

1987 Update

The New Gold Rush:

Financing California's Legislative Campaigns

**Report and Recommendations of the
California Commission on Campaign Financing**

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**1987 Update of the Report and Recommendations
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Foreword

In October 1985, the California Commission on Campaign Financing released the final report of an eighteen-month study into campaign financing practices in state legislative races. Entitled *The New Gold Rush: Financing California's Legislative Campaigns*, the Commission's report studied legislative campaign financing in California from 1958 through the November 1984 general election. This *1987 Update* examines legislative campaign financing in California since the November 1984 election.

Formed in 1984, the Commission is a bipartisan, non-profit, private organization funded by generous grants from private California foundations. Twenty Californians from the state's business, labor, agricultural, legal, political and academic communities, both Republicans and Democrats, agreed to serve as Commission members.

The Commission's broad purpose, publicly announced at the time of its formation, was to study and make recommendations for improving California's system of campaign financing so that it might better serve the citizens of this state. The Commission decided early in its existence to focus its study on campaign financing in the California State Legislature. In so doing it turned its attention to the institution believed by many experts to pose the most serious campaign finance problems.

The Commission's initial report, *The New Gold Rush*, was published in two volumes. The first volume summarizes the Commission's report. The second volume contains the Commission's full report (including the summary), fourteen chapters of analysis, ten appendices of supplemental research, a fully drafted model campaign finance law containing the Commission's principal recommendations and a second model law reflecting an alternative proposal.

The Commission wishes to extend its warm appreciation to The William and Flora Hewlett Foundation, The James Irvine Foundation, The Ralph M. Parsons Foundation and the Weingart Foundation for their generous support of the Commission's work. Without their assistance, this *1987 Update* and the Commission's forthcoming study of local campaign financing could not have been undertaken.

The Commission wishes to express its particular gratitude to its talented staff. Executive Director Tracy Westen and Co-Director/General Counsel Robert M. Stern conducted the research, gathered the data and were responsible for the preparation of the *1987 Update*. Quantitative Research Director James Platler, Ph.D., designed the computer analyses that generated some of the *1987 Update's* statistical conclusions. Office Manager Janice Lark again contributed her outstanding administrative skills. Robert Herstek created the *1987 Update's* graphic design.

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CALIFORNIA'S ACCELERATING CAMPAIGN FINANCING GOLD RUSH

The Record Breaking 1986 Election

In 1986 California state legislators' rush for campaign dollars again broke all state and national records. During the 1986 primary and general elections, California legislators spent a total of \$57.1 million for 100 legislative seats—up almost 30% since the 1984 election cycle (when total spending reached a then-record setting \$44.8 million). Over the last 28 years, legislative spending has skyrocketed almost 4,000%.

In *The New Gold Rush*, issued in October 1985, the Commission examined legislative contribution and spending patterns up through the 1984 California elections. The Commission's report concluded: "California is witnessing a new political gold rush. . . . Candidates

have come to believe that money is the key to political success. They are throwing themselves with increasing abandon into a fundraising arms race in which each tries to outraise and outspend all opponents. The resulting fundraising fever is distorting many aspects of California's political process."

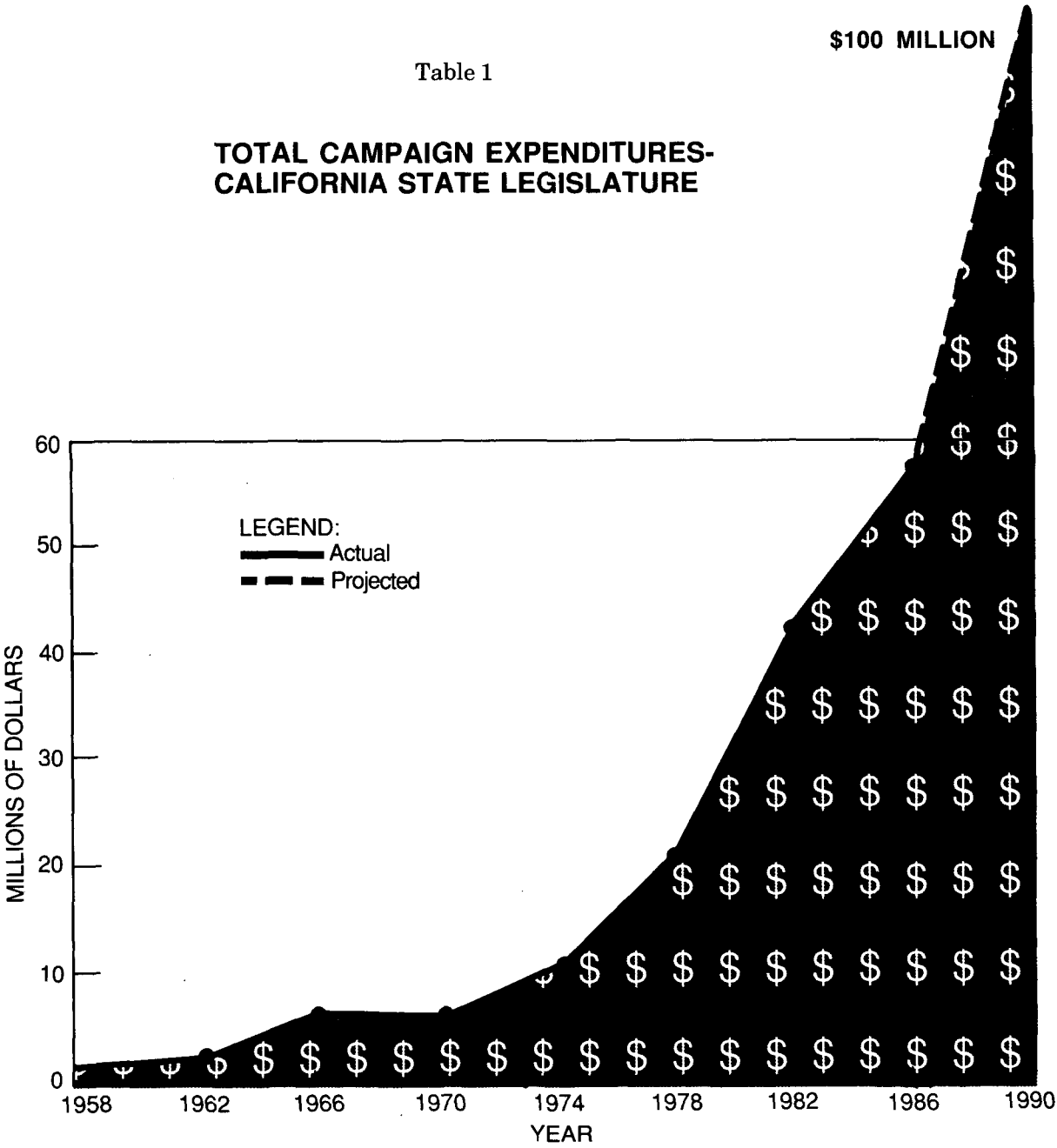
The Commission also warned that California's escalating "gold rush" for campaign financing dollars is creating the public perception that legislative votes are unduly influenced by money. Huge warchests of accumulated campaign dollars are deterring potentially qualified newcomers from entering politics. Incumbents are continuing to widen their fundraising advantage over challengers. And public confidence in California's political processes continues to wane.

The elections of the past two years have reinforced this verdict. California's system of legislative campaign financing is now wildly out of control. Legislative efforts to restrain the explosive growth in campaign spending have failed. Without serious remedial efforts, California's badly flawed campaign financing processes will continue to worsen.

In 1991 California will be reapportioned by the political party then in power. Unless campaign spending is curtailed before then, through legislation or a vote of the people, the battles for control of the legislature will trigger as yet unimagined spending sprees. By 1990, at its current explosive rate of growth, total legislative campaign spending will reach \$100 million. Legislative seats will then cost their candidates an average of \$1 million each. (See Table 1.)

Table 1

TOTAL CAMPAIGN EXPENDITURES-
CALIFORNIA STATE LEGISLATURE



Update on the Commission's Proposals for Reform

In 1985 the Commission unanimously recommended comprehensive legislation to halt the escalating arms race and redress the public perception that campaign money was corrupting the California legislature. It concluded that piecemeal solutions—such as contribution limits—were inadequate, and that contribution limits by themselves favored incumbents, forced candidates to spend more time raising money, and failed to ameliorate the fundraising “arms race.” The Commission believed then, and its recent research has strengthened this belief, that California’s campaign spending practices can only be brought under control by placing limits on the total amounts legislative candidates can spend.

The Commission Recommends a Comprehensive Model Law for California

In *The New Gold Rush* the Commission proposed a Model Law containing expenditure ceilings, contribution limits and limited public matching funds. (The United States Supreme Court in the landmark decision of *Buckley v. Valeo* (424 U.S. 1, 1976) ruled that expenditure ceilings are unconstitutional unless voluntarily accepted by candidates in exchange for partial matching funds.) The Commission’s Model Law included the following provisions:

■ Expenditures are capped in all legislative races where candidates accept limited matching funds. Assembly candidates can spend no more than \$150,000 in the primary and \$225,000 in the general election. Senate candidates can spend no more than \$250,000 in the primary and \$350,000 in the general election.

■ Contributions by individuals, regular PACs (Political Action Committees), corporations, businesses and labor unions are limited to \$1,000 per candidate per election; specially qualifying “Small Contributor PACs” (receiving all member donations in amounts of \$50 or less) can contribute up to \$5,000.

■ Transfers of money by legislative candidates or incumbents to other candidates are prohibited.

■ Fundraising during non-election years is prohibited.

■ Honoraria are restricted.

■ Political parties and legislative caucuses can contribute up to \$50,000 per candidate in the general election.

■ Candidates are prevented from receiving more than an aggregate of \$50,000 (Assembly) or \$75,000 (Senate) from all PACs, corporations, businesses and labor unions combined.

■ Candidates who agree to expenditure ceilings qualify for limited public matching funds, but candidates who fail to raise threshold amounts or lack competitive opponents (who themselves do not qualify for matching funds or do not raise, spend or have cash on hand of at least \$35,000) will not qualify.

■ Candidates are encouraged to seek smaller in-district contributions.

■ Spending by independent expenditure committees and wealthy candidates is discouraged.

A one-page summary of the Commission’s Model Law can be found at the end of this *1987 Update* in Appendix A. A comprehensive analysis of the

Commission's proposal appears in *The New Gold Rush*, Chapters 12 and 13. The 17-page text of the Model Law appears in Appendix A to *The New Gold Rush*.

Efforts Have Been Made to Implement the Commission's Recommendations

A few months after release of the Commission's 1985 report, its Model Law was introduced without change by Assembly Speaker Willie Brown, but the bill (AB 2681) did not pass the Assembly floor. In 1987 a bill (AB 2051) based on the Model Code was introduced by Assemblywoman Jackie Speier (D-South San Francisco).

In addition to these developments, Californians to Limit Campaign Spending, a broad-based citizens coalition headed by Walter Gerken, Chairman of Pacific Mutual Life Insurance Company in Orange County, and Robert Monagan, President of the California Economic Development Corporation in Sacramento and former Republican Speaker of the Assembly (1969-70), circulated an initiative petition which contained most of the Model Code's provisions. This proposal was endorsed by the California Business Roundtable, the California Chamber of Commerce, California Common Cause, the California League of Women Voters and dozens of California newspapers.

Although the petition's organizers submitted over 630,000 signatures to the Secretary of State in June 1986, they fell 6,795 signatures short of qualifying the measure for the November 1986 ballot. The proponents subsequently examined the signatures which had been rejected and found several thousand which they believed had been improperly disallowed. The proponents anticipate that the petition will qualify for the June 1988

ballot for a vote of the people. (For a discussion of the differences between the initiative and the Commission's Model Law, see Appendix B.)

Campaign Finance Reforms in Other Jurisdictions

California today has *no* laws restricting the amount of money candidates can receive or spend in legislative or statewide elections. The Political Reform Act of 1974 only requires candidates to disclose the amounts and sources of their contributions and expenditures. By contrast, *almost three-fourths of all other states restrict contributions or spending in some way—through contribution limits, expenditure ceilings and limited public matching funds or other devices*. California is thus in a diminishing minority of states which impose no restraints on the escalation in political fundraising.

Since the 1985 publication of *The New Gold Rush*, several states and cities have enacted comprehensive new campaign finance laws. In California, many cities and counties have adopted or amended ordinances to limit contributions.

Sacramento County and Tucson Have Now Adopted Expenditure Ceilings, Contribution Limits and Limited Matching Funds

In November 1986, Sacramento County became the third local jurisdiction in the United States (following Seattle, Washington and Tucson, Arizona) to adopt a comprehensive campaign finance reform measure containing expenditure ceilings, contribution limits and limited public matching funds. Sacramento's ordinance adopted major portions of the Commission's Model Code.

The County Board of Supervisors placed a ballot measure before the voters, asking whether they would authorize the Board to adopt a comprehensive ordinance. The *Sacramento Bee* and California Common Cause endorsed the proposition. The conservative *Sacramento Union* and the Sacramento Chamber of Commerce urged a negative vote. The ballot measure was approved by 61% of the popular vote. Within a month, the Board of Supervisors unanimously adopted the comprehensive law proposed by outgoing Supervisor Ted Sheedy, who had supported the idea for ten years.

The Sacramento County ordinance, which will go into effect for the June 1988 election, limits contributions to \$500 for individuals and \$1,000 for organizations, imposes expenditure ceilings of \$75,000 per election, prevents candidates from receiving more than \$250 per contributor or a total of \$10,000 in the off year, and provides partial matching funds up to \$37,500 for qualifying candidates. Candidates only qualify for matching funds if they accept expenditure ceilings, raise at least \$10,000 in small contributions, and have an opponent who has also raised \$10,000. This latter feature was originally suggested by the Commission.

The City of Tucson, Arizona, also adopted a comprehensive campaign finance reform ordinance at the November 5, 1985, election. The city modeled its law after a similar ordinance adopted by the City of Seattle in 1978. (See *The New Gold Rush*, Chapter 10.) The new ordinance will be tested for the first time during the November 1987 election.

Reform advocates in Tucson cited runaway escalation in campaign spending to justify the new law. They pointed

out that between 1979 and 1983 the average expenditure by mayoral candidates had increased over 200%—from \$34,000 to \$113,000. City council candidates had increased their spending over 100%—from \$12,000 to \$25,000. Proponents also argued that the old Tucson system favored incumbents and that the proposed changes would make races more competitive. Opponents of the measure argued that matching funds would “divert residents’ tax dollars to candidates they don’t support.” The ordinance was adopted by a 53% vote of the people.

Two Other States Have Also Adopted Laws With Expenditure Ceilings and Limited Public Matching Funds

In 1986 voters in Rhode Island approved a campaign finance reform referendum placed on the ballot by the state legislature. The referendum mandated the legislature to adopt expenditure ceilings, contribution limits and limited public matching funds for both legislative and statewide elections by June 1988. The referendum was approved by a 53% vote.

The Florida legislature also approved a bill in 1986 which established expenditure ceilings, contribution limits and partial matching funds for candidates seeking statewide office, such as Governor and other cabinet positions. The bill, which will go into effect for the 1988 elections, does not cover campaigns for the legislature.

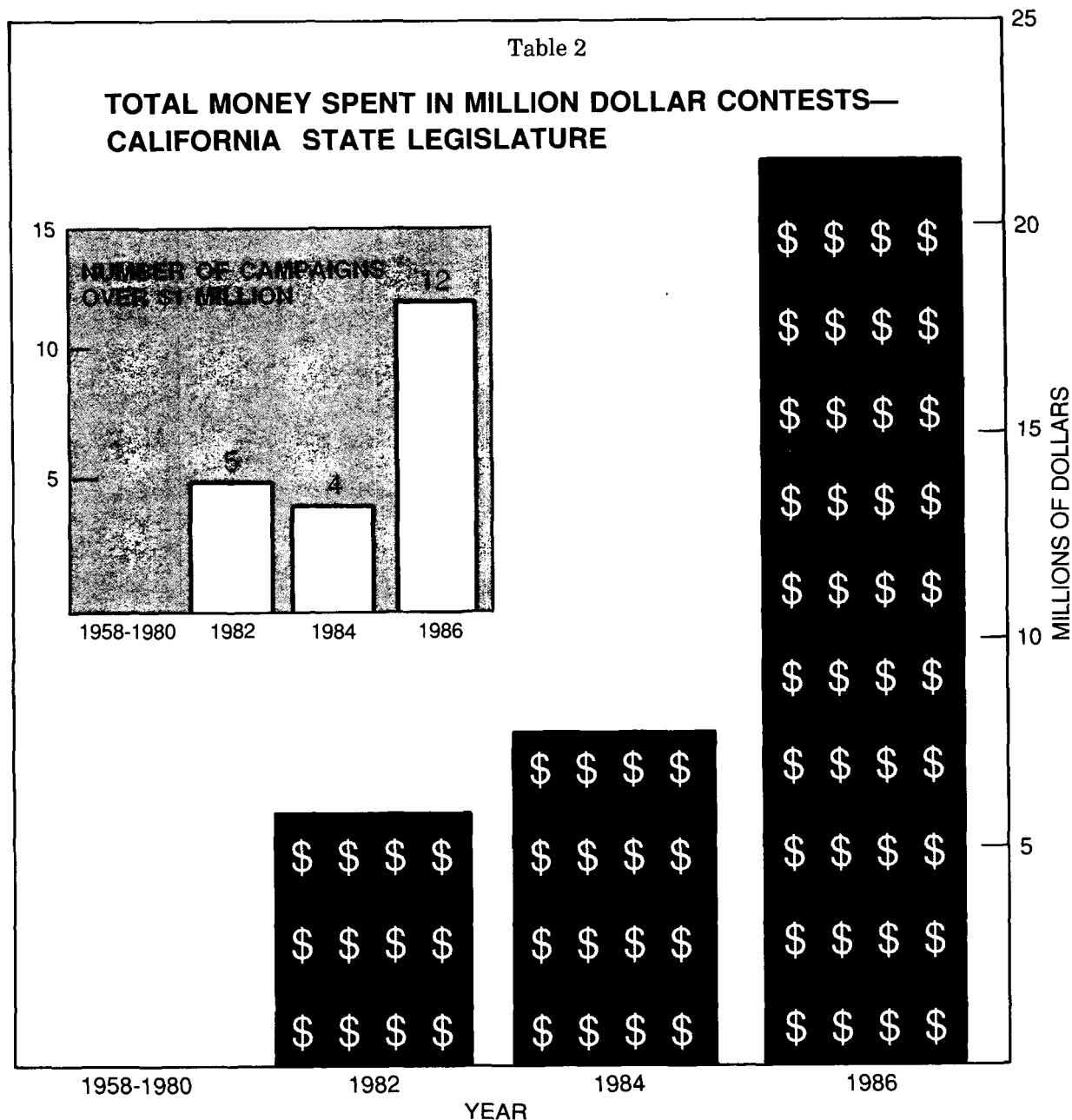
Skyrocketing Campaign Costs

Californians have become inured to expensive legislative races. Since 1974, when the Political Reform Act required candidates to disclose their contributions and expenditures, Californians have watched as each election breaks the prior

election's spending record. Yet even jaded observers were shocked by the 1986 election's all-time highs. For the first time in California, *12 legislative races cost over \$1 million each*; five exceeded \$2 million; and all million-plus races combined topped \$22 million. (See Table 2.) Six months later, in a May 1987 special election, candidates for a vacant State Senate seat spent *nearly \$3 million*—making it the most expensive State Senate race in history.

Spending Per Vote Has Doubled in Competitive Races

Spending per vote figures have also risen dramatically. The average Assembly candidate spent \$2.51 per vote in 1986—an increase of 2,700% since 1958 and an increase of 34% since 1984. Senate spending per vote has risen even faster in the past two years. In 1984, the average Senate candidate spent \$1.70 per vote; two years later, the average spending for



Senate candidates had increased by 127%—to \$3.86 per vote.

Yet even these spending-per-vote figures tell only part of the story. In “competitive” Assembly races (as defined by the California Fair Political Practices Commission), candidates in 1984 spent an average of \$4.56 per vote. But by 1986 Assembly spending had jumped to \$10.47 per vote—over a 100% increase in just two years. Competitive Senate races were even more expensive, reaching an average of \$11.09 per vote in 1986. One Sacramento Assembly candidate even spent \$19.75 per vote—enough to take every one of his voters out to dinner—yet he still lost the election. (See Table 3.)

Open Seat Races Have the Highest Spending

Much “competitive” spending occurs in open seat races where campaign costs skyrocket to levels not seen anywhere else in the country. In the 1986 general election, the average Assembly candidate running for an open seat spent \$379,000, up 88% since 1984 (\$202,000) and up 246% since 1982 (\$154,000).

The winners in these vacant seat contests spent even more. Thus, winners of open Assembly seats in 1986 spent on the average over \$500,000, while winners of open seats in the State Senate averaged \$771,000. At these levels, many talented individuals will avoid legislative public service altogether—a tragedy for high quality government in this state.

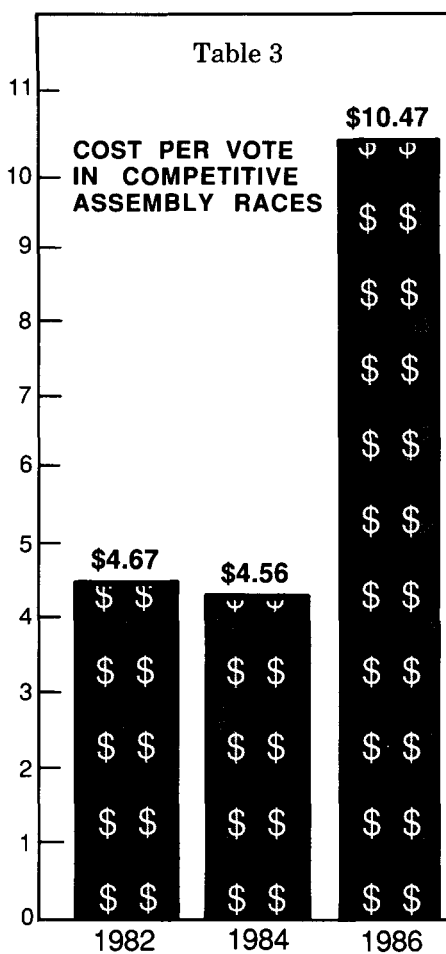
Incumbents Have Increased Their Fundraising Dominance Over Challengers

In 1976 Assembly incumbents outspent their general election challengers by a ratio of almost 3-to-1. By 1984 Assembly incumbents had increased their lead over challengers by 14-to-1. But in the 1986 general election, incumbents doubled their advantage, out-raising their challengers by a 30-to-1 ratio. In the Senate, the incumbents’ fundraising advantage was even wider. By the 1986 general election incumbents were overwhelming their challengers by a 62-to-1 ratio (\$248,000 to \$4,000). (See Table 4.)

Between 1976 and 1984, the median Assembly incumbent running in the general election increased his or her spending from \$25,100 to \$115,400, while average spending by challengers in general elections actually *dropped* from \$9,400 to \$8,500. In 1986 challengers’ spending dropped by one-half—an

average of only \$4,100. In actual dollar amounts, the average challenger raised less money in the 1986 general election than in 1976 and less than half as much as in 1984.

When the primary elections are included, the disparity becomes more pronounced. During the 1985-86 cycle, the average Assembly incumbent spent \$263,000, while the average challenger spent only \$6,700, a ratio of 39-to-1. In the State Senate, incumbents outspent their challengers by a ratio of 75-to-1 (\$461,000



for Senate incumbents versus \$6,100 for Senate challengers). Even the smallest amount spent by any Assembly incumbent (Robert Frazee, R-Carlsbad) during this two year period vastly exceeded the amounts spent by challengers. Although Frazee had no significant opponents in either the primary or general elections (a Libertarian candidate faced him in the general election), he nevertheless spent \$107,000 during the two-year period. Generalizing from this example, challengers to Assembly incumbents must conclude that they will be faced with incumbents who will raise and spend a minimum of \$100,000.

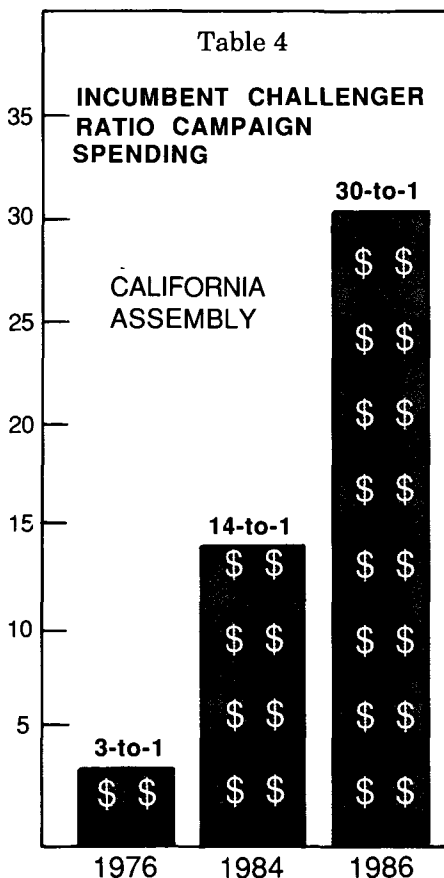
As a substantial result of these spending disparities, not one incumbent in either the 1986 primary or general election was defeated by a challenger. For the first time since 1952, *all incumbent legislators seeking reelection won their races.*

Vigorously Competitive Races Remain Scarce

Fewer candidates are seeking legislative office today. In 1976, for example, 362 candidates vied for 100 seats (80 Assembly and 20 Senate). By 1986 this number had dropped by 8% to 332. The high cost of campaigning for legislative office is a significant factor in this drop. In 1976, for example, the average Assembly candidate spent \$32,000 in the general election. By 1986, the average Assembly candidate had to raise almost four times as much in the general election—\$120,000.

Even though overall costs are skyrocketing, the number of races where candidates face a meaningful opponent

remains low. In 1986, out of 80 general election Assembly races, only 21 contests occurred where both candidates spent at least \$35,000. Yet this low number was actually an increase of five contests over 1984, which saw only sixteen \$35,000-plus races. This five-seat increase in 1986 was caused by the unusually high number of vacant seats—eleven, compared to two in 1984.



Reapportionment has also reduced competition in California. Because many districts have been drawn to reflect heavily Democratic or Republican voter registration, competition is rare in the general election and the incumbent almost always wins the primary. Only when a legislative seat is vacated do new candidates have a chance of breaking into the Legislature. In San Mateo County, for example, Democratic candidate Jackie Speier, running for an open Assembly seat with overwhelming Demo-

cratic registration, had to spend \$336,000 in the June primary to defeat her Democratic opponent, Michael Nevin, who spent \$236,100. In the general election, however, there was no competition. Ms. Speier spent only \$148,000 against a Republican opponent who reported spending *no* money on his campaign.

Shifting Sources of Campaign Money

In *The New Gold Rush*, the Commission noted that legislative candidates received 92% of their money from outside

their districts but only 8% from sources inside the district; 83% of their money from organizations and political contributors (transfers, party and caucus contributions) but only 13% from individuals; and 47% in gifts over \$5,000 but only 6% in amounts under \$100. California's legislative candidates, the Commission observed, had come to rely on "two separate constituencies: the district residents who vote for them, and the statewide contributors who pay for their campaigns." By 1986, these trends had deteriorated further. (See Table 5.)

Partisan Contributions Are Increasing As a Dominant Source of Money

The fastest growing new source of campaign financing in 1986 was political money—transfers from other candidates, legislative caucuses and political parties. Since 1980 partisan contributions have nearly *doubled*—going from 20% in 1980 to 38% in 1986. Although many observers believe the political parties should play a larger role in campaigns, the parties themselves actually contributed less than 10% of all partisan money received by candidates in 1986, while officeholders and legislative caucuses donated over 90%.

Without partisan contributions, some candidates would not have been competitive. Republican Roger Fiola, for example, running against incumbent Democrat Richard Floyd of Gardena, received 70% (\$199,000) of his total funds (\$284,000) from the Assembly Republican Political Action Committee. Fiola raised *no* individual contributions of \$250 or more and only ten contributions in all. Democrat Johanna Wilman, in her contest against Republican incumbent William Filante of Marin, received 80%

(\$407,000) of her total money (\$511,000) from Assembly Democrats.

Open seat contests also drew large partisan contributions. Democrat Jack Dugan, for example, running for an open seat in Sacramento, received 80% (\$675,000) of his total funds (\$846,000) from Assembly Democrats. Running for an open State Senate seat, Democrat Jim Young of Bakersfield was provided with 82% of his funds (\$893,000) in partisan money: \$114,000 from the Democratic Party, \$155,000 in transfers from Democratic officeholders and an amazing \$624,000 from the Senate Democratic Caucus Committee.

Individual Donations Are Dwarfed by Organizational Contributions

Candidates apparently find it easier to seek money from organizations than individuals. Thus, legislative candidates in the 1986 general election received only 8% of their money in individual contributions of \$250 or more.

By contrast, business entities, labor unions and PACs contributed over one-half (53%) of all monies received by candidates in the 1986 general election. These organizational givers increased their contributions 31% since 1984, but their gifts comprised the same approximate percentage of overall receipts as in 1984 (substantially because partisan gifts increased so rapidly).

Some business entities gave extraordinarily large sums. The California Medical Association (CMA), for example, gave \$1.3 million to 117 legislative candidates and incumbents in 1985-1986, more than any other PAC or private entity. CMA contributions ranged from a low of \$500 to a high of \$81,000 to Assembly Speaker Willie Brown.

CMA's contributions were not given along political or ideological lines. Except for Senator Herschel Rosenthal (D-Los Angeles), every incumbent who returned to the legislature in 1987 (plus several who retired in 1986) received at least \$500 in campaign funds from the doctors' PAC. In one case CMA gave money to two candidates running against each other: \$11,500 to Assemblyman Lou Papan running for an open State Senate seat and \$10,000 to San Francisco Supervisor Quentin Kopp, Papan's successful opponent in the general election.

The doctors' PAC even gave a total of \$102,300 to 19 out of the 20 Senators who were not up for reelection. Only Senator Walter Stiern (D-Bakersfield), who announced his retirement in 1985, failed to receive CMA money. But other legislators announcing their retirements still received CMA contributions: \$5,500 to Senator John Foran (D-San Francisco) and \$500 to Assemblywoman Jean Duffy (D-Sacramento).

Candidates Contribute Little to Their Own Campaigns

Candidates historically have not felt the need to contribute significant amounts of money to their own campaigns, and in recent years this trend has continued. In 1982 and 1984, two candidates for the legislature spent over \$100,000 of their own money on their campaigns: Tom Hayden and Brooks Firestone in 1982, and Tom Hayden and

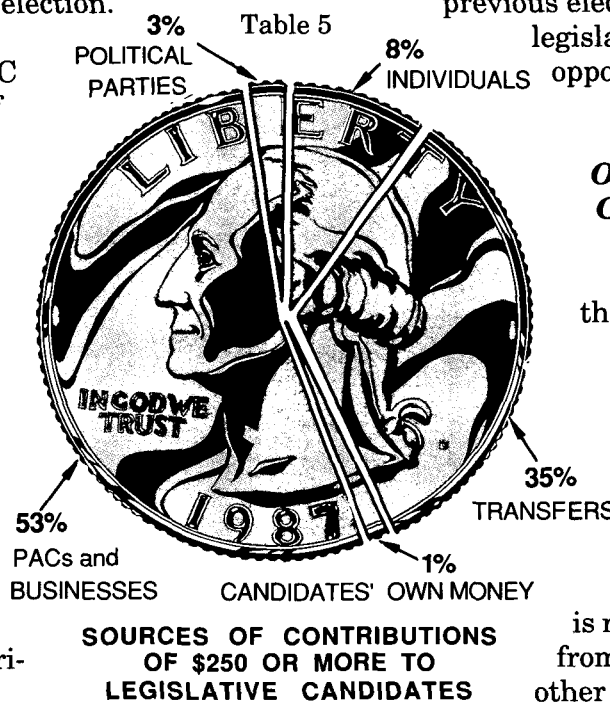
Lia Belli in 1984. By contrast, in 1986 only Ed Bacciocco, a Democratic Assembly candidate running for an open seat in San Mateo County, spent more than \$100,000 of his own money on a losing bid. Since 1982, only Tom Hayden has spent more than \$100,000 of his own money and won. All other wealthy candidates were defeated.

In 1986, the percentage of money candidates donated to their own campaigns dropped to 1%—far below previous elections. While incumbent legislators worry that wealthy opponents may oppose them, this rarely happens.

Off Year Fundraising Continues to Expand

In *The New Gold Rush*, the Commission described off year fundraising—a non-election year when most incumbents have no identified opponents—as California's "secret campaign finance problem." Because most off year money is raised by incumbents from PACs, lobbyists and other special interest groups, the appearance of "trade-offs" between contributions and votes is at its peak. Yet, most incumbents have no opponents to criticize off year fundraising practices. Instead, incumbents accumulate large war chests in the off year to deter challengers.

In 1985, an off year, legislators raised nearly \$17 million, a 19% increase over 1983. The typical Assembly incumbent raised \$93,000 in 1985, up 15% from 1983. Contributions received ranged from a high of \$1.9 million gathered by Speaker Willie Brown to a low of \$12,075 raised by former legislator Frank Vicencia who did



not run for reelection. Only Senator Walter Stiern, who announced that he would retire following the 1986 legislative session, failed to collect any money in the off-election year.

Incumbents raised *virtually all* of the off year funds. Only six challengers facing incumbents in the 1986 general election raised any funds in 1985—averaging \$5,450 each. In contrast, opponents of these six challengers averaged \$115,000—outraising their challengers 21-to-1.

Nearly all off year funds were contributed by special interests with pending legislation. Only 14% of off year contributions came from individuals, political organizations or the candidates themselves, while 86% of the money came from PACS, business interests or labor organizations. Individual contributions in the off-election year dropped by over one-third.

The California Medical Association PAC was the largest off year contributor, providing \$346,000 to 98 incumbents. It gave to 41 Republican and 57 Democratic legislators. CMA increased its non-election year giving by 134% over 1983, when it gave \$148,000 to 91 incumbents. In 1983, CMA's largest contribution had been \$10,000 to Senator Milton Marks (then a Republican, now a Democrat) from San Francisco. By contrast, in 1985, CMA gave 10 contributions of \$10,000 or more—including a \$50,000 contribution to Senate President pro Tem David Roberti (D-Hollywood) and a \$40,000 contribution to Assembly Speaker Willie Brown. It also gave another \$10,000 to Marks who is not up for reelection until 1988.

The California Trial Lawyers Association (CTLA), the largest off year contributor in 1983, was the second largest giver in 1985. It gave \$280,000 to 92 of

the 120 incumbents, an 18% increase over the \$237,000 it gave in 1983. CTLA gave to 61 Democrats and 31 Republicans. Its fourth largest contribution in 1985 (\$15,000) went to Senator Nicholas Petris, a Democrat from Alameda County, who will not be up for reelection until 1988.

The Apparent Connection Between Contributions and Legislative Decisions

Observers disagree whether campaign contributions influence lawmakers' decisions. Assemblyman Larry Stirling defends the current system: "It is admittedly hard to explain how anyone can solicit and receive support, and not feel bound to reciprocate. . . . The answer is by honesty, integrity, self-discipline, press disclosure, public scrutiny, political opposition and competition. . . . [O]ne will not last long as a legislator or any other kind of arbiter of human affairs if he's for sale. No one wants you to decide his destiny if you can be bought by the other side."

State Senator Bill Lockyer argues that opposing contributions neutralize each other: "There are many competing special interests giving contributions, essentially canceling out one another's influence. There's a balance."

But many others, including experienced journalists and legislators, believe that the flood of money into campaign coffers has a pervasive influence on the legislative process:

■ *"It goes beyond the ability of anyone being able to say that these kinds of contributions don't have an influence."* (Assembly Speaker Willie Brown.)

■ *"We have widespread corruption. We have had . . . the purchasing of votes . . . with campaign contributions. . . . I think that's reprehensible."* (State Senator Ed Davis.)

■ *"Saying the cascade of special-interest contributions only buys access is a 'most charitable interpretation.' No one that I know of gives money, energy or time into the system without some kind of reward."* (Arizona State Professor Ruth Jones.)

■ *"It would be nice to report now that corruption has been erased and that everyone is living happily ever after. But, of course, that isn't true. Corruption, in the form of special favors for those special interest contributions, not only continues but is bigger and more blatant than before."* (Robert Fairbanks, *The Sacramento Daily Recorder*.)

Since the 1984 election, a number of incidents have helped reinforce the widespread public impression that campaign contributions have a corrupting impact on the integrity of legislative votes.

The Beer Bill (AB 1150) Passes the Assembly

In 1987, beer wholesalers sponsored legislation to require retailers to buy brands of beer from the one wholesaler with exclusive jurisdiction over a brand of beer in an area. Proponents, including the California Beer and Wine Wholesalers Association, Miller Brewing Company and the Mexican American Grocers Association, argued the measure would protect consumers by ensuring quality (exclusive wholesalers would rotate stock to avoid stale beer) and improving customer service.

Opponents, including the California Retailers Association, Common Cause, and Consumers Union, argued that exclusive territories would cost consumers up to \$64 million a year in higher prices. In May 1986, the Legislative Analyst (a non-partisan employee of the legislature) concluded that an identical predecessor bill would

"leave California beer consumers as a whole, and the state government, *worse off* than they would be without such a bill." (Emphasis in original.)

Considerable sums of money flowed to legislators from supporters of the beer bills in 1983 and 1985. In 1983-84 the wholesalers contributed \$198,500, and in 1985-86 they distributed \$227,000 to 108 incumbents, 6 candidates running for open seats and one challenger (Sandra Smoley) who received \$500 while her opponent, incumbent State Senator Leroy Greene of Sacramento, was given \$1,000. Only 12 incumbents did not receive funds and eight of these were not seeking reelection in 1986.

During the first three months of 1987, when the beer bill was being considered, legislators tapped the beer wholesalers' PAC for \$77,000. Seventy-six incumbents received beer money ranging from \$500 to \$11,000 for Senate President pro Tem David Roberti. Twelve Senators not up for reelection until 1990 received \$13,500 in the first quarter of 1987. Conservatives, liberals, Democrats and Republicans all received substantial sums.

The *Fresno Bee* editorialized, "It's not hard to see what the campaign contributions are intended to do." Dan Walters of the *Sacramento Bee* charged, "the wholesalers are trying to buy themselves a monopoly" and called the bill "a blatant piece of anti-competitive, special interest legislation."

As of this *1987 Update*, AB 1500 had passed the Assembly and was in the State Senate, where it was also expected to pass.

The Tobacco Tax Proposal Is Killed With Little Debate

In May 1987, the Assembly Revenue and Taxation committee rejected a proposed constitutional amendment to raise

the state's cigarette tax to 35 cents a pack. The estimated \$500 million in additional revenues was earmarked exclusively for anti-smoking programs.

Assemblyman Lloyd Connelly (D-Sacramento) and Assemblyman William Filante (R-Marin), co-sponsors of the measure, cited a recent California Poll finding that over two-thirds of those surveyed favored raising taxes to 30 cents a pack. They also argued that increased taxes would save over 40,000 lives by deterring Californians from smoking.

Assemblyman Richard Floyd (D-Gardena), however, argued that increasing the cigarette tax would encourage gangsters to smuggle cigarettes into the state and sell them at a lower price. "This bill is a direct invitation to the mob to come into California and do business," Floyd noted, puffing on both a cigar and a cigarette.

The bill died in committee. No member of Revenue and Taxation voted for the bill because no motion on the bill was offered. The chairman, Assemblyman Johann Klehs (D-San Leandro), refused to permit witnesses supporting the bill to testify on its merits.

The Tobacco Institute gave \$129,000 to 73 members of the legislature in 1985-1986 and \$16,000 in contributions to members of the Assembly Revenue and Taxation committee. The Tobacco Institute gave no contributions to any challengers, or candidates running for an open seat. Both liberals and conservatives received funds—provided they were incumbents.

On May 20, 1987, the *Los Angeles Herald Examiner* attacked the campaign contributions behind the vote: "It's time for some legislators in Sacramento to stop adding 'R' or 'D' after their names in designating Republican or Democratic

party affiliation and to replace it with 'TI—Tobacco Institute.' The lobby's special interests and cash contributions seem to be what is most important to them."

The Moriarty Scandal Rocks the Legislature

In 1981-82 Patrick Moriarty, manufacturer of so-called "safe and sane" fireworks, urged the legislature to adopt a bill preempting local control over the sale of fireworks. The bill passed the legislature but was vetoed by former Governor Jerry Brown. Although Moriarty reported giving legislators only \$17,100 in campaign contributions, close associates of Moriarty apparently gave legislators over \$590,000—some of it at Moriarty's request. Moriarty later pled guilty to other charges, including several felony counts of bribing public officials and providing them with illegal gifts. For many, the Moriarty case came to symbolize the appearance of widespread corruption at high governmental levels.

Other local officials have either pled guilty or have been convicted of federal crimes. Former Assemblyman Bruce Young, for example, became the first California legislator in over 30 years to be convicted of a felony. Young was convicted of 5 counts of mail fraud (for failing to report the ownership of certain assets) and sentenced to 18 months in prison.

At Young's sentencing Judge Dickran Tevrizian referred to *The New Gold Rush* and commented: "The bottom line is going to be state legislators are going to have to take another look at campaign funding and campaign spending. I really believe . . . this case is going to fan the fires for reform." *Sacramento Bee* reporter Dan Walters wrote a scathing column following Young's conviction, stating: "The sordid details that emerged during the Young trial represented . . . a case study of

how business is done in Sacramento these days. . . . It's a typical case involving a typical, even run-of-the-mill, juice bill."

The Appearance of Corruption Requires Reform

In *The New Gold Rush*, the Commission warned that California's legislative campaign financing was increasing the appearance of corruption, diminishing competition between candidates and undermining public confidence in the governmental system. The Commission also noted that the legislature's reliance on special interest contributions was forcing taxpayers to shoulder higher costs (one reporter has estimated that the public loses \$9 billion a year in tax revenue as a result of "special interest fiddling with the tax code") and decreasing the legislature's efficiency.

Professor Daniel Lowenstein, a UCLA Law School Professor and a former Chairman of the FPPC, argues that giving campaign money to influence legislation or gain access to a legislator's time is bribery under California law. He asserts: "Not many observers will deny that most interest-group contributions are made with the intent of gaining influence. It is difficult otherwise to explain the many groups that contribute to incumbents and other likely winners across the partisan and ideological spectrum." These and other similar observations make the need for campaign finance reform in California especially compelling.

Summary of the Commission's Proposals

The excesses of the 1986 election require comprehensive reforms. The 1986 election saw the highest legislative spending in California history and the lowest challenger's success rate in

34 years. Never has so much much been spent to reelect so many, yet seldom have challengers offered such token opposition.

High spending and low competition are partly due to reapportionment. During California's 1982 reapportionment, 85% of all legislative districts were placed either in safe Democratic or Republican hands. Competition in the general election in these districts became virtually nonexistent. A handful of seats, however, were closely divided between Democratic and Republican voters. These few races, together with any open seat contests, now draw most of the campaign financing fire. A few extremely high spending 1986 races, therefore, with total spending exceeding \$2 million, were enough to drive overall legislative spending totals through the ceiling.

California's legislative races are thus characterized by extremely high spending and a simultaneous lack of overall competition. Moreover, the high cost of electoral politics deters qualified newcomers from seeking office. Small local contributors are ignored, since high campaign costs force candidates to approach larger donors. Legislators spend more time raising money and less time discussing issues. Large contributions increase the impression that contributions are exchanged for favorable votes. And public confidence in California's system of government is waning.

The Commission Recommends a Comprehensive Model Campaign Finance Law for California

Campaign finance laws for California must decrease the perception that legislators are unduly influenced by large contributions, reduce the time candidates spend on fundraising, increase competition between candidates, enhance the quality of information received by voters and offer

all individuals a fair and equal opportunity to participate in the state's legislative and electoral processes. All these objectives can be attained only by a balanced package of expenditure ceilings, contribution limits and limited public matching funds for candidates who limit their expenditures. (A summary of the Commission's Model Law appears as Appendix A to this Update, and its full text appears in Appendix A to the *The New Gold Rush*. A list of the changes in the Model Law proposed by the initiative circulated by Californians to Limit Campaign Spending appears as Appendix B to this Update.)

Comprehensive Expenditure Ceilings, Contribution Limits and Limited Matching Funds Are Necessary to Solve California's Campaign Financing Problems

Expenditure ceilings are a vital component in any campaign finance reform system. Without them, the escalating "arms race" mentality will continue to permeate most campaigns. Expenditure ceilings cap the total amount of money candidates need to spend, thus reducing the time they must devote to fundraising. Expenditure ceilings also stabilize campaigns, reduce fears over last-minute large infusions of money, diminish incumbents' fundraising advantage and abate special interest groups' influence.

Contribution limits, as part of a comprehensive reform package, are also vital. They reduce the impact of special interest contributors and encourage candidates to seek funding from smaller contributors. At the same time, expenditure ceilings prevent candidates from spending excessive amounts of time raising money and restrain incumbents' fundraising advantage. Proliferation of contributors will decrease in importance, since candidates cannot spend more than the prescribed ceilings.

Limited amounts of public matching funds are constitutionally necessary to encourage candidates to limit their expenditures voluntarily, according to United States Supreme Court rulings. Matching funds also substitute for special interest contributions, allow candidates to spend less time raising money and encourage candidates to solicit smaller contributions in their own home districts. And taxpayers can voluntarily choose to participate in the matching funds program by appropriately indicating on their annual state income tax returns.

The Model Law Contains Several Innovative Features

The Commission's proposed Model Law contains several important innovations. Candidates will not qualify for matching funds unless they: (i) limit their expenditures; (ii) raise qualifying threshold amounts in small contributions; and (iii) face "serious opponents"—who have either qualified for matching funds or raised, spent or have cash on hand of \$35,000.

Small contributions of \$250 or less from residents of the candidate's own district are encouraged by higher matching ratios. Unused matching funds are returned to the state. Expenditures by wealthy candidates and independent expenditure committees are discouraged. Honoraria are limited.

Contribution Limits By Themselves Are Inadequate to Solve California's Campaign Financing Problems

Contribution limits have been applied in federal elections since 1974, in almost half of the states, and in over 50 local California jurisdictions. These limits have the principal benefit of reducing the appearance or reality of a *quid pro quo* between a contribution and a legislator's vote. Contribution limits also encourage

candidates to raise more contributions in smaller amounts, thus encouraging small contributors to participate in the electoral process.

But contribution limits by themselves, without the support of expenditure ceilings and limited matching funds, have serious flaws. They protect incumbents and hurt challengers since incumbents with established name recognition can raise large numbers of smaller contributions more easily than relatively unknown challengers. Contribution limits also force candidates to spend more time raising money. They leave less time to discuss electoral issues. And they can stimulate the proliferation of "bundlers" (who raise small contributions from others and forward them to candidates) and PACs. Contribution limits are only effective if part of a comprehensive reform including expenditure ceilings and limited matching funds.

The Costs of the Commission's Comprehensive Proposal Are Minimal

The Commission estimated in *The New Gold Rush* that the cost of its matching funds proposal would approximate \$4.6 million annually, including both primary and general elections. These estimates were based on analyses of the 1980-1984 California elections. Analysis of spending in 1986 confirms the Commission's estimate that the cost of its program will be lower than \$4.5 million a year. This is the lowest cost of any comparable proposal and would cost California residents 17 cents a year—less than the cost of one telephone call.

The Future of Campaign Financing in California

"Money is influencing and corrupting the political process here, and yet the people who should be most concerned—the politicians—seem least inclined to do

something about it. They act like alcoholics who know they have a problem but can't be helped until they really want to seek it. The politicians are drunk with money, staggering under the weight and impact of it, yet are unable to break the addiction." (Fred Kline, *The Sacramento Daily Recorder*.)

California urgently needs campaign finance reform. Yet the state legislature seems paralyzed and unable to act. If reforms are not implemented, the Commission can realistically predict:

- Campaign costs will continue to skyrocket. By 1990 legislative campaigns will break the \$100 million barrier.
- Incumbents will build larger warchests in non-election years to scare off challengers.
- Fewer candidates will run for legislative office. Most challengers will realize it is nearly impossible to defeat an incumbent and nearly impossible to win an open seat without money from legislative leaders.
- Legislative party caucuses will increase their role in finding and financing legislative candidates. Transfers from one candidate to another may diminish as incumbents donate their money to the caucuses.
- Major pieces of legislation will stall. Legislators, reluctant to alienate advocates on either side of controversial issues when both are major sources of funds, will avoid definitive votes. Major contributors will continue to give so long as critical issues remain unresolved.
- Democrats and Republicans will increase their pressure on PACs and other special interest groups to contribute. Contributors will be forced to increase their giving to all incumbents even if they

disagree with their philosophy. PACs and other special interests will further diminish their funding of challengers.

■ Campaign finance reform proposals will be offered in the legislature but not enacted. Incumbent legislators will be reluctant to change the rules of a game they have won.

Political resistance to campaign finance reform will perpetuate a system

which is increasingly unstable. At some future point the strains will become intolerable and reforms will eventually come. What is uncertain, however, is whether such reforms will incorporate only cosmetic stop-gap measures, designed more to improve the image of the legislature than to address California's real problems. The Commission hopes its report together with this *1987 Update* can contribute to a process of constructive discussion, and that those discussions can generate meaningful change.

APPENDIX A

The Commission's Principal Campaign Finance Proposal for California State Legislative Elections

Expenditure Limitations, Contribution Limitations and Limited Matching Funds

I. Expenditure Limitations

	PRIMARY	GENERAL	TOTAL
Assembly	\$150,000	\$225,000	\$375,000
Senate	250,000	350,000	600,000

II. Contribution Limitations (per election)

Basic limit (individual, business, labor union, PAC) \$1,000

PACs receiving all contributions in amounts of \$50 or less ("Small Contributor PACs") \$5,000

Transfers Prohibited

Legislative Caucus and/or Party (general election only) \$50,000

Off year contributions Prohibited

Aggregate contributions received from non-individuals per election:

Assembly candidates \$50,000
Senate candidates \$75,000

Limit on total contributions in a two-year period to all candidates by:

—Individual, business, labor union, PAC \$25,000

—Small Contributor PAC \$100,000

Contributions to PACs/year \$1,000

Contributions to parties and caucuses/year \$5,000

Seed Money (exempted from basic contribution limits) \$35,000

III. Limited Matching Funds

Threshold amount candidate must raise (in contributions up to \$1,000) to qualify for matching funds:

Assembly \$20,000
Senate \$30,000

Candidates cannot receive limited matching funds unless at least one opponent raises or spends at least \$35,000, or an opponent qualifies for matching funds

Contributions matched at following ratios:

\$250 or under 3:1
\$250 or under from in-district sources 5:1

Maximum amount of funds per candidate:

	PRIMARY	GENERAL	TOTAL
Assembly	\$ 75,000	\$112,500	\$187,500
Senate	125,000	175,000	300,000

IV. Miscellaneous

Limits on receipt of gifts, honoraria and contributions in any two-year period from:

— Individual, business, labor union, PAC \$2,000
— Small Contributor PAC \$10,000

Improved identification of PAC sponsoring organizations

FPCC administration and enforcement

Income tax checkoff to finance limited public matching funds: maximum \$3 per person

Cost of living adjustments

Return of surplus matching funds to government on a pro rata basis

APPENDIX B

Changes in the Model Law Proposed by the "Californians to Limit Campaign Spending" Initiative

Californians to Limit Campaign Spending is expected to place an initiative on the June 1988 ballot which incorporates many of the provisions contained in the Commission's Model Law (see Appendix A). The initiative would make a number of changes in the Model Law, including the following more significant ones:

1. The \$1,000 contribution limit for organizations (corporations, unions, PACs) to candidates or other PACs is raised to \$2,500. (Section 85300) "Organizations" are defined as groups with 25 or more members, shareholders or employees. (Section 85206)
2. The \$25,000 limit on total contributions is raised to \$200,000 for all organizations. (Section 85307)
3. The \$50,000 contribution limit for parties and caucuses is raised to \$75,000 for Senate candidates. (Section 85303)
4. Gifts and honoraria are separately limited to \$2,000 a year. (The Model law offset gifts and honoraria against the permissible contribution limit.) Limits on gifts do not apply to candidate's family members. (Section 85310)
5. Wealthy candidates cannot receive public financing if they spend over \$50,000 of their own money. (Section 85501)
6. Candidates must return to contributors any surplus over \$100,000 after the general election or donate it to the Campaign Reform Fund. (Section 85506)
7. Surpluses over \$1 million in the Campaign Reform Fund following the general election are paid back to the General Fund. (Section 18776)
8. Revenues from the state's General Fund are prohibited from being used to supplement the Campaign Reform Fund. (Section 85505)
9. Candidates cannot set up separate funds for non-legislative offices without specifying the exact office sought. (Section 85315)
10. Political party committees supporting or opposing legislative candidates cannot receive off year contributions. (Section 85309)
11. Contributions from candidates or their immediate families cannot be matched and do not help qualify candidates for matching funds. (Sections 85501, 85502)
12. Political parties can create separate committees to support legislative candidates, thus allowing parties to receive separate and larger contributions for non-legislative candidates. (Section 85302)

APPENDIX C

Outline of the Commission's Full Report

PART I—Campaign Finance Today in California: Problems, Causes and Consequences

1. The Problem of Skyrocketing Costs

- A. Costs of Campaigning for the California Legislature Are Escalating Dramatically
- B. Incumbents Are Widening Their Fundraising Advantage over Challengers
- C. Competitive Races Are Diminishing in Number
- D. Election Expenditures Are Rising Primarily Due to Increased Use of Direct Mail, Not to Increased Costs
- E. Broadcast Advertising Is Effective but Not Cost-Efficient for Most Legislative Campaigns
- F. Other Spending Categories Vary Between Campaigns
- G. Similar Trends Have Been Found in a Recent Washington State Study
- H. A Variety of Spending Choices Is Apparent in 1982 Campaigns
- I. Expenditure Ceilings Can Stem Rapidly Escalating Campaign Costs

2. The Causes of Escalating Fundraising and Campaign Costs

- A. An "Arms Race" Mentality Destabilizes Campaigns and Increases Campaign Costs
- B. Easy Access to Large Sums of Cash Accentuates the Fear of Sudden or Unexpected Defeat
- C. Continued Reapportionment Battles over the Past Five Years Have Increased the Level of Legislative Insecurity
- D. Contributors Are Willing to Pay
- E. Candidates Are Afraid Not to Purchase Available New Technologies
- F. Legislative Incumbents Are Using Campaign Funds for Non-Campaign Expenses
- G. High Spending Has Not Caused a Voter Backlash

3. Who Pays for California's Legislative Campaigns?

The Disappearance of the Mom and Pop Contributor

- A. The Prototype for Future Elections May Be the Candidate from Riverside, Not the Candidate from San Mateo
- B. The Small, Individual, In-District Contributor Is an Anachronism
- C. The Institutional Contributor Is Now the Dominant Source of Funds
- D. The Commission's Model Law Will Encourage Small In-District Contributions

4. The Growth of PAC, Business and Labor Contributions

- A. PACs Have Grown to Prominence at the Federal Level
- B. PAC, Business and Labor Contributions Are the Largest Source of Campaign Contributions in California's Legislative Races
- C. Reforms Are Desirable to Moderate the Influence of PAC-Business-Labor Contributions in California

5. Partisan Sources of Campaign Money: Transfers, Legislative Caucus Contributions and Political Party Contributions

- A. Democrats and Republicans Rely Equally on Partisan Sources of Money Although Their Techniques Differ
- B. Transfers Are the Fastest Growing Source of Campaign Money in California
- C. Legislative Caucus Contributions Aid Assembly Republicans
- D. Political Party Contributions: Republicans Outstrip Democrats
- E. Summary and Conclusions: Reforms Are Needed to Address Problems Raised by Partisan Contributions

6. Off Year Fundraising: California's Secret Campaign Finance Problem

- A. Off Year Fundraising Is Growing in Importance
- B. There Is a Dangerous Relationship Between Off Year Contributions and Improper Legislative Influence
- C. Off Year Fundraising Has an Alarming Impact on the Competitiveness of Elections
- D. Off Year Money Is Often Raised for a Variety of Non-Campaign Purposes
- E. Reforms Are Needed to Address the Problems of Off Year Fundraising

7. Negative Consequences on Legislation, Elections and Public Confidence

- A. The Legislative Process Is Being Impaired
- B. Electoral Competition Is Being Distorted
- C. Public Confidence in Government Is Diminished

8. Wealthy Candidates and Independent Expenditures: Potential Problems That Have Not Yet Appeared in California

- A. Wealthy Candidates Have Had Minimal Impact in the State
- B. Independent Expenditures Have Yet to Play a Major Role in the State
- C. Limited Reforms Are Appropriate

PART II — The History of Campaign Finance Reform: Goals, Limits and Alternatives**9. California: A Century of Campaign Finance Reform**

- A. California Attempts Its First Campaign Finance Reforms: 1849 to 1907
- B. Indifference to Reform Grows: 1907 to 1922
- C. Artie Samish Uses Contributions to Influence the Legislature: 1923 to 1949
- D. The Legislature Passes Weak Laws Which Are Unenforced or Declared Unconstitutional: 1949 to 1970
- E. The Legislature Is Forced to Renew Its Interest in Reform: 1971 to 1974
- F. New Campaign Reform Proposals Are Considered: 1975 to 1984
- G. California Law Today: Disclosure and a Limited Number of Other Requirements Are Imposed on Political Campaigns

10. Campaign Finance Laws in Other States: The Laboratories of Reform

- A. Other States Have Experimented with a Wide Variety of Reform Measures
- B. Contribution Controls Are the Most Prevalent Type of Reform
- C. Eleven States and One City Provide for Partial Public Financing of Elections
- D. A Number of States Use the Tax System to Encourage Political Contributions
- E. Summary and Conclusions: Contribution Limits, Expenditure Ceilings and Partial Public Financing Have Accomplished Many of Their Goals in Other States

11. The Federal Experience: Contribution Limits, Expenditure Ceilings and Partial Public Financing

- A. Contribution Limits Have Met with Partial Success in Congressional Elections
- B. Expenditure Limits and Public Financing for Presidential Elections Have Met with Considerable Success

PART III — The Commission's Recommendations**12. The Commission's Model Campaign Finance Law:****A Proposal for California**

- A. The Commission Recommends a Comprehensive Approach to California's Campaign Finance Problems
- B. Expenditure Ceilings Are Necessary to Limit the Fundraising Arms Race
- C. Contribution Limits Are Necessary to Mitigate the Real or Apparent Influence of Large Contributors
- D. Limited Matching Funds Are Necessary to Ease Fundraising Pressures and to Encourage Acceptance of Expenditure Ceilings
- E. The Prospects for Reform Are Open

13. A Detailed Analysis of the Commission's Model Law

- A. Expenditure Ceilings Will Cap the Escalating Demand for Campaign Funds
- B. Contribution Limits Are Tailored to Address a Wide Range of Contributor Problems
- C. Limited Public Matching Funds Will Encourage Acceptance of Expenditure Ceilings and Smaller Contributions
- D. Additional Model Law Provisions Are Required for Adequate Enforcement

14. The Constitutionality of the Commission's Recommended Model Law

- A. The Commission's Contribution Limits Are Valid Attempts to Eliminate Actual or Apparent "Corruption" in the Political Process
- B. The Commission's Expenditure Ceilings Are Voluntary and Constitutionally Valid
- C. Limited Public Matching Funds Are Constitutionally Valid Because They Further Important Governmental Interests

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B. An Alternative Proposal

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Political Tax Credits Analyzed

The Pros and Cons of Political Tax Credits

Variable Political Party and/or Legislative Caucus
Contribution Limits Analyzed

The Pros and Cons of Variable Contribution Limits

The Constitutionality of the Alternative Proposal

Conclusion

Statutory Provisions for the Alternative Proposal

C. Consultants

D. How Legislative Candidates Raise Money Today: A Hypothetical Case Study

E. How Legislative Candidates Might Raise Money Under the Commission's Recommended Model Law: A Scenario

F. Analysis of Proposition 40: The Ross Johnson Campaign Finance Initiative

G. Analysis of the Vasconcellos-Lockyer Bill (S.B. 87)

H. Recent Public Opinion Polls on Campaign Finance Reforms

I. Issues for Further Study

J. Selected Bibliography

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The bipartisan Commission is comprised of 20 Californians from the state's business, labor, agricultural, legal, political and academic communities.

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