



Plugged-in information for California's charter movement

## Charter School Impact of the 2016 Election

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Beyond the stunning presidential election, last Tuesday's election could significantly impact California's charter schools for years, including higher funding, a less unfriendly Legislature, and a potential seismic reduction in the power of public employee unions. This article provides CSDC's analysis of the charter-specific impact of the election results.

## Presidential Election Could Reshape Federal Role and Clip Union Power

President-elect Trump's positions on education policy were little discussed during the election – arguably along with skeletal policy pronouncements on most topics. What little is clear is that Trump generally advocated for a more limited federal role in education matters, emphasizing parental choice, more deference to state and local decision-makers, and appointment of conservative judges to the U.S. Supreme Court.

Neither Hillary Clinton nor Trump said much in detail about K-12 education policy during the election. Trump was especially vague and we are left to speculate as to his likely actions on K-12 policy and funding matters going forward.

What little we do know includes the following:

- Trump also spoke in favor of eliminating, or at least reducing “way, way down” the influence of the US Department of Education,
- Trump spoke disparagingly of the Common Core Standards, though the federal influence over these is waning, and
- Trump did visit one charter school in Cleveland in August where he announced support for a \$20 billion grant program to support parental choice in K-12 schools. This proposal was not fleshed out, other than to specify that it would be funded by redirecting existing funding (it's worth noting that \$20 billion is a huge sum, exceeding the \$15 billion the federal government allocates for the huge Title I program each year).

Given the circle of individuals said to be advising Trump on education policy, CSDC presumes a Trump administration would have a lighter hand in implementing the recently-reauthorized Every Student Succeeds Act (ESSA). The Obama administration has completed action on key ESSA regulations on testing and accountability, using its leverage in the rulemaking process to take ESSA in a more restrictive direction. It also rejected California's requests to depart from standard practice, including recently denying the state's request to pilot new science tests aligned to the new Next Generation Science Standards in lieu of a full administration of our old science tests. CSDC hopes that Trump will seek to reopen and reverse these actions to give states more flexibility.

The Obama administration altered the important Public Charter School Grant Program from its original emphasis on launching innovative schools to

instead emphasizing replication of schools following traditional, “proven,” “no excuses” instructional practices and that are managed by larger charter management organizations. Obama has also forced states, including California, to focus on developing charter schools that produce high standardized test scores, including mandating testing-based renewal decisions. Many of Trump’s advisors, however, are less enamored with test scores. CSDC hopes that a Trump administration would return the charter grant program back towards its original focus on innovation, serving high-needs students who don’t respond well to traditional forms of instruction, and emphasizing more ecumenical gauges of charter school quality.

Trump’s influence over Supreme Court appointments, however, may have a more significant impact on K-12 policy than all other education policy actions combined. In March of this year, the U.S. Supreme Court tied 4-4 in the *Friedrichs v. California* case. In this case, teacher Rebecca Friedrichs asserted that mandatory union dues (“agency fee”) requirements in California law violated her constitutional right of free speech. If the court were to declare these mandatory fees unconstitutional, unions’ ability to collect dues could be severely reduced, potentially hobbling their influence.

Court-watchers had expected the Court to rule in favor of Friedrichs until the Court’s most conservative justice, Antonin Scalia, unexpectedly died earlier this year. The Court had heard oral arguments before Scalia’s death, but Scalia died before the court issued a ruling, ultimately leading to a 4-4 tie and leaving the pro-fees lower court decision intact.

Trump has specifically committed to filling the vacancy left by Justice Scalia with a like-minded judge. Scalia, who was arguably the Court’s most conservative jurist, presumably would have voted in favor of Friedrichs’ free speech rights.

Senate Republicans blocked President Obama’s nomination of Merrick Garland to fill the vacancy left by Scalia’s death. With Republicans retaining control of the Senate, which must confirm court appointees, Trump appears to have a free hand to soon appoint a justice who likely would, if presented with a new and similar case, strike a major blow to teacher and other public employee unions.

## State Ballot Measures Demonstrate Charter Vulnerability

Statewide ballot measures that would have lifted a low state cap on the number of charter schools in Massachusetts and establish a special reform district in Georgia were soundly defeated, dealing a blow to charter advocates in those states.

Massachusetts' [Question 2](#), as the measure was known, would have lifted the state's current cap on charter schools by allowing a modest 12 additional charters per year and would have limited charter enrollment growth at 1 percent of statewide enrollment per year. Despite its modest growth allowances, voters rejected Question 2 by a wide margin, with 62 percent voting "no" despite a massive spending advantage by the pro-charter "yes" campaign. Opponents, led by the state's influential teachers' union, built a strong coalition with liberal constituencies and civil rights organizations, and enjoyed the support of the state's popular U.S. Senator Elizabeth Warren.

Georgia voters defeated Amendment 1, a constitutional measure that would have authorized the Georgia Legislature to create a special "Opportunity School District," modeled in part on a [similar district in Tennessee](#), that would take over low-scoring public schools, presumably including converting them to charter schools. Here too, the anti-charter margin was lopsided (60 percent voted "no") though opponents may have outspent proponents in this match.

For many years, charter school advocates in Massachusetts and Georgia have emphasized modest growth, "no excuses" instructional models, and high test scores – believing that this "quality" approach to chartering would lead to strong political support for long-term expansion of the charter sector. Tuesday's election, however, demonstrated the vulnerability of this strategy and the deep-seeded tendency of the public to defend traditional school districts when they feel threatened.

## California Ballot Measures Guarantee More Bond and Operational Funding

California voters faced a dizzying array of 17 ballot measures addressing everything from the death penalty to condoms. At least three of these are of specific interest to charter school leaders and voters approved all three, as described below.

**Proposition 51 – K-12 School & Community College Bonds.** Voters narrowly approved (51 percent "yes," 46 percent "no") this measure to authorize the state to issue \$9 billion in bonds for new construction and modernization of K-12 school and community college facilities. Of the \$7 billion allocated for K-12 facilities, the measure loosely earmarks \$500 million for charter schools.

Under current law, the funds will be allocated through the pre-existing [Leroy Greene School Facilities Program](#) (SFP). The SFP is an extremely complex set of several different programs, including a [Charter School Facilities](#)

[Program](#) (CSFP). The CSFP can provide funding for either new construction and/or modernization.

The SFP is inordinately complex, including complex application, funding criteria, funding formulas, and financial soundness requirements. Proposed school sites are subject to extensive review, including safety and environmental/toxics clearances. Projects are also subject to the State Architect's stringent reviews, including Field Act seismic safety reviews. They are also subject to costly labor compliance and "prevailing wage" requirements.

CSFP provides up to 50 percent of approved costs, thereby requiring a substantial local match. While school districts can often fund their match with local facilities bond funds (see below), charter schools have no ready source of matching funds and must generally borrow to make the match unless their school district is willing to do so on the charter school's behalf.

Governor Brown has noted his opposition to this bond measure, citing its high costs and concerns with the complexity and inefficiency of the SFP, but he did nothing to actively oppose it. The measure was backed by the Coalition for Adequate School Housing (CASH) and the Building Industry Association over the governor's objections.

While this program has many disadvantages, charter schools seeking to construct new facilities and especially charter schools that occupy district-owned facilities in need of reconstruction may want to review the program's requirements and begin to develop an application. In the past, projects were funded on a "first come, first serve" basis, so moving quickly may be an advantage. CSDC does anticipate, however, that the Governor, who was critical of the first-come-first-served and other aspects of the program, may make a strong push to amend and perhaps streamline the program.

**Prop 55 – Education and Health Care Income Tax Surcharge Extension.** Voters approved this measure by a wide margin (62 percent voted "yes"). It will extend the income tax portion of the "temporary" tax increases approved by voters in 2012's Proposition 30. Proposition 30 had imposed an income tax surcharge ranging from 1-3 percent on high-income (\$250K+) earners through 2018 along with an additional quarter-cent sales tax through 2016. Proposition 55 will extend the income tax surcharges for another 12 years (2019-2030) while allowing the sales tax portion to expire.

The measure will generate an estimated \$4-9 billion/year of additional income tax revenues, depending on economic and other factors. How much of this will be allocated for K-12 schools, and how much of this will benefit charter schools, is determined by many factors. In broad terms, however, California's constitutional education funding formulas ("Prop 98") generally direct roughly half of state revenues to schools and community colleges. Thus,

the passage of Prop 55 should significantly boost education funding above what would have occurred if the income tax surcharge had expired, but the specific amounts and programs are very difficult to project.

**Proposition 58 – English Learners.** This measure, approved by a wide margin (over 72 percent voted “yes”) eliminates a requirement in current law requiring school districts to provide instruction exclusively in English, thereby restoring school districts’ authority to provide instruction in multiple languages. The measure effectively repeals the main provisions of Proposition 227, a 1998 ballot measure that imposed “English only” instruction requirements. Proposition 227 also spurred the establishment of many charter schools because charter schools were not subject to the English-only restrictions. CSDC anticipates that school districts may seek to launch their own dual-language immersion and similar programs, perhaps providing additional competition to charter schools with similar programs.

## Education Reform Billionaires Gain Traction in Legislative Races

A loose coalition of wealthy charter school and education reform advocates that CSDC calls the “Billionaire Reformers Club” poured at least \$20 million into state legislative races this election cycle and scored a dozen or so victories. The “Club’s” major donors include Reed Hastings (Netflix founder), members of the Walton family (Wal-Mart), Fischer family (Gap clothing), Eli Broad, Michael Bloomberg, and other wealthy individuals. The funds flow through political action committees controlled by EdVoice, the California Charter Schools Association, and others, according to CSDC’s analysis of state campaign finance filings.

Until recently, gerrymandered legislative district boundaries had created “safe” Democratic and Republican districts. The result is a legislature dominated by Democrats with a decidedly pro-labor tilt and a much smaller number of very conservative Republicans who have little effective influence. California’s “top-two” primary election system, wherein the top two vote-getters in the primary election advance to the general election without regard to party affiliation, was adopted in 2010 and is generating a new dynamic in California’s legislative races. This system tends to favor more moderate rather than partisan candidates.

The “Billionaire Reformers Club,” after placing mostly losing bets in the prior two legislative elections, took advantage of the top-two system by backing over a dozen moderate candidates this year. While a few races remain close and are pending final counts, they appear to have scored a dozen or so

victories. With many moderate candidates thought to be supportive, or at least neutral, with respect to charter schools, CSDC hopes these moderates may help block some of the increasingly virulent anti-charter legislation we battled in the prior legislative session.

At the same time, both houses of California's legislature will remain firmly in Democratic control, with the potential for a "supermajority" that could override gubernatorial vetoes in the lower house. The balance in the legislature becomes increasingly important as Governor Brown, who has vetoed many anti-charter bills and appointed a generally pro-charter State Board of Education, nears the end of his final term in 2018. Meanwhile, several individuals have announced their candidacies, including pro-charter former legislator and Los Angeles Mayor Antonio Villaraigosa and anti-charter former legislator and state superintendent Delaine Eastin, among others.

### Local School Bonds and Parcel Tax Measures

Voters approved the vast majority of school district facilities bond measures along with a few parcel tax measures. According to preliminary data compiled by the California League of Cities, voters approved over 90 percent of the 184 local school bond measures that were on the ballot along with 68 percent of the 22 proposed school parcel taxes.

In some cases, these local measures were drafted to include a share of funding for charter schools. Chico Unified School District's [Measure K](#), for example, authorizes the district to issue \$152 million in facilities bonds, of which over 15 percent "shall be available to pay the costs of financed facilities for charter schools." The measure is patterned after San Diego's Proposition Z from 2012, which [sets aside \\$360 million for charter school facilities](#). Under both measures, the district board appoints an advisory committee composed of charter school representatives to recommend how to allocate the funds among eligible charter schools.

Parcel taxes are much less common than school bonds, but can constitute a large amount of funding in some localities, raising over \$1,000 per student, per year. Oakland Unified School District's [Measure G](#) levies a \$120/parcel tax for 12 years. Charter schools will share proportionally based on enrollment with 65 percent of the funds available for salary increases for school staff and 35 percent for middle school improvement grants. In most localities, however, charter schools have not successfully advocated for such provisions and must rely on the Proposition 39 facilities sharing laws and districts' good will to gain a fair share of these funds.

## Implications for Charter Schools

The implications of this year's election for charter schools seems decidedly mixed. The defeat of the Massachusetts and Georgia ballot measures signals the weakness of the primary strategies used by well-funded charter advocates at the national, while their spending in California may be gaining some meaningful traction. If the Supreme Court clips teacher unions' ability to generate fee revenues, it could thwart not only their ability to oppose charter schools but also their ability to protect education funding in the Legislature.

CSDC will provide a more complete and updated analysis of the election results, including their practical and strategic implications, at our upcoming [Charter Schools Leadership Update Conference](#) – we look forward to seeing you there.

We hope you found this article informative and helpful. Please [click here to provide feedback](#).