contributions, they turn in an affidavit to the Campaign Finance Board attesting that they have now satisfied the conditions of qualifying. They then immediately receive a payment of 20% of the public subsidy. After filings for candidacy, candidates with primary and/or general election opponents will receive a pre-primary payment of 40%. The final payment of 40% occurs just after the primary election. Candidates without primary or general election opponents receive only the initial 20% payment.

### Spending Limit & Subsidy:

<u>Total Spending Limit</u>	<u>Total Subsidy</u>
\$100,000	\$90,000

### Timing of Payments:

<u>On Qualification</u>	<u>Pre-Primary</u>	<u>Post-Primary</u>
\$18,000	\$36,000	\$36,000

### Spending Limits:

<u>Prior to Close of Filings</u>	<u>Pre-Primary</u>	<u>Post-Primary</u>
\$28,000	\$64,000	\$100,000

A candidate will return to the Fund any remaining public subsidy that is unspent and uncommitted by the general election, or at the time the individual ceases to be a candidate, whichever occurs first. For accounting purposes, all qualifying and personal contributions shall be considered spent before the public funds are spent or committed.

### Rationale:

*The overall spending limit was set at an amount that is below what has been raised by some judicial candidates, but more than is usually spent in Supreme and Appeals Court elections. We were worried that if the spending limit was much lower that candidates might be afraid to participate because they wouldn't have enough funds at their disposal.*

*We set the subsidy at 90% of the spending limit so that the full burden wouldn't be on the public coffers, but that candidates that don't raise the full amount that they could spend from private funds wouldn't be at too great a disadvantage.*

*Candidates get their money in installments to balance their need for adequate funding and wanting to be prudent with the public funds.*

*Candidates who do not have an opponent in either the primary or general elections do not receive additional public funds after the close of filings for office because we think that \$28,000 should be more than enough to get their name out.*

## Independent Expenditures

### Notice/ Reporting of independent expenditures

An individual or association making independent expenditures in excess of \$500 in the aggregate is required to file a report within 48 hours of becoming obligated to make the expenditures. During the last 3 weeks before an election, they must be reported within 24 hours.

They may file a second report at least 2 weeks before the expenditure is made to notify the Board that the expenditure will be positive. Otherwise, the expenditure is presumed to be negative.

### Rationale:

*We want independent expenditures to be reported when a group becomes obligated to make them so that candidates can plan ahead and know what's coming. We speed up reporting just before the election, because timing is of the essence at that point.*

*The second report, on whether the IE will be positive or not, is necessary so that we know whether to provide full matching funds or not. We're trying to balance the need for groups to have the time to decide what they want to do with their ad versus candidates needing to be able to respond.*

*We distinguish between positive and negative ads because we believe that candidates are hurt more by negative ads than by positive ones.*

### Matching independent expenditures

After \$5,000 has been spent either against a candidate or for their opponent, participating candidates will receive an additional public subsidy to match independent expenditures, up to three times their subsidy for that part of the campaign. The actions of a group that is supporting a particular candidate cannot trigger matching funds for that candidate.

	<u>Spending Limit</u>	<u>Possible Matching Funds</u>	<u>Potential Spending Limit (w/ full matching funds)</u>
Pre-Filings	\$28,000	\$54,000	\$82,000
Pre-Primary	\$64,000	\$162,000	\$226,000
Post Primary	\$100,000	\$270,000	\$370,000

If an independent expenditure advocates the defeat of a participating candidate, that candidate will receive an amount equal to the value of the independent expenditure.

If an independent expenditure advocates the election of a financially viable candidate, that candidate's participating opponents will receive an amount equal to 1/2 of the independent expenditure.

Candidates get matching funds after the first \$5,000 has been spent on IEs either against them or for their opponent. The timing of the payment depends on when they ad will run:

	<u>When 1st Payment is Made</u>	<u>When 2nd Payment is Made</u> (if applicable)
Pre-Filings	Immediately after the candidate qualifies	2 weeks before the ad runs
Pre-Primary	Just after filings close	2 weeks before the ad runs
Post Primary	Just after the primary	2 weeks before the ad runs

### Rationale:

*We chose not to provide matching funds for the first \$5,000 in IEs because we thought that candidates should be able to absorb the cost of responding to that level of IEs into their campaign budget, and because it will make the program less expensive.*

*We provide the first half of the matching funds as soon as we know that a candidate will be continuing their campaign during the period in which the ad will run (right after filings and right after the primary). The second half is delayed to give the group a chance to decide whether their ad will be positive or negative.*

### **Other Reporting Requirements**

Political Action Committees (PACs) would have to file reports on their contributors and expenditures in April and July of the election year, in addition to the standing pre-primary, pre-general election and year end reports.

### **Rationale:**

*This will allow us to gain an understanding of who is funding PACs, especially those with innocuous names (like Citizens for Better Healthcare).*

### **Definitions**

#### **Expenditures:**

Ads that use the “magic words” (“vote for...”, “vote against...”, “support...”, “defeat...”) aired at any time would be considered expenditures. Also, there would be a rebuttable presumption that expenditures of over \$500 that appear 45 days before the primary or 60 days before the general election that identify or depict a candidate are campaign expenditures. If an expenditure meets these criteria but is not electioneering, the speaker would have the option of filing a statement, under the penalty of perjury, stating that this is the case.

Communications between an organization and its members and corporations and their executive and administrative employees are exempt from the definition of “expenditure”.

#### **Independent Expenditures:**

An expenditure made by a person or group other than a candidate or the candidate's committee is presumed not to be independent if that individual or group uses the same consulting firm as the candidate, replicates the candidate's campaign materials, receives information from the candidate, tells the candidate about the expenditure, or serves as a key player in the candidate's campaign.

### **Rationale:**

*This is the definition recommended by the Brennan Center for Justice, based upon a comprehensive analysis of campaign advertising. It would only apply to judicial candidates.*

## Non-Participating Candidates

### Contribution Limits

PACs and individuals may not contribute more than \$1,000 to a non-participating candidate per election cycle. Candidates may personally contribute unlimited amounts to their campaign.

### Rationale:

*A contribution limit of \$1,000 should allow non-participating candidates to raise the funds they need without becoming unduly dependent upon any one contributor. Constitutionally we cannot limit the amount that non-participating candidates can contribute to their own campaign.*

### Notice/reporting of spending

Once a non-participating candidate who is running against a participating candidate has raised, spent, or become obligated to spend over 80% of a participating candidate's spending limit for that part of the election, they must file a report on their fundraising and expenditures with the Board within 1 week. They must file another report once they have reached 100% of a participating candidate's spending limit. Thereafter, they must file reports each week in which they raise, spend, or become obligated to spend more than \$1,000. During the last three weeks before an election, non-participating candidates must file a report within 24 hours of receiving this amount.

	<u>Spending Limit</u>	<u>First Report Due</u>
Pre-Filings	\$28,000	\$22,400
Pre-Primary	\$64,000	\$51,200
Post Primary	\$100,000	\$80,000

### Rationale:

*Requiring non-participating candidates to file reports when they've raised 80% of the spending limit will give participating candidates and others paying attention to the race notice that it's likely that the non-participating candidate will spend more than the spending limit.*

*Requiring reporting in weeks in which the non-participating candidate raises another \$1,000 seems like it provides participating candidates information in a timely manner without being overly burdensome. We speed up reporting just before the election, because timing is of the essence at that point.*

### Matching excess spending

A participating candidate will immediately receive an additional public subsidy to match fundraising by a non-participating candidate, up to three times their original subsidy.

	<u>Spending Limit</u>	<u>Possible Matching Funds</u>	<u>Potential Spending Limit (w/ full matching funds)</u>
Pre-Filings	\$28,000	\$54,000	\$82,000
Pre-Primary	\$64,000	\$162,000	\$226,000
Post Primary	\$100,000	\$270,000	\$370,000

### Rationale:

*The goal of the matching money is to make sure that participating candidates cannot be easily drowned out by a non-participating opponent.*

## **Political Parties**

### **Contributions to Participating Candidates**

Political parties may not contribute to participating candidates.

### **Contributions to Non-Participating Candidates**

Political parties may contribute up to \$1,000 to non-participating candidates per election cycle.

#### **Rationale:**

*Political parties have not been involved in judicial races in Minnesota's recent history; we'd like to keep it that way as much as we can. As such, political parties may not contribute more than any other Political Action Committee to non-participating candidates, and may not contribute anything to participating candidates.*

## **Voter Education**

There will be a state-published Voters Guide as part of this legislation. We're doing research into other states' guides to see how we may want to structure it's format, content, etc.

#### **Rationale:**

*The Voters Guide further subsidizes the campaigns of the publicly funded candidates by giving them "free media" and provides the electorate with unbiased information about the candidates.*

## **Funding & Cost**

The Judicial FACE program would be paid for by adding a nominal charge (perhaps \$1) to the filing fee for civil lawsuits. Since there are around 2 million cases filed annually, this would generate approximately \$4 million a biennium.

We are waiting for a fiscal analysis on how much the program would cost, but believe that the filing fee would generate more than enough revenue.

#### **Rationale:**

*At least two attorneys' organizations have indicated that they would support increasing the filing fee for this purpose.*