Proposition 38


Authorizes annual state payments of at least $4000 per pupil for private/religious schools phased in over four years. Restricts state and local authority to require private schools to meet standards, including state academic requirements. Limits future health, safety, zoning, building restrictions on private schools. Requires release of composite test scores of voucher pupils. Permits Legislature to replace current voter-enacted constitutional funding priority for public schools (Proposition 98) with minimum formula based on national per-pupil average, as defined by terms of this measure.
The National Average School Funding Guarantee and Parental Right to Choose Quality Education Amendment

SECTION 1: TITLE
This measure shall be known and may be cited as "The National Average School Funding Guarantee and Parental Right to Choose Quality Education Amendment."

SECTION 2:
Section 8.1 is added to Article IX to read:

SEC 8.1.
The people of the State of California find and declare:

(a) The economic and social viability of California depends on a well educated citizenry.

(b) Test scores from students in government operated schools reveal that the public school system in this state has become an inefficient monopoly, with many parents forced to enroll their children in schools that are failing to prepare students with the foundation skills of reading, writing and mathematics.

(c) As California embarks on the 21st century, basic changes in California's education delivery structure must be made to ensure that our children receive the benefits of quality education services.

(d) Parents are best equipped to make decisions for their children and have the right to select the educational setting that will best serve the interests and educational needs of their child.

(e) Families have the right to have their children attend schools that successfully teach reading, writing and mathematics to all enrolled students.

(f) The scholarship provided pursuant to this measure is a grant in aid to the parents for the education of their children. The decision by a parent

This initiative would amend the California Constitution.

This voucher proposal does nothing to improve public schools, while creating a host of new problems by encouraging unregulated voucher schools.

This is extremely misleading. Under this initiative, the choice belongs to the voucher schools, not parents. Voucher schools will be able to reject students based on gender, ability to pay, mental or physical ability.

This statement is meant to insulate the initiative from a Constitutional challenge based upon separation of church and state. In fact, payments are made directly to voucher schools.
to accept a scholarship and how it is used is not the decision of the state but an exercise of independent parental judgement.

(g) The scholarships provided pursuant to this measure are consistent with existing programs operated by the state including Cal-Grants, special education services in non-public schools, and child care services, all of which use government revenues to provide services at privately operated institutions chosen by eligible individuals.

(h) The scholarship program enacted by this Article is not intended to establish, support, promote, or in any way endorse any religion. The people of this State intend only to provide the parents of schoolchildren with the financial means to make their own school choices, not to promote or disadvantage any particular class of schools.

(i) In order for California's students to compete with the students of other states and countries in the global economy of the 21st century, the people of the State of California hereby declare the importance of restoring the focus on academic outcome, introducing competition into the delivery of education services, eliminating waste and inefficiency in government operated schools while providing necessary resources for a quality public education.

(j) This measure recognizes the importance of maintaining and enhancing the per-pupil funding base in government schools at or above the national average amount as part of the system-wide reform of introducing competition and expanding the educational options for parents, which it would accomplish.
SECTION 3: SECTION 8.3
is added to Article IX to read:

SEC. 8.3.

(a) The Legislature may fund public schools by an amount equal to or exceeding the national average on a dollar per pupil basis pursuant to this section by a statute passed by a majority vote of the members of each house concurring. The amount of funding provided for the support of public schools pursuant to this section each fiscal year thereafter shall be equal to the number of students enrolled in the public school system in kindergarten through grade 12, inclusive, multiplied by an amount equal to or greater than the national average dollar per pupil funding amount calculated pursuant to subdivision (c). This amount shall be known as the national average school funding guarantee.

(b) If the national average school funding guarantee is operative it may only be suspended for a period of one fiscal year by a statute passed in each house by roll call vote entered in the journal, three fourths of the membership concurring provided that the statute may not be made part of, or included within, any bill enacted pursuant to Section 12 of Article IV.

(c) Each fiscal year, the Director of the Department of Finance shall calculate the amount of funding provided for support of public schools in this state, the enrollment in public schools in this state, and the national average dollar per pupil funding amount for support of public schools. To the extent that the Director of Finance is unable to determine the current year amount dedicated in each of the states for the public schools, the most recent amount for each state shall be adjusted upward by the appropriate number of times using the latest positive dollar per pupil growth rate in that state.

(d) If in any fiscal year, the amount of funding provided for support of public schools is at least the national average school funding guarantee calculated pursuant to subdivision (a), the amount calculated pursuant to subdivision (a) shall be used to calculate the amount of funds provided

The national average funding provision is a sham. The initiative does not increase funding to the national average. It neither requires the legislature to take action nor permits it to take action not already authorized by law.

Currently, enactment of the school funding portion of the state budget requires a 2/3 vote of the legislature.

There is no requirement that if this funding guarantee is suspended the amount that schools would have received will be paid when the suspension is lifted.

Collection of data to establish the national average is flawed. The Director of Finance must calculate this figure. Legal challenges to this calculation are highly likely.
for the support of public schools in all subsequent fiscal years and this section shall supercede Section 8 of Article XVI.

(e) If the national average school funding guarantee becomes operative pursuant to this section, then this section shall supercede all the provisions of Section 8 of Article XVI with respect to funding for school districts and will define the amount of funds required to be appropriated for the support of public schools, thereby guaranteeing that students enrolled in California public schools are funded at or above the national average dollar per pupil amount.

(f) For purposes of this Article, the following terms have the following meanings:

(1) "amount of funding provided for the support of public schools" shall include all funds used to support services to students in public schools in grades kindergarten through 12, inclusive, including federal, state, and local sources, unrestricted funds, categorical funding, and funding dedicated to cover annual debt service on state and local bonds, certificates of participation, notes, and other forms of indebtedness, or any other funds, which are dedicated to finance local and state educational programs, administration or facilities for grades kindergarten through 12, inclusive, including disbursements, if any, pursuant to Section 8.5 of Article XVI.

(2) "national average dollar per pupil funding" shall be the average amount of funds provided in the United States for public school students in grades kindergarten through 12, inclusive, determined by calculating a statewide dollar per pupil average for each state which is the amount of funding provided for the support of public schools in that state, pursuant to paragraph (1), divided by the number of public school students enrolled in grades kindergarten through 12, inclusive. These dollar per pupil amounts shall then be averaged across all the states.

(3) "child," "pupil," or "student" is a person eligible to attend kindergarten or any grades 1 to 12, inclusive.

When funding reaches the new national average, the provisions and guarantees of Prop. 98 are eliminated. There is no provision for Prop. 98 to be reinstated.

1) The funding definition is not consistent with data collected by the California Dept. of Education, nor by any recognized state or national agency.

2) No national or state agency is currently collecting this data. A whole new state bureaucracy would be required to collect this data for California and 49 other states.

3) There is no provision for a weighted average as is currently used by both NEA and the National Center for Educational Statistics, the two national agencies most commonly used to determine the national average.
(4) "parent" is any person having legal or effective custody of a child.

(5) "gender" means either a male human being or a female human being.

(g) The Legislature may enact a statute pursuant to Section 12 of Article IV for the necessary support of the community colleges in each fiscal year this section is operative. The intent of the people is that any such statute fully fund the demand for programs offered by the community colleges.

SECTION 4:
Section 8.5 is added to Article IX of the Constitution, to read:

SEC. 8.5.

(a) The people of this state, in recognition of their right to promote the general welfare, to secure the blessings of liberty to themselves and their posterity, and to pursue happiness, find that parents and not the state have the right to choose the appropriate educational setting for their children, whether that setting is a public school or a private school. Therefore, parents who choose to send their children to schools operated or owned by an entity other than the state or any of its subdivisions or agencies are eligible to receive a scholarship which may be used for the education of their children, consistent with this section.

(b) Commencing with the fiscal year following the approval by the voters of this section, the parents of school age children whose children are starting kindergarten or were enrolled for the previous school year in any of the grades kindergarten through 11, inclusive, in a public school shall receive, upon request, a scholarship for purposes of providing the parent with additional choices in the type of educational setting in which to enroll their child.

(c) In the second fiscal year and each fiscal year thereafter until fully implemented, parents' phase in eligibility for scholarships shall be determined as follows.

Community colleges, state special schools, and preschool childcare funding is currently guaranteed under Prop. 98. This initiative provides funding guarantees only for K-12. It provides no guarantee for community college funding.

Parents who send their children to any private school, including a religious school or home school, would be eligible to receive voucher payments.

Current private school students would be phased in as follows:
1) July 1, 2001 – parents of school-age children enrolled in kindergarten and those “enrolled for the previous year in public school”;
2) July 1, 2002 – parents of children in grades K-2;
3) July 1, 2003 – parents of children K-8; and
4) July 1, 2004 – all parents of school-age children.

Parents of private school students could establish immediate eligibility for voucher payments during the subsequent school year by enrolling their children in public schools for some period of time during the year.

The language makes no provision for parents providing proof of enrollment in a public school for the previous year to comply with the phase-in provisions. It also does not require confirmation of enrollment by school districts.
Parents of children who were enrolled in any of the grades kindergarten through 11, inclusive, in a public school in the prior year and in, (1) year two: all other parents of children in grades kindergarten through 2, inclusive, (2) year three: all other parents of children in grades kindergarten through 8, inclusive, (3) year four and each subsequent year: all parents.

(d) (1) The amount of a scholarship, excluding any increases provided pursuant to paragraph (2) of this subdivision, shall be in grades kindergarten to twelve, inclusive, the greater of four thousand dollars ($4,000), one-half of the national average dollar per pupil funding defined pursuant to Section 8.3 of Article IX, or one-half of the amount of funds provided for the support of public schools divided by the enrollment of students enrolled in public schools in grades kindergarten through 12, inclusive if provided pursuant to Section 8.3. (2) If a parent decides to apply for a scholarship to enroll their child in a scholarship-redeeming school, any scholarship amount that exceeds the tuition and fees of the scholarship-redeeming school for any year in which the pupil is in attendance shall be credited to an account on behalf of the parent for each eligible child to be managed by the State Treasurer. A parent may apply that surplus to supplement future tuition or fee costs that exceed the scholarship amount for that child in any of the grades one through twelve inclusive, and through the completion of an undergraduate degree. Any credit remaining on the date the pupil completes an undergraduate degree, or reaches 21 and is not enrolled in a scholarship redeeming school, shall be credited to the state general fund. (3) Costs to the State Treasurer pursuant to this subdivision shall be reimbursed from interest income earned on the management of these funds. The net interest earnings shall be deposited in the state general fund. (4) The legislature may enact statutes governing the management of the parent savings account.

(e) The amounts disbursed to parents for scholarships pursuant to this section shall not be calculated toward the amounts provided for the support of public schools pursuant to Section 8.3 of this Article or Section 8 of Article XVI.

State Treasurer must establish a bureaucracy to account for each student’s unused voucher funds for use in K-12 or college education. This bureaucracy will be paid for from the interest on unused funds.

Vouchers must be paid for out of the non-education side of the state budget. This means a cut in vital services like police, fire and health, or a tax increase. Vouchers for the 700,000 private school students could cost $3 billion.
(f) Scholarships provided under this section are grants of aid to parents on behalf of their children, to provide parents with greater choice in selecting the most appropriate educational setting for their child, and not to the schools in which parents decide to enroll their children. These scholarships do not constitute taxable income to the parent or their child.

(g) After accepting a scholarship pursuant to this section, a parent may choose a non-public educational placement for the child and that selection is not, and shall not be deemed to be, a decision or act of the state or any of its subdivisions.

(h)(1) Any parent eligible pursuant to subdivision (c), having enrolled their child in a scholarship-redeeming school, may request a scholarship by providing proof of enrollment, tuition and fee information, and the address of the scholarship redeeming school to the county office of education in the county in which the scholarship-redeeming school is located. The county office of education shall compile this information for all scholarship-redeeming parents within the county and shall submit the statement of current enrollment, tuition and fees, and addresses of scholarship-redeeming schools, to the Controller within 30 days of proof of enrollment. (2) The Controller shall make four quarterly disbursements to the parent in the form of a check for the amount of the scholarship established pursuant to paragraph (1) of subdivision (d) adjusted for the amount transferred to or from the account established on behalf of the parent pursuant to paragraph (2) of subdivision (d). The Controller shall send the check to the address provided in paragraph (1). The parent shall restrictively endorse each quarterly check for application to the parent's account at the scholarship-redeeming school. In any fiscal year, the sum of the quarterly checks to a parent on behalf of a child shall not exceed the tuition and fees for that child at the scholarship-redeeming school. (3) If a pupil of a parent or guardian receiving a scholarship transfers from a scholarship redeeming school, the school shall provide written notification of the transfer and its effective date to the county office of education within 10 days of the transfer. The county office of education shall notify the Controller of the transfer and the Controller shall prorate the disbursement(s) to reflect only the period of time in which the child was actually enrolled. (4) At the end of each fiscal year,
the Controller shall deposit the unused portion of each scholarship in the parent's account established pursuant to paragraph (2) of subdivision (d).

(i)(1) A private school may become a scholarship-redeeming school by filing with the Superintendent of Public Instruction a statement certifying that the school satisfies the legal requirements that applied to private schools on January 1, 1999, and each of the requirements set forth in paragraph (2).

(2) To become a scholarship-redeeming school, a school shall certify that it meets each of the following requirements:

(A) The school does not discriminate on the basis of race, ethnicity, color or national origin, or advocate unlawful behavior of any kind. Nothing precludes the establishment of same gender schools or classrooms.

(B) The school does not deliberately provide false or misleading information about the school.

(C) No person convicted of (i) any felony or crime involving moral turpitude, (ii) any offense involving lewd or lascivious conduct, or (iii) any offense involving molestation or other abuse of a child, shall own, contract with or be employed by the school.

(D) A high school shall certify either (i), that the school has obtained notice from the University of California, California State or an accreditation agency recognized by the state, that coursework completed by a pupil University, or any private college or university accredited by a regional accreditation agency at the high school in one or more academic subjects designated by the institution issuing notice will fulfill the institution's admission requirements in the designated subject or subjects if a pupil's grades and the duration of study are acceptable; or (ii), that it has received either accreditation or provisional accreditation from a regional accreditation agency or an accrediting agency recognized by the state.

A school must “certify” that it meets the following requirements to become eligible to receive tax-funded voucher payments:
1) Does not discriminate on the basis of race, ethnicity, color or national origin.
2) Does not advocate unlawful behavior;
3) No person convicted of a felony or crime involving moral turpitude, lewd or lascivious conduct, or child abuse, shall own, contract or be employed by the school, and;
4) An accredited college or university has certified that at least ONE (1) academic course at the high school level will meet admission requirements or that the school has received accreditation from a recognized agency.

The initiative does not provide for loss of voucher redeeming status if a school fails to act consistent with its certification. There is no provision for enforcement of these regulations. The initiative permits voucher redeeming schools to discriminate on the bases of religion, sex, disability, sexual orientation, ability to pay, and primary language.
(3) Each scholarship-redeeming school shall comply with each of the following requirements on an annual basis:

(A) Prepare a statement of financial condition that lists the revenues, expenses and debts of the school. These documents shall be provided to parents upon request.

(B) Administer nationally normed reference tests, mandated to be taken by pupils enrolled in public schools and that provide individual student scores, to pupils whose parents have accepted scholarships, for the purpose of monitoring academic improvement of these pupils. The composite results of the test scores of the pupils of parents who accepted scholarships for each grade level tested shall be released to the public. Individual results shall be released only to the child's parents and the school that the child attends.

(4) Any scholarship-redeeming school may establish a code of conduct and discipline and enforce the code with sanctions, including dismissal. The school shall provide to the parent a copy of the written code of conduct and discipline upon the pupil's admission to the school. A pupil who is responsible for serious or habitual misconduct related to school activity or school attendance may be dismissed. A dismissed pupil may use the unused portion of a scholarship for the balance of the year in which the dismissal occurred at any other scholarship-redeeming school that will grant admission, or may return to a public school and forego notify the county office of education in writing within ten days of any such dismissal.

(5) Notwithstanding Section 8.7 of this Article, the Legislature may by majority vote enact civil and criminal penalties for schools and persons who engage in fraudulent conduct in connection with the solicitation of pupils or the redemption of scholarships under this section.

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Each scholarship redeeming school must:

- Provide a “statement of financial condition” to parents upon request.
- Administer a “nationally-normed test” annually, and report composite scores of voucher students only by grade level. Individual scores are released to the parents, not the public.
- Taxpayers who do not have students in a school will not be able to request financial statements. Meetings of voucher school boards can be closed to the public.
SECTION 5:
Section 8.7 is added to Article IX of the Constitution, to read:

SEC. 8.7.
(a) Private schools, including scholarship-redeeming schools, regardless of size, need maximum flexibility to educate pupils. Therefore, private schools shall be free from unnecessary, burdensome or onerous regulation. In any legal proceeding challenging a state statute or any regulation promulgated pursuant to a state statute as inconsistent with this section, the state shall bear the burden of establishing that the statute or regulation is necessary and that the statute or regulation does not impose any undue burden on private schools, including scholarship-redeeming schools.

(b) Except as provided in this section, private schools including scholarship-redeeming schools, are not subject to any state regulation beyond the state statutes, in effect and as enforced, that applied to private schools on January 1, 1999, including, but not limited to, Article 1 (commencing with Section 32000), Article 2 (commencing with Section 32020), and Article 5 (commencing with Section 32050) of Chapter 1 of Part 19 of, Article 5 (commencing with Section 33190) and Article 10.5 (commencing with Section 35295) of Chapter 2 of Part 20 of, and Sections 44237, 48200, 48202, 48222, 49068, 49069, and 51202 of, the Education Code. No additional statutes shall be enacted by the legislature pertaining to private schools, including scholarship-redeemproved by a three-fourths vote of the membership of each house of the Legislature.

(c) No regulation or ordinance may be enacted on or after the approval by the voters of this section that affects private schools, including scholarship-redeeming schools and that pertains to health, safety or land use and is imposed by any county, city, city and county, district or other subdivision of the state, except by a two-thirds vote of the governmental body issuing or enacting the regulation or ordinance and a majority vote of qualified electors within the affected jurisdiction. In any legal proceeding challenging a regulation or ordinance as inconsistent with
this subdivision, the governmental body issuing or enacting the
regulation or ordinance shall bear the burden of establishing that the
regulation or ordinance meets each of the following criteria:

(1) It is essential to assure the health, safety or education of
pupils, or, as to any land use regulation, that the governmental
body has a compelling interest in issuing or enacting the
regulation or ordinance.

(2) It does not unduly burden or impede private schools or the
parents of students attending private schools.

(3) It does not harass, injure or suppress private schools.

(4) It does not infringe on a parent or guardian's freedom to
make decisions regarding the quality and content of their child's
education, or whether the child attends a public or private school,
including a scholarship-redeeming school.

SECTION 6:
Section 8.8 is added to Article IX of the Constitution to read:

SEC. 8.8.
If any portion of Section 8.5 of Article IX is enjoined from being utilized by
parents to expand their choice in educational settings for their children at
any class of schools, it shall not prevent Section 8.5 of Article IX from
being operative for any other school or class of schools not explicitly
covered by the judicial order.

This section has been added in an attempt to
protect non-religious schools in the event
the courts rule that the State cannot
contribute to private religious schools. This
severability clause attempts to address the
issue of separation of church and state.